STATE OF MICHIGAN

COURT OF APPEALS

SHARON E. ANZALDUA,

Plaintiff-Appellant,

v

RUDOLPH NEAL BAND and MICHIGAN STATE UNIVERSITY,

Defendants-Appellees.

UNPUBLISHED
March 27, 2001

No. 221380
Ingham Circuit Court
LC No. 93-073639-NZ

Before: Smolenski, P.J., and Jansen and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff was hired by Michigan State University in 1988 as a full-time administrative assistant, and in February 1989, she was reclassified as a research assistant I, level II. She worked under the supervision of Professor Rudolph Neal Band. Plaintiff was employed as a year-to-year employee and was assigned to projects funded by the United States Navy. Funds for these projects, referred to as ELF projects, were, according to plaintiff, the sole source of her salary after February 1, 1989. By the summer of 1992, funding for the ELF project decreased significantly and, to continue the ELF project, Band stated that he decided to not renew plaintiff's contract around August 14, 1992.

Plaintiff alleges, however, that the decision to not renew her contract was made because (1) she was making people aware of serious problems in safety procedures for handling hazardous chemicals and pathogens, (2) she was making people aware of the use of ELF funds for non-ELF research, (3) she had information that would question the integrity of the research reports and papers, and (4) she was legitimately pursuing her employee rights through the union grievance procedure.[1] Throughout her employment with the university, plaintiff made several complaints to her employer regarding students being used to perform union work that she was

[1] Plaintiff filed a grievance claiming that her employment was not renewed because of retaliation for filing grievances; however, on November 24, 1993, the arbitrator denied the grievance.

entitled to perform, unsafe laboratory practices, uncompensated overtime pay, and retaliatory behavior by Band after she conferred with the university's office of radiation chemical and biological safety (ORCBS). All of these issues were heard at various grievance hearings.

On October 5, 1992, Band informed plaintiff by letter that her appointment as a research assistant would not be extended past her contract expiration date of October 31, 1992. Plaintiff subsequently filed suit, on January 4, 1993, alleging a claim under the Whistleblower's Protection Act (WPA), MCL 15.361 *et seq.*; MSA 17.428(1), with regard to both defendants, and a claim of intentional infliction of emotional distress with regard to defendant Band.[2] The trial court granted defendants' motion for summary disposition under MCR 2.116(C)(10) (no genuine issue as to any material fact and moving parties entitled to judgment as a matter of law). We review de novo the trial court's ruling on a motion for summary disposition under MCR 2.116(C)(10). *Chandler v Dowell Schlumberger Inc*, 456 Mich 395, 397; 572 NW2d 210 (1998). The court must consider the pleadings, affidavits, admissions, depositions, and any other documentary evidence submitted or filed in the action in a light most favorable to the nonmoving party to determine if a genuine issue of any material fact exists to warrant a trial. *Id.; Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Plaintiff first argues that the trial court erred by granting defendants' motion for summary disposition with regard to her WPA claim. To establish a prima facie case under the WPA, a plaintiff must show (1) that she was engaged in protected activity as defined by the act, (2) that the defendant discharged her, and (3) that there was a causal connection between the protected activity and the discharge. *Chandler, supra,* p 399. The trial court ruled that no causal connection existed between the decision not to renew plaintiff's contract and her subsequent report or threatened report of a violation of law.

The documentary evidence shows that Band's decision not to renew plaintiff's contract occurred around August 14, 1992. Plaintiff's first report or threatened report of a violation of law occurred approximately one month *after* the decision not to renew plaintiff's contract. Although plaintiff contacted the ORCBS before the decision to terminate her contract, these contacts were not made to report any type of violation, but were mere inquiries regarding how to dispose of chemical solutions and how to use safety equipment in the laboratory. At the time the decision was made not to renew plaintiff's contract, defendants had no knowledge of any report alleging violation of a rule or law. Therefore, the decision to not renew plaintiff's contract could not have been based on retaliation. The trial court did not err in granting summary disposition to defendants on the WPA claim because plaintiff failed to establish a prima facie case.

Plaintiff next argues that the trial court erred by granting summary disposition to defendant Band with respect to her intentional infliction of emotional distress claim. To prove a claim of intentional infliction of emotional distress, a plaintiff must show (1) extreme and

[2] We note that this case has a previous history in the appellate courts. Previously, the trial court granted defendants' motion to strike plaintiff's demand for a jury trial under the WPA, determining that the act provided no such right. However, our Supreme Court ultimately ruled that the WPA provides a right to a jury trial and that such a right exists in suits against the state and its subdivisions. *Anzaldua v Band*, 457 Mich 530; 578 NW2d 306 (1998).

outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress. *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 582; 603 NW2d 816 (1999). The trial court ruled that the evidence failed to establish the element of extreme and outrageous conduct. Extreme and outrageous conduct is that which is so extreme in degree so as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community. *Id.*

Specifically, plaintiff argues that the trial court erred by failing to find that defendant's conduct in exposing her to potentially deadly pathogens and other highly explosive substances and defendant's disregard for safety precautions was extreme and outrageous. As noted by the trial court, plaintiff received an October 6, 1992, memorandum from Band's supervisor indicating that the laboratory was found to be in compliance with safety regulations. There was additional evidence that the ORCBS regularly inspected Band's laboratory and never found problems with it. Further, after plaintiff's employment was not renewed, she filed a complaint with the Department of Public Health, which reviewed information submitted to it and determined that no further investigation was warranted. In fact, plaintiff has presented no evidence, other than her allegations, that she was exposed to potentially deadly pathogens or other explosive substances in the laboratory. Accordingly, the trial court did not err in granting summary disposition in favor of defendant Band with regard to the claim of intentional infliction of emotional distress because plaintiff failed to prove the element of extreme and outrageous conduct.

Affirmed.

/s/ Michael R. Smolenski
/s/ Kathleen Jansen
/s/ E. Thomas Fitzgerald