

Peters v. Shamrock Foods Company, No. 06-15356

DEC 27 2007

THOMAS, Circuit Judge, dissenting:

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

I respectfully dissent. The district court's grant of summary judgment in favor of Shamrock Foods Company should be reversed, and the case remanded for trial.

Peters provided direct evidence of discriminatory intent when she testified that her supervisor, Elliot Begoun, explained that the reason he denied her the position of External Marketing Manager was because she was a "mom" and therefore "couldn't travel." This statement, on its face, establishes sex discrimination because it demonstrates clearly impermissible sex-stereotyping. *See, e.g., Back v. Hastings On Hudson Union Free Sch. Dist.*, 365 F.3d 107, 120 (2d Cir. 2004) ("[I]t takes no special training to discern stereotyping in the view that a woman cannot 'be a good mother' and have a job that requires long hours These are not the kind of 'innocuous words' that we have previously held to be insufficient . . . to provide evidence of discriminatory intent."); *Santiago-Ramos v. Centennial P.R. Wireless Corp.*, 217 F.3d 46, 57 (1st Cir. 2000) (finding evidence of sex discrimination where employment decision maker questioned plaintiff's "ability to fulfill her work responsibilities should she have a second child"); *Sheehan v. Donlen Corp.*, 173 F.3d 1039, 1044 (7th Cir. 1999) (holding decision maker's "remarks [to plaintiff] and her co-workers . . . that she would be happier at

home with her children provided direct evidence of discrimination”). Because Peters presented direct evidence of Begoun’s discriminatory animus, she has demonstrated a triable issue of fact as to Begoun’s actual motivation. *See Chuang v. U. of Cal. Davis, Bd. of Trustees*, 221 F.3d 1115, 1128 (9th Cir. 2000).