STATE OF MICHIGAN

COURT OF APPEALS

SANDY WESTBROOK,

Plaintiff-Appellant,

v

CARAVAN KNIGHT FACILITIES MANAGEMENT and JOSEPH JOHNSON,

Defendants-Appellees.

UNPUBLISHED
September 20, 2002

No. 232983
Wayne Circuit Court
LC No. 00-002557-CZ

Before: Cooper, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

In this sexual harassment case, plaintiff appeals as of right the trial court's grant of summary disposition in favor of defendants and its denial of plaintiff's motion to amend her complaint. We affirm.

Plaintiff first argues that the trial court erred in granting summary disposition in favor of defendants. We review de novo a trial court's decision to grant summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

In evaluating a motion for summary disposition brought under MCR 2.116(C)(10), "a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion" to determine whether a genuine issue regarding any material fact exists. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). If the nonmoving party fails to present evidentiary proofs showing a genuine issue of material fact for trial, summary disposition is properly granted. *Smith v Globe Life Ins Co*, 460 Mich 446, 455, n 2; 597 NW2d 28 (1999).

Here, plaintiff makes three separate claims concerning her position that the trial court erred in granting summary disposition in favor of defendants. First, plaintiff claims that the trial court erred in concluding that defendant employer Caravan Knight took appropriate remedial action against defendant Johnson after plaintiff made a written complaint of sexual harassment to her employer. An employer is liable for hostile environment sexual harassment only if it failed to investigate and take prompt, appropriate remedial action after having been put on notice of the harassment. *Chambers v Trettco, Inc*, 463 Mich 297, 313; 614 NW2d 910 (2000); *Radtke v Everett*, 442 Mich 368, 396; 501 NW2d 155 (1993). In *Chambers, supra* at 319, our Supreme Court emphasized that "the relevant inquiry concerning the adequacy of the employer's remedial

action is whether the action reasonably served to prevent future harassment of the plaintiff." See also *Downer v Detroit Receiving Hosp*, 191 Mich App 232, 234-235; 477 NW2d 146 (1991). Here, reviewing the evidence in the light most favorable to plaintiff, we conclude that summary disposition was proper because plaintiff has not shown that the remedy was inadequate. Evidence demonstrated that defendant employer removed Johnson as plaintiff's supervisor and told him to have no contact with plaintiff. Plaintiff does not claim that any harassment occurred after she notified the human resources department and when asked in her deposition if Johnson "made any untoward comments to [her] or any comments which [she] would consider offensive," plaintiff replied "[n]ot that I can recall." Plaintiff has failed to raise a genuine issue of material fact concerning the adequacy of the employer's remedial action.

Next, plaintiff claims that the trial court erred in concluding that plaintiff did not meet her burden of showing that her employer had constructive knowledge of sexual harassment before she submitted her written complaint of sexual harassment. According to plaintiff, because Johnson was both plaintiff's supervisor and an owner, no notice was necessary for the employer to be liable for hostile environment sexual harassment because the employer should have known that Johnson was sexually harassing plaintiff.

An employer cannot be held liable for a hostile work environment unless it received actual or constructive notice of the harassing conduct. *Sheridan v Forest Hills Public Schools*, 247 Mich App 611, 621; 637 NW2d 536 (2001). Notice is considered adequate if, under the totality of the circumstances, a reasonable employer would have known there was a substantial probability that an employee was being sexually harassed. *Chambers*, *supra* at 319; *Sheridan*, *supra* at 622.

Here, plaintiff offered no evidence that she told anyone about the alleged harassment or that any incident occurred in the presence of higher management. Instead, she suggests that Johnson's involvement sufficed as constructive notice to the employer. In support of her argument plaintiff cites only one case, *Radtke v Everett*, 442 Mich 368; 501 NW2d 155 (1993), which is clearly distinguishable from the present case. In *Radtke*, the alleged harasser, who committed a physical sexual assault on the employee, owned the company in equal shares with one other person and had the ability to control the employee's working conditions and wages, to discipline her, and to fire her. *Radtke*, *supra* at 374-375, 397. In the present case, viewing the evidence in the light most favorable to plaintiff, the alleged harasser owned, at most, a small percentage of a separate company that held an interest in defendant employer and there is no evidence he had the authority of an employer; rather, the evidence demonstrates, at most, that Johnson was her supervisor. Plaintiff has failed to demonstrate a genuine issue of material fact concerning whether the employer had constructive knowledge of the alleged sexual harassment.

Plaintiff further claims that the trial court erred in concluding that the complained of conduct was not severe and pervasive enough to rise to the level of hostile environment sexual harassment. Again, we disagree.

"[W]hether a hostile work environment existed shall be determined by whether a reasonable person, in the totality of circumstances, would have perceived the conduct at issue as substantially interfering with the plaintiff's employment or having the purpose or effect of creating an intimidating, hostile, or offensive employment environment." *Radtke*, *supra* at 394. Stated another way, "to survive summary disposition, plaintiff had to present documentary

evidence to the trial court that a genuine issue existed regarding whether a reasonable person would find that, in the totality of circumstances, [the harasser's] comments to plaintiff were sufficiently severe or pervasive to create a hostile work environment." *Quinto v Cross & Peters Co*, 451 Mich 358, 369; 547 NW2d 314 (1996). Viewing the evidence presented in a light most favorable to plaintiff, no reasonable person would conclude that the alleged conduct was severe or pervasive nor that over an approximately seven month period the conduct substantially interfered with plaintiff's employment or created an intimidating, hostile, or offensive work environment. Summary disposition was appropriate.

Plaintiff also argues, in essence, that the trial court erred in denying her motion to amend her complaint to add a quid pro quo sexual harassment count because amendment would be futile. We disagree. We review for abuse of discretion a trial court's denial of a motion to amend a complaint. *Dowerk v Oxford Charter Twp*, 233 Mich App 62, 75; 592 NW2d 724 (1998).

To establish a claim of quid pro quo harassment, an employee must demonstrate:

> (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. [*Chambers, supra* at 310, quoting *Champion v Nation Wide Security, Inc*, 450 Mich 702, 708-709; 545 NW2d 596 (1996).]

"[Q]uid pro quo harassment occurs only where an individual is in a position to offer tangible job benefits in exchange for sexual favors or, alternatively, threaten job injury for a failure to submit." *Champion, supra* at 713.

Here, the trial court concluded that the amendment was futile because plaintiff did not reject the advances "in this employment context." Even if this conclusion is erroneous, plaintiff's motion to amend was properly denied because plaintiff did not propose any new factual scenario that would sustain a quid pro quo harassment claim. *Schellenberg v Rochester Elks*, 228 Mich App 20, 47; 577 NW2d 163 (1998) ("This Court will not reverse a trial court's decision if the right result is reached for the wrong reason."); *Champion, supra*; see *Plumb v Abbott Laboratories*, 60 F Supp 2d 642, 649 (ED Mich, 1999) ("Merely offensive sexual conduct which is not directed at an employee with the explicit or implicit understanding that fulfillment of a sexual proposition will lead to job benefits or that rejection of sexual advances will yield serious employment consequences, does not give rise to a quid pro quo claim.").

Affirmed.

/s/ Jessica R. Cooper
/s/ Joel P. Hoekstra
/s/ Jane E. Markey