STATE OF MICHIGAN

COURT OF APPEALS

PAMELA TURNER,

Plaintiff-Appellant,

v

COUNTY OF WAYNE, WAYNE COUNTY SHERIFF'S DEPARTMENT, ROBERT FICANO, COMMANDER BOOTH, SERGEANT DENTON, and SERGEANT CHESNEA,

Defendants-Appellees.

UNPUBLISHED
November 23, 1999

No. 205825
Wayne Circuit Court
LC No. 96-602325 CZ

Before: Gribbs, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

In this case that claims sexual harassment and sex discrimination, plaintiff appeals as of right an order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff's complaint alleges that defendants Sergeant Denton and Sergeant Chesnea made unwelcome sexual advances to her, and that because she failed to submit to those advances, Denton and Chesnea gave her a poor work performance evaluation that ultimately led to her discharge. On appeal, plaintiff contends the trial court erred as a matter of law in granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We disagree. This Court reviews the trial court's decision to grant or deny summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Plaintiff first contends that genuine issues of material fact are in dispute regarding whether Denton and Chesnea sexually harassed her. The Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq*., prohibits an employer or its agent from discriminating "against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of . . . sex." *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 358; 597 NW2d 250 (1999). The act contains a provision that specifically outlaws two forms of sexual harassment: hostile work environment and "quid pro quo" harassment. *Champion v Nation Wide Security, Inc*, 450 Mich 702, 708; 545 NW2d 596 (1996). The present case involves the latter. According to *Champion*, the

act sets forth two separate theories under which a party may pursue a quid pro quo sexual harassment cause of action:

> (i) Discrimination because of sex includes sexual harassment which means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature when:
>
> (*i*) Submission to such conduct or communication is made a term or condition either explicitly or implicitly to obtain employment, public accommodations or public services, education, or housing;
>
> (*ii*) Submission to or rejection of such conduct or communication by an individual is used as a factor in decisions affecting such individual's employment, public accommodations or public services, education, or housing. [MCL 37.2103(i)(*i*), (*ii*); MSA 3.548 (103)(i)(*i*), (*ii*).]

Pursuant to the second subsection, which forms the basis for the present claim, plaintiff must establish "(1) that she was subject to any of the types of unwelcome sexual conduct or communication described in the statute, and (2) that her employer or the employer's agent used her submission to or rejection of the proscribed conduct as a factor in a decision affecting her employment." *Id*. at 708-709.

In this case, plaintiff failed to present evidence that Denton and Chesnea made sexual advances toward her or that they used her rejection of those advances as a factor when they gave her the poor work performance evaluation that ultimately led to her discharge. As the trial court correctly stated, plaintiff can, at best, show that Denton asked her what her evening plans were, and Chesnea, on the other hand, merely asked her to spend the weekend with him on his boat. Thus, Denton and Chesnea did not communicate anything sexual in nature to plaintiff.

Moreover, plaintiff did not present sufficient evidence that she was discharged for reasons other than her work performance. The evidence before the trial court indicated that Denton and Chesnea gave plaintiff poor ratings because she failed the CPR and first-aid classes, displayed marginal ability to identify problems and make appropriate decisions, and failed to maintain a minimum level of absences and tardiness. Plaintiff did not present evidence, beyond mere speculation, to the contrary. We therefore conclude that the trial court properly granted summary disposition on plaintiff's sexual harassment claim. MCR 2.116(G)(4); *Maiden v Rozwood*, 461 Mich 109, 118-121; 597 NW2d 817 (1999).

Plaintiff also contends that genuine issues of material fact are in dispute regarding whether Denton and Chesnea discriminated against her because of her sex. Again, we disagree. To establish a prima facie case of "intentional discrimination," a plaintiff must prove that (1) the plaintiff is a member of the protected class, (2) the plaintiff suffered an adverse employment action, (3) the defendant was predisposed to discriminate against members of plaintiff's protected class, and (4) the defendant acted on the predisposition when the employment decision was made. *Wilcoxon, supra* at 358-359. A plaintiff may establish the third and fourth elements by showing through direct evidence that the

defendant had a discriminatory animus that was a motivating factor in the adverse employment action. *Downey v Charlevoix Co Bd of Co Rd Comm'rs*, 227 Mich App 621, 633; 576 NW2d 712 (1998). Once the plaintiff has met this burden, the defendant has the opportunity to show by a preponderance of the evidence that it would have reached the same decision without consideration of the protected status. *Id*. at 634.

For essentially the same reasons described above with regard to plaintiff's sexual harassment claim, plaintiff did not present sufficient evidence that Denton and Chesnea had a discriminatory animus toward her and that the discriminatory animus was a motivating factor in her discharge. Plaintiff failed to prove that Denton and Chesnea made sexual advances toward her. Plaintiff also failed to prove that she was treated differently than her male counterparts because they did not fail the CPR and first aid classes that plaintiff failed. Moreover, plaintiff failed to prove that defendant discharged her for reasons other than her work performance. Accordingly, summary disposition on plaintiff's sex discrimination claim was also properly granted. MCR 2.116(G)(4); *Maiden, supra*.

Affirmed.

/s/ Roman S. Gribbs
/s/ William B. Murphy
/s/ Richard Allen Griffin