

STATE OF MICHIGAN  
COURT OF APPEALS

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PERLA D. NAVARRO,

Plaintiff-Appellant,

v

HUTZEL HOSPITAL and ROSALYN HALL,

Defendants-Appellees.

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UNPUBLISHED  
February 24, 2004

No. 242052  
Wayne Circuit Court  
LC No. 00-220302-NH

Before: Schuette, P.J., and Murphy and Bandstra, JJ.

BANDSTRA, J. (*separate opinion*).

I agree with the conclusion of the per curiam opinion that the trial court's dismissal of the wrongful termination and breach of contract claims should be affirmed and that the trial court's dismissal of the claim for discrimination in failing to timely provide charge nurse training to plaintiff should be reversed. However, I disagree with the per curiam opinion's conclusion that the trial court erred in dismissing plaintiff's retaliatory discharge claim and hostile environment/harassment claim.

With respect to the retaliatory discharge claim, plaintiff failed to create a genuine issue of material fact that her discipline by defendant hospital was in any way causally linked to her EEOC complaint. See *DeFlaviis v Lord & Taylor, Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997). Plaintiff argues that her write-ups became more frequent after she made her EEOC complaint but the record reveals that plaintiff had been written up regularly and consistently since she was hired, both before and after she filed the complaint. Further, plaintiff does not dispute that most of the write-ups were justified.

Plaintiff also argues that the hospital's disciplinary policy was not followed but, in fact, the record shows that it was. Having been written up repeatedly in the past, plaintiff was placed on disciplinary probation on November 10, 1998, for an "act detrimental to [the] well-being" of a patient and was informed that this meant that "any further rule violation (major or minor) may result in dismissal over the next year." When plaintiff was disciplined again during this period,



she was terminated. Plaintiff fails to demonstrate how the policy was improperly applied in her case.<sup>1</sup>

To be sure, Hall's conduct in informing her staff that someone had accused her of unlawful discrimination and that she wanted "very much to hurt" that complainant was inappropriate. However, plaintiff is required to demonstrate more than inappropriate behavior to proceed on a retaliatory discharge theory. Because plaintiff failed to establish a genuine issue of material fact regarding a causal connection between her exercising of her rights and her many disciplinary actions, summary disposition of the retaliatory discharge claim was appropriate.

With respect to the hostile environment/harassment claim, "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 alleged conduct was] sufficiently severe or pervasive to create a hostile work environment." *Quinto v Cross & Peters Co*, 451 Mich 358, 369; 547 NW2d 314 (1996). Instead, plaintiff merely states in a conclusory fashion that a "severe and pervasive situation exists in the instant case."

It is insufficient for plaintiff to argue that defendant's application of discipline against her was "hostile" where plaintiff agrees that the conduct for which she was disciplined actually occurred. While defendant hospital admitted that Hall's comments referenced above were "not appropriate," its agreement with plaintiff on that assessment certainly does not show any additional hostility against her. Although plaintiff argues that the EEOC right-to-sue letter is sufficient to create a genuine issue of material fact regarding a hostile work environment/harassment claim she cites no authority for that proposition. Because plaintiff fails to provide documentary evidence or compelling argument that conduct so severe and pervasive to establish a hostile work environment occurred, summary disposition on this claim was appropriately granted by the trial court.

/s/ Richard A. Bandstra

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<sup>1</sup> Plaintiff's argument that the trial court improperly relied on the fact that she did not immediately sue after her right-to-sue letter was issued by the EEOC is not supported by the record, which does not indicate such reliance by the trial court.