STATE OF MICHIGAN

COURT OF APPEALS

JACK ROSIN,

Plaintiff-Appellant,

v

DAWN LACASSE and ROSCOMMON COUNTY,

Defendants-Appellees.

UNPUBLISHED
February 24, 2004

No. 240893
Roscommon Circuit Court
LC No. 00-721578-NZ

Before: Hoekstra, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendant Roscommon County and defendant Dawn LaCasse, the former 911 Director for the county and plaintiff's former supervisor, on plaintiff's claims of hostile work environment sexual harassment and retaliation under the Civil Rights Act (CRA), MCL 37.2101 *et seq*. We affirm.

Plaintiff first argues that the trial court improperly granted summary disposition in favor of defendants with regard to his claim of hostile work environment sexual harassment. A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a (C)(10) motion, a trial court considers affidavits, pleadings, depositions, admissions, and other documentary evidenced submitted by the parties in the light most favorable to the nonmoving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

To establish a prima facie case of hostile work environment sexual harassment, a plaintiff must prove the following five elements by a preponderance of the evidence: (1) the employee belonged to a protected group, (2) the employee was subjected to communication or conduct on the basis of sex, (3) the employee was subjected to unwelcome sexual conduct or communication, (4) the unwelcome sexual conduct or communication was intended to or in fact did substantially interfere with the employee's employment or created an intimidating, hostile, or offensive work environment, and (5) respondeat superior. *Radtke v Everett*, 442 Mich 368 383-384; 501 NW2d 155 (1993).

Summary disposition in favor of defendant LaCasse was proper because under the CRA, an individual supervisor cannot be held liable separate from the employer for hostile

environment sexual harassment. *Jager v Nationwide Truck Brokers, Inc*, 252 Mich App 464, 485; 652 NW2d 503 (2002). With regard to defendant Roscommon County, the evidence presented failed to establish that LaCasse's interaction with plaintiff, viewed under an objectively reasonable standard, rose "to the level of serious, demeaning and degrading conduct based on sex in the workplace." *Radtke, supra* at 386-387. Further, even if plaintiff had established the other elements, he failed to establish the element of respondeat superior.

An employer may avoid liability based on sexual harassment "if it adequately investigated and took prompt and appropriate remedial action upon notice of the alleged hostile work environment." *Downer v Detroit Receiving Hosp*, 191 Mich App 232, 234; 477 NW2d 146 (1991). Prompt and appropriate remedial action will permit an employer to avoid liability if the plaintiff accuses a supervisor of sexual harassment. *Radtke, supra* at 396, citing *McCalla v Ellis*, 180 Mich App 372, 380; 446 NW2d 904 (1989).

The record reveals that plaintiff filed his written complaint with Roscommon County on December 1, 1999. Pursuant to policy, plaintiff was requested to inform the prosecutor and the Michigan Department of Civil Rights (DCR) of his allegations. Plaintiff informed the prosecutor and DCR on January 11, 2000, and on February 18, 2000, he was contacted by the county and asked to participate in the county's investigation of his allegations. It took approximately six to eight weeks for Roscommon County to begin investigating the allegations which, considering the facts of this case, was prompt and reasonable. Therefore, the county cannot be held liable under the theory of respondeat superior, and summary disposition was properly granted.

Plaintiff argues that the trial court improperly granted summary disposition of his claim that the county unlawfully retaliated against him for filing a CRA claim when they decided not to hire him for the position of 911 director after LaCasse resigned from the position. To establish a prima facie claim of retaliation under the CRA, a plaintiff must show: (1) that he or she was engaged in a protected activity, (2) that the defendant knew that the plaintiff had done so, (3) that the defendant took an adverse employment action, and (4) that a causal connection existed between the adverse employment action and the protected activity. *Deflaviis v Lord & Taylor, Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997). At issue in this case is whether plaintiff established a causal connection between the adverse employment action and the protected activity.

To establish causation, a "plaintiff must show that his participation in activity protected by the CRA was a 'significant factor' in the employer's adverse employment action, not just that there was a causation link between the two." *Barrett v Kirtland Community College*, 245 Mich App 306, 315; 628 NW2d 63 (2001). Plaintiff contends that the testimony of a 911 Authority Board member that an unidentified member of the board stated, "And this is the person who had filed the lawsuit" when plaintiff's application was introduced at the meeting establishes that plaintiff was not hired for the position in retaliation for filing his lawsuit. We disagree. The statement made in reference to plaintiff being the person who filed the lawsuit was a stray remark and, therefore, would be inadmissible evidence that would not be considered by the jury. See *Krohn v Sedwick James of Michigan, Inc*, 244 Mich App 289; 624 NW2d 212 (2000) (the comment "out with the old and in with the new" made by the plaintiff's supervisor before she was fired was properly excluded as a stray remark). Although the remark was made by a decision maker and close in time to the challenged decision, the disputed remark was isolated and ambiguous with respect to discriminatory bias. Further, the remark merely identified

plaintiff and was not made in reference to a reason not to promote plaintiff. Viewed in a light most favorable to plaintiff, the evidence fails to establish a causal connection between his lawsuit and the decision not to hire plaintiff for the position of director.[1]

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot

[1] Assuming that plaintiff had established a prima facie case of retaliation, summary disposition in favor of the county would still be appropriate because the county articulated a legitimate, nondiscriminatory reason for the adverse action (another applicant had qualifications superior to plaintiff's qualifications) and plaintiff failed to prove that the reasons stated by the county were pretextual.