STATE OF MICHIGAN

COURT OF APPEALS

MARY M. SCHADE,

Plaintiff-Appellee,

v

CITY OF DETROIT,

Defendant-Appellant,

and

DETROIT POLICE DEPARTMENT, LT. ELMORE SIMONS, and LT. STACY BRACKENS,

Defendants.

UNPUBLISHED
July 28, 2000

No. 209210
Wayne Circuit Court
LC No. 95-532487-NZ

Before: Griffin, P.J., and Holbrook, Jr., and J. B. Sullivan*, JJ.

GRIFFIN, P.J. (*concurring*).

I agree with and join the majority's opinion. I write separately to note a potentially dispositive issue defendant City of Detroit has not raised: the apparent lack of respondeat superior liability.

At trial, plaintiff prevailed on her claim that defendant City of Detroit committed sex discrimination in violation of the Elliott-Larsen Civil Rights Act, MCL 37.2202(1)(a); MSA 3.548(202)(1)(a), when her superiors, Lt. Elmore Simons and Lt. Stacy Brackens, failed to act on a misconduct complaint (not alleging sex discrimination, but insubordination and physical threats) filed by plaintiff against subordinate Officer Leroy Stafford. It is the conduct (more precisely the inactions) of Simons and Brackens that plaintiff alleges constitute unlawful sex discrimination. Plaintiff sought to hold defendant City of Detroit liable for the conduct of its agents, Simons Brackens, based on the theory of

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

respondeat superior.[1] Lt. Simons and Lt. Brackens were dismissed from the case pursuant to a motion for summary disposition granted in their favor. Plaintiff did not cross appeal. Inexplicably, defendant City of Detroit did not argue in the trial court or on appeal that its liability as principal is extinguished based on the adjudication of non-liability of its agents. See, generally, *Theophelis v Lansing General Hosp*, 141 Mich App 199, 203-204; 366 NW2d 249 (1985), vacated 148 Mich App 564; 384 NW2d 823 (1986), aff'd 430 Mich 473; 424 NW2d 478 (1988).

In her brief on appeal, plaintiff sets forth her theory that Brackens and Simons *intentionally* violated defendant City of Detroit's policies and procedures in an effort to protect Officer Stafford from defendant's discipline:

> The bottom line is that as a result of Lt. Brackens' and Lts. Simons' intentional decision to protect P.O. Stafford and ignore Department policies and procedures regarding the disciplinary process, P.O. Stafford's record remained unblemished and he got away with gross insubordination and making threats to a superior officer.

Plaintiff further alleged Lt. Simons and Lt. Brackens were predisposed to discriminate against plaintiff because of her sex. The circumstantial evidence relied on by plaintiff was the alleged comments made by Simons that "women should be at home" and "women in the work place is what is wrong with today's world." Further, Officer Howard Daugherty testified that both Simons and Brackens demonstrated "male chauvinism" toward plaintiff "from time to time."

There appears to be no dispute that when the superiors to Brackens and Simons were advised of the alleged sex discrimination, defendant promptly investigated and took appropriate remedial actions. In this regard, plaintiff admits the following in her brief:

> In March 1994, Appellee [plaintiff] was approached by Commander David Simmons of the Chief's Staff . . . Appellee told Commander Simmons about her Misconduct Report and Lt. Brackens and Lt. Simons' failure to investigate P.O. Stafford. Commander Simmons stated that he would look into the situation. Apparently, Commander Simmons called Commander Spight and ordered her to investigate the matter. Commander Spight ultimately generated a report on April 1, 1994. However, as Commander Spight's report stated, too much time had elapsed between the incident and the investigation and that it was simply too late to discipline P.O. Stafford at this point.

It is well established that an employer is not liable for the civil rights violations of its employees if it adequately investigates and takes prompt and appropriate remedial action upon notice of the alleged civil rights violation. *Radtke v Everett*, 442 Mich 368, 396; 501 NW2d 155 (1993); *Grow v W A*

[1] Plaintiff's original complaint, paragraph two, specifies that defendant City of Detroit's liability is premised solely on the ground of respondeat superior: "The city of Detroit's liability in this Complaint is premised on the doctrine of respondeat superior as a result of the acts and omissions of the remaining Defendants [Simons and Brackens] as more fully set forth herein."

Thomas Co, 236 Mich App 696, 702; 601 NW2d 426 (1999); *Downer v Detroit Receiving Hosp*, 191 Mich App 232, 234; 477 NW2d 146 (1991).

In the present case, plaintiff does not base any portion of her claim on the investigation by Commander Connie Spight. Rather, her allegations regard the inactions of Lt. Brackens and Lt. Simons of not pursuing plaintiff's misconduct complaint for reasons motivated by unlawful sex discrimination. Because defendant City of Detroit adequately investigated and took prompt appropriate remedial action upon notice of the alleged wrongful sex discrimination of its employees, defendant is not liable under a theory of respondeat superior for the conduct of its employees. *Id.* Nonetheless, because it is fundamentally unfair to reverse[2] on the basis of an issue that has not been preserved and argued, *Radtke*, supra at 397-398; *Lansing v Hartsuff*, 213 Mich App 338, 351; 539 NW2d 781 (1995); *Goodridge v Ypsilanti Twp Bd*, 209 Mich App 344, 354-355; 529 NW2d 665 (1995) (Griffin, J., dissenting); rev'd 451 Mich 446; 547 NW2d 668 (1996), I join the majority opinion to affirm.

/s/ Richard Allen Griffin

[2] The doctrine of "right result, wrong reason" applies to affirming, not reversing, the trial court when a ruling reaches the correct result albeit for the wrong reason. See, generally, *In re Jory*, 443 Mich 403, 425; 505 NW2d 228 (1993); *Mulholland v DEC Int'l Corp*, 432 Mich 395, 411, n 10; 443 NW2d 340 (1989).