STATE OF MICHIGAN

COURT OF APPEALS

DELORES GOODSON,

Plaintiff-Appellant,

v

R.C. ENGINEERING AND MANAGEMENT SERVICES, INC. and JERVIS B. WEBB,

Defendants-Appellees.

UNPUBLISHED
June 27, 1997

No. 194719
Genesee Circuit Court
LC No. 95-037030

Before: Markey, P.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendants, R.C. Engineering and Management Services, Inc. (hereinafter "R.C.") and Jervis B. Webb (hereinafter "Webb"), on her claims of race discrimination and sex discrimination and to defendant Webb on her tortious interference claim. We affirm.

Plaintiff first claims that it was an error for the trial court to determine that there was no employee-employer relationship between Webb and plaintiff. We need not resolve this issue because it is not dispositive[1]. Regardless of whether Webb was plaintiff's employer, summary disposition was appropriate. Plaintiff failed to offer a prima facie case of race discrimination, sex discrimination, or tortious interference.

Plaintiff attempted to demonstrate a prima facie case of disparate treatment by showing that she was a member of a protected class and that she was treated differently than persons of a different class for the same or similar conduct. *Jenkins v Southeastern Michigan Chapter, American Red Cross*, 141 Mich App 785, 793; 369 NW2d 223 (1985). Plaintiff failed to make the requisite showing. Plaintiff, an African-American female, was a member of a protected class, but she failed to offer any evidence that she was treated differently than white employees for the same or similar conduct. The only evidence she offered was the affidavit of another R.C. contract worker, a white male, who held the exact same job as plaintiff at Webb. He averred that he was once counseled for socializing too much on the job and was not terminated. There was no evidence that this individual failed to improve his

conduct after being informed that it was inappropriate. There was evidence, however, that plaintiff was warned once without disciplinary action being taken. Only when she failed to improve was she terminated. In addition, there was no evidence that the white contract worker's conduct was the same or similar to plaintiff's conduct, so there was no evidence that he was treated differently for the same or similar conduct. Therefore, plaintiff offered no evidence to create a material issue of fact with regard to the prima facie case of race discrimination. Plaintiff's mere assumptions and beliefs that she was a victim of race discrimination are insufficient to allow the claim to proceed to the jury. *Bouwman v Chrysler Corp*, 114 Mich App 670, 682; 319 NW2d 621 (1982).

Similarly, plaintiff failed to offer evidence of a prima facie case of sex discrimination, which requires that plaintiff demonstrate that she was a member of a protected class and was treated differently than a man for the same or similar conduct. *Marsh v Dep't of Civil Service (After Remand)*, 173 Mich App 72, 79; 433 NW2d 820 (1988). She did not offer any evidence that the white, male contract worker or any other male workers were treated differently than she was for the same or similar conduct. Moreover, she conceded that the senior detail engineer in charge of her work did not treat her differently because of her sex, and she offered no other evidence, direct or circumstantial, from which this Court could find material issues of fact as to this claim.

Summary disposition on the race and sex discrimination claims were appropriate for R.C. also. Plaintiff conceded that R.C. did not discriminate against her directly. Plaintiff's only claims against R.C. are that Webb was R.C.'s agent and, as such, is liable for Webb's discrimination. We need not decide the agency issue. Because plaintiff could not sustain her discrimination causes of action against Webb, she cannot maintain her causes of action against R.C., even if Webb were its agent.

Summary disposition was also proper on plaintiff's tortious interference claim. The elements of tortious interference with a contractual relationship are (1) the existence of a contract; (2) a breach of the contract; and (3) instigation of the breach without justification by the defendant. *Jim-Bob, Inc v Mehling*, 178 Mich App 71, 95-96; 443 NW2d 451 (1989). With respect to R.C., plaintiff was an at-will employee and R.C. had no obligation to find plaintiff another placement after her work at Webb ended. At-will contracts are terminable at the will of either party at any time for any reason or no reason at all. *Rood v General Dynamics Corp*, 444 Mich 107, 116-117; 507 NW2d 591 (1993); *Snell v UACC Midwest, Inc*, 194 Mich App 511, 512; 487 NW2d 772 (1992). Plaintiff was not discharged in violation of public policy as plaintiff claims. See *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich 692; 316 NW2d 710 (1982). Nor was there evidence that plaintiff was discharged for discriminatory reasons. Because there was no evidence that R.C. breached the at-will employment contract, the second element of the tort cannot be established.

Plaintiff also failed to establish a case for tortious interference with business relations with respect to Webb.

> One is liable for commission of this tort who interferes with business relations of another, both existing and prospective, by inducing a third person not to enter into or continue a business relation with another or by preventing a third person from continuing

> a business relation with another. [*Winiemko v Valenti*, 203 Mich App 411, 416; 513 NW2d 181 (1994) (citations omitted).]

Here, plaintiff offered no evidence that Webb induced R.C. not to continue its business relationship with plaintiff. Webb simply terminated its lease agreement. R.C. was free to place plaintiff or not place plaintiff per the terms of the at-will contract, and there was no evidence that Webb did or said anything to R.C. to prevent it from continuing its relationship with plaintiff. Summary disposition on these torts was appropriate.

Finally, plaintiff argues that if she failed to properly state her claims, she should have been allowed to amend her pleading to correct the defects. We disagree, having concluded that plaintiff did not create material issues of fact as to any of her claims. Even if the pleading was defective and the defects were corrected, plaintiff could not prevail on her causes of action for sex discrimination, race discrimination, or tortious interference with contractual or business relations. Therefore, any amendments would be futile. Leave to amend need not be granted where it would be futile. *Rathbun v Starr Commonwealth for Boys*, 145 Mich App 303, 316; 377 NW2d 872 (1985).

We affirm. Defendants may tax costs pursuant to MCR 7.219.

/s/ Jane E. Markey
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra

[1] Similarly, we need not address plaintiff's second argument that the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*, does not require an employer-employee relationship as a prerequisite to recovery because this issue was not raised before the trial court and is not dispositive.