

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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REBECCA KECSKES,

Plaintiff-Appellee,

v

PARAMOUNT NEWPORT CORPORATION and  
JAMES COSGROVE,

Defendants,

and

VINCENT WOOD,

Defendant-Appellant.

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UNPUBLISHED

February 16, 2001

No. 214844

Wayne Circuit Court

LC No. 96-620638-NO

Before: Cavanagh, P.J., and Talbot and Meter, JJ.

PER CURIAM.

Defendant Vincent Wood appeals as on leave granted the trial court's order granting plaintiff's motion for reconsideration and denying defendant's motion for summary disposition of plaintiff's sex discrimination claim under the Civil Rights Act, MCL 37.2202(1)(a); MSA 3.548(202)(1)(a). We reverse and remand for further proceedings.

Plaintiff, a former employee of Paramount Newport Corporation (Paramount), brought this action alleging, inter alia, that during her employment she was subjected to repeated acts of sexual harassment by James Cosgrove, Paramount's chief financial officer. Plaintiff named as defendants Paramount, Cosgrove, and Wood, an owner and officer of Paramount. Plaintiff alleged that defendant Wood had knowledge of Cosgrove's inappropriate behavior and failed to effectively remedy the situation. Defendant<sup>1</sup> moved for summary disposition on the ground that he could not be held personally liable under the Civil Rights Act for Cosgrove's alleged acts of sexual harassment. The trial court, Judge Timothy Kenny, granted defendant's motion, and

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<sup>1</sup> Because this appeal involves only defendant Wood, the use of the term "defendant" will refer solely to Wood.

entered an order to that effect.<sup>2</sup> Judge Kenny determined that no basis existed for holding defendant liable in his individual capacity. Judge Kenny noted that in his official capacity, defendant's alleged knowledge of Cosgrove's tendencies, and defendant's inaction in that regard, were potentially relevant to Paramount's ultimate liability on principles of respondeat superior.

Plaintiff filed a motion for reconsideration, raising the same arguments she had raised in her response to defendant's motion for summary disposition, as well as one additional argument. Plaintiff argued for the first time that the public policy underlying the Civil Rights Act required a denial of summary disposition. Plaintiff maintained that because Paramount's assets had been sold during the pendency of this litigation, defendant, as Paramount's primary shareholder, should not be permitted to hide behind the corporate form to evade liability. Judge Kenny denied reconsideration in a ruling from the bench. Judge Kenny reiterated his prior bases for granting summary disposition, and further determined that plaintiff's public policy argument was meritless. Judge Kenny stated that his prior ruling was correct and that no legal basis existed for holding Wood personally liable under the Civil Rights Act. Finally, Judge Kenny granted plaintiff's request that the order granting summary disposition to defendant be amended to clarify that defendant was dismissed from this action in his individual capacity only. For reasons not apparent from the record, no order was entered to reflect Judge Kenny's ruling on plaintiff's motion for reconsideration.

This case was subsequently reassigned to Judge Jeanne Stempien. Plaintiff thereafter filed a renewed motion for reconsideration pursuant to MCR 2.613(B), which provides that an order may be set aside or vacated by a judge empowered to rule on the matter<sup>3</sup>. Plaintiff also cited in support of her motion MCR 2.604, MCR 2.612(C)(1)(f), and MCR 2.119(F). Judge Stempien entertained plaintiff's motion for reconsideration, and determined that Judge Kenny's grant of summary disposition for defendant constituted an error of law.<sup>4</sup> Judge Stempien granted plaintiff's motion for reconsideration and denied defendant's motion for summary disposition.

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<sup>2</sup> Defendant's motion for summary disposition was brought pursuant to both MCR 2.116(C)(8) and (C)(10). Although the court's ruling appeared to focus primarily upon the allegations in plaintiff's complaint, the court also stated that its ruling was "based on the evidence." Therefore, it appears that the court's analysis extended beyond the pleadings and summary disposition was granted pursuant to (C)(10).

<sup>3</sup> After plaintiff filed her renewed motion for reconsideration, defendant filed a motion for entry of judgment nunc pro tunc on Judge Kenny's September 30, 1997 ruling from the bench denying plaintiff's motion for reconsideration. Judge Stempien denied the motion. Judge Stempien entered an order to comport with Judge Kenny's ruling. However, the order was not entered nunc pro tunc but instead was dated March 6, 1998. The order also indicated, in accordance with Judge Kenny's ruling, that defendant was dismissed from the action in his individual capacity only.

<sup>4</sup> Judge Stempien's ruling was based upon her interpretation and application of *Radtke v Everett*, 442 Mich 368; 501 NW2d 155 (1993), which she found to be controlling in this case. Judge Kenny had distinguished *Radtke* from the instant case and determined that *Radtke* did not support the proposition that defendant, as a non-harasser, could be held personally liable for Cosgrove's alleged harassment.

On appeal, defendant first argues that Judge Stempien erroneously determined that he may be held personally liable under the Civil Rights Act even though he did not participate in the alleged acts of harassment. Defendant also argues that Judge Stempien erred in granting plaintiff's renewed motion for reconsideration because it was not properly before the court, as no new issues were raised and plaintiff had not offered a proper basis for bringing the motion. Because we agree that plaintiff's motion was not properly before the court, we need not address the merits of defendant's first argument.

We review a trial court's decision to grant a motion for reconsideration for an abuse of discretion. *Kokx v Bylenga*, 241 Mich App 655, 658-659; 617 NW2d 368 (2000); *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). The interpretation and application of the court rules is a question of law subject to de novo review. *Colista v Thomas*, 241 Mich App 529, 535; 616 NW2d 249 (2000); *Grzesick v Cepela*, 237 Mich App 554, 559; 603 NW2d 809 (1999).

In support of her second motion for reconsideration, plaintiff relied upon MCR 2.613(B), 2.604(B), 2.612(C)(1)(f), and 2.119(F). As an initial matter, we recognize that pursuant to MCR 2.613(B) and existing case law, a successor judge possesses the same authority to correct error as his or her predecessor. *Mikedis v Perfection Heat Treating Co*, 180 Mich App 189, 203-204; 446 NW2d 648 (1989); *Harry v Fairlane Club Properties, Ltd*, 126 Mich App 122, 124; 337 NW2d 2 (1983). However, plaintiff's second motion for reconsideration presented the identical arguments raised in her first motion for reconsideration which was ruled upon by Judge Kenny, and most of which were also raised in her response to defendant's motion for summary disposition. Accordingly, plaintiff failed to articulate a proper basis for bringing her second motion for reconsideration under our court rules.

MCR 2.119(F) allows a party to seek reconsideration of a trial court's decision on a motion. Plaintiff pursued this avenue in her first motion for reconsideration of the order granting summary disposition for defendant. This motion for reconsideration was heard and denied by Judge Kenny. The court rule does not provide for the filing of multiple motions for reconsideration. In her second motion for reconsideration, plaintiff advanced arguments that had been previously raised before, and rejected by, Judge Kenny. The court rule provides that generally, reconsideration is not warranted where the court is merely asked to revisit issues it ruled upon previously. MCR 2.119(F)(3); *Traverse City Light and Power Bd v Home Ins Co*, 209 Mich App 112, 126-127; 530 NW2d 150 (1995). To the extent that plaintiff based her renewed motion for reconsideration on MCR 2.119(F), her motion was not properly before the court because her first motion for reconsideration, which presented the identical issues, was denied by Judge Kenny.

Plaintiff also invoked MCR 2.604(A) in support of her second motion for reconsideration. MCR 2.604(A) provides that "an order . . . adjudicating fewer than all the claims, or the rights and liabilities of fewer than all the parties . . . is subject to revision before entry of final judgment adjudicating all the claims and the rights and liabilities of all the parties." Although the court rule allows revision of an order, plaintiff's motion sought a redetermination of the same issues presented and ruled upon at least once by Judge Kenny. Plaintiff cites case law which is inapposite to the case at bar. In *Harry, supra* at 123-125, this Court affirmed a

successor judge's ruling denying the plaintiffs a new trial, after the preceding judge had decided the issue in favor of the plaintiffs but failed to sign an order to that effect. This Court noted that the successor judge's ruling was based upon aspects of the issue that were not addressed by his predecessor. *Id.* at 124-125. In the case at bar, plaintiff presented no new information or argument to form a basis for Judge Stempien to entertain plaintiff's motion. Additionally, in *Harry*, there is no indication that the defendants requested or received more than one rehearing on that issue. *Id.* at 124. In the instant case, plaintiff had already moved for reconsideration before Judge Kenny, and then requested a second opportunity for reconsideration before Judge Stempien on the same facts and issues.

Similarly, plaintiff's reliance upon MCR 2.612(C)(1)(f) was misplaced. Plaintiff argued that this rule provided a basis for relief because manifest injustice would result from the failure to correct Judge Kenny's erroneous grant of summary disposition. Inasmuch as MCR 2.612(C)(1)(f) authorizes relief from a final judgment or order, it is inapplicable to this case because the grant of summary disposition did not dispose of all claims and all parties. As such, it was not a final order. MCR 2.604(A). Further, this Court has held that MCR 2.612(C)(1)(f) will be applied only where the substantial rights of the opposing party are not detrimentally affected *and* where extraordinary circumstances exist. *Tomblinson v Tomblinson*, 183 Mich App 589, 594-595; 455 NW2d 346 (1990), citing *Mikedis*, *supra* at 198. See also, *Barclay v Crown Building and Development, Inc*, 241 Mich App 639, 654; 617 NW2d 373 (2000); *Limbach v Oakland Co Bd of County Road Com'rs*, 226 Mich App 389, 394; 573 NW2d 336 (1998). "Generally, relief is granted under subsection f only when the judgment was obtained by the improper conduct of the party in whose favor it was rendered." *Altman v Nelson*, 197 Mich App 467, 478; 495 NW2d 826 (1992). Plaintiff did not demonstrate extraordinary circumstances. In the instant case, plaintiff merely reiterated the same arguments she raised previously before Judge Kenny. See *Barclay*, *supra* at 654. Merely repeating grounds for relief advanced previously does not establish a valid basis for plaintiff's motion. *Barclay*, *supra* at 654.

Accordingly, we conclude that plaintiff failed to establish a proper basis for bringing her second motion for reconsideration. Therefore, the trial court erred in entertaining the motion and abused its discretion in granting the motion.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh  
/s/ Michael J. Talbot  
/s/ Patrick M. Meter