STATE OF MICHIGAN

COURT OF APPEALS

TAMMY WHITEHOUSE,

Plaintiff-Appellant,

v

SOURCEONE, INC., JOHN FRANKEN, ROGER LYNEMA, and RICHARD LYNEMA,

Defendants-Appellees.

UNPUBLISHED
May 19, 1998

No. 200776
Allegan Circuit Court
LC No. 94-016988 NZ

Before: Bandstra, P.J., and MacKenzie and N.O. Holowka*, JJ.

MEMORANDUM.

Following a jury verdict of no cause for action in this suit for hostile environment sexual harassment and retaliatory discharge under the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq*.; MSA 3.548(101) *et seq*., plaintiff appeals by right. Her sole contention is that the trial court abused its discretion, *Sackett v Atyeo*, 217 Mich App 676, 683; 552 NW2d 536 (1996), in denying her motion in limine to preclude the introduction of any evidence, including various letters she wrote, pertaining to her adulterous sexual relationship with a supervisor, which supervisor is not one of the named defendants in this action, although employed by the same defendant employer, Sourceone, Inc. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff contends that the trial court abused its discretion, citing *Priest v Rotary*, 98 FRD 755; (ND Cal, 1983). That case is plainly distinguishable because the excluded evidence concerned the plaintiff's sexual conduct outside the workplace and with persons unaffiliated with the workplace.

Here, by contrast, the evidence in question concerns plaintiff's sexual conduct with another person affiliated with the workplace. Such evidence is well within the totality of the circumstances of the sexual atmosphere within the workplace relevant to a claim of hostile environment sex harassment. *Meritor Savings Bank v Vinson*, 477 US 57, 68; 106 S Ct 2399; 91 L Ed 2d 49 (1986); *Mitchell v Hutchings*, 116 FRD 481, 484 (D Utah, 1987).

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* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff also relies on an amendment to FRE 412 effectuated by PL 103-322, Title IV, § 40141(b) (September 13, 1994), which expanded the federal rape shield law and extended it to civil cases. However, to date, the Michigan Legislature has limited the Michigan rape shield law to criminal sexual conduct cases only. MCL 750.520j(1); MSA 28.788(10)(1). The Michigan Supreme Court, the only other governmental entity having the authority to promulgate rules of evidence, Const 1963, art 6, § 5, has so far not opted to emulate the federal example; there is no MRE 412. The trial court did not abuse its discretion by declining to engraft onto the jurisprudence of this state a federal evidentiary rule that neither the Michigan Legislature nor the Michigan Supreme Court has seen fit to adopt.

No abuse of discretion having been demonstrated, appellate relief in this case is unwarranted.

We affirm.

/s/ Richard A. Bandstra
/s/ Barbara B. MacKenzie
/s/ Nick O. Holowka