

STATE OF MICHIGAN
COURT OF APPEALS

JACQUELYN V. MAGEE,

Plaintiff-Appellant,

v

DAIMLERCHRYSLER,

Defendant-Appellee.

UNPUBLISHED

March 2, 2004

No. 243847

Macomb Circuit Court

LC No. 02-000538-CZ

Before: Schuette, P.J. and Meter and Owens, JJ.

MEMORANDUM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm in part and reverse in part. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

Plaintiff, who is an African-American, worked for defendant between 1976 and February 2, 1999, when she resigned without returning from a medical leave. She filed suit alleging sexual harassment, sex and age discrimination, retaliation, and constructive discharge in violation of the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq.* She alleged that throughout her employment, she was subjected to sexual harassment and that this treatment caused her to seek job transfers, take medical leaves, and ultimately compelled her to resign.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), alleging that plaintiff's suit was barred by the three-year statute of limitations, MCL 600.5805(10), because it did not allege that an actionable event occurred between September 12, 1998, her last day of work, and February 2, 1999 (the day she resigned). The trial court granted the motion.

II. STANDARD OF REVIEW

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

A claim based on discrimination in violation of the ELCRA must be filed within three years of the time it accrued. *Womack-Scott v Dep't of Corrections*, 246 Mich App 70, 74; 630 NW2d 650 (2001). Whether a cause of action is barred by a statute of limitations is a question of

law that is reviewed de novo on appeal. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 62; 642 NW2d 663 (2002).

III. ANALYSIS

A. Constructive Discharge

The trial court correctly dismissed plaintiff's claim of constructive discharge. Constructive discharge is not itself a cause of action, *Jacobson v Parda Fed Credit Union*, 457 Mich 318, 321 n 9; 577 NW2d 881 (1998), but rather is a defense against the argument that a suit should not lie in a specific case because the plaintiff left employment voluntarily. *Vagts v Perry Drug Stores, Inc*, 204 Mich App 481, 487; 516 NW2d 102 (1994). An employee who resigns in apprehension that conditions will deteriorate at a later time is not constructively discharged. *Agnew v BASF Corp*, 286 F3d 307, 310-311 (CA 6, 2002).

B. Statute of Limitations and ELCRA

We reverse that portion of the trial court's order dismissing plaintiff's remaining claims pursuant to MCR 2.116(C)(7). In *Collins v Comerica Bank*, 468 Mich 628, 633-634; 664 NW2d 713 (2003), our Supreme Court held that a claim for discriminatory discharge does not arise until the employee is discharged. Plaintiff was not discharged; however, her last day of work was followed by a period in which she was on a medical leave of absence. During that period, she was still employed by defendant. Plaintiff's causes of action, if any, arose on February 2, 1999. *Id.* Her suit, which was originally filed on February 1, 2002, was timely. MCL 600.5805(10).

Affirmed in part and reversed in part.

/s/ Bill Schuette

/s/ Patrick M. Meter

/s/ Donald S. Owens