

STATE OF MICHIGAN  
COURT OF APPEALS

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PHILIP M. KELLER,

Plaintiff-Appellant,

v

CITY OF GRAND RAPIDS,

Defendant-Appellee.

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UNPUBLISHED

August 7, 2001

No. 223083

Kent Circuit Court

LC No. 95-001019-CL

Before: Saad, P.J., and Fitzgerald and O'Connell, JJ.

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

I reluctantly concur in the result and only because our courts should rarely overturn a jury verdict. Here, plaintiff produced minimal evidence of a causal relationship between his complaints that his employer failed to enforce its no smoking policy and subsequent conduct which plaintiff regarded as retaliatory harassment. Further, what plaintiff regards as harassment appears to be little more than a personality tug-of-war with his division head. Yet, this judgment ultimately is for the jury to make, not us. Also, if reasonable minds could differ on whether the cumulative so-called retaliatory conduct would cause a reasonable employee to leave his job, then, again, it is for the jury to make this ultimate judgment.

Though it is highly questionable that a reasonable person would react as plaintiff did to any specific incident or to the specific event leading to the alleged constructive discharge, I cannot say, with assurance, that reasonable minds could not differ on the ultimate liability question. Further, while I believe that the dissent makes a valid point regarding constructive discharge, I must disagree with the dissent in one crucial respect. As I understand the evidence and the proofs, plaintiff's claim of constructive discharge went to the jury on the theory that the cumulative weight of all the events over a five-year period precipitated plaintiff leaving his job. Had plaintiff quit his job solely for the event that occurred on July 14, 1994, then I would agree with the dissent that this does not constitute constructive discharge. However, the allegations and the proofs concern a number of events over a number of years and accordingly, there was sufficient evidence to go to the jury. Therefore, while I regard the ultimate outcome to be a miscarriage of justice, I may not substitute my judgment for that of the jury.

/s/ Henry William Saad