# STATE OF MICHIGAN

# COURT OF APPEALS

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LINDA CRAFT,

Plaintiff-Appellant,

v

CITY OF DETROIT and JERRY FELCZAK,

Defendants-Appellees.

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UNPUBLISHED
April 29, 2004

No. 244251
Wayne Circuit Court
LC No. 01-103178-CZ

Before: Cooper, P.J., and Griffin and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(4), (C)(7), and (C)(8). We affirm.

Plaintiff first argues that the trial court improperly granted summary disposition in favor of the City pursuant to MCR 2.116(C)(8) relating to plaintiff's claim under the Michigan Civil Rights Act (CRA), MCL 37.2101 *et seq.* We disagree.

We review a trial court's grant of summary disposition for failure to state a claim upon which relief may be granted under MCR 2.116(C)(8) de novo. *Churella v Pioneer State Mut Ins Co*, 258 Mich App 260, 266; 671 NW2d 125 (2003). In doing so, we must assume that all factual allegations in the nonmoving party's pleadings are true and determine whether there is a legally sufficient basis for the claim. *Id*. Motions for summary disposition under MCR 2.116(C)(8) test "the legal sufficiency of a claim by the pleadings alone; the motion may not be supported with documentary evidence." *Ormsby v Capital Welding, Inc*, 255 Mich App 165, 172-173; 660 NW2d 730, lv gtd 469 Mich 947 (2003).

In determining whether a prima facie case of employment discrimination has been made under the CRA, the approach used in *McDonnell Douglas Corp v Green*, 411 US 792, 802-803; 93 S Ct 1817; 36 L Ed 2d 668 (1973), for establishing a prima facie case should be tailored to the facts and circumstances of each case. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 134; 666 NW2d 186 (2003), citing *Hazle v Ford Motor Co*, 464 Mich 456, 462-463; 628 NW2d 515 (2001). The facts of the instant case require a showing (1) that plaintiff is a member of a protected class, (2) that she suffered an adverse employment action, and (3) that she was treated differently than similarly situated members of the unprotected class. See *McDonnell Douglas*, *supra* at 802; *Snieckinski*, *supra* at 134; *Hazle*, *supra* at 463.

While plaintiff did not specifically plead that she is a member of a protected class, as a female, she is a member of a protected class on the basis of her gender. *Feick v Monroe County*, 229 Mich App 335, 338; 582 NW2d 207 (1998). Nonetheless, regarding the remaining two elements, plaintiff failed to plead facts, which even accepted as true, would create a prima facie case of a CRA violation. Accordingly, we need not address plaintiff's allegations within the context of the *McDonnell-Douglas* balancing test. Because plaintiff failed to plead a prima facie case of a violation of the CRA, we conclude that the trial court properly granted summary disposition in defendant's favor under MCR 2.116(C)(8) with respect to the CRA count.

Plaintiff next argues that the trial court improperly granted summary disposition in favor of Felczak under MCR 2.116(C)(4) on the basis that it lacked jurisdiction to determine as a matter of law whether plaintiff's intentional tort claim fell under the intentional tort exception to the exclusive remedy provision of the Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq.* While the trial court based its decision on an improper premise, we conclude that plaintiff failed to plead legally sufficient facts which would invoke the intentional tort exception to the exclusive remedy provisions of the WDCA as stated in MCL 418.131.

Under the WDCA, employees are provided nearly automatic compensation for injuries sustained on the job without regard to who is at fault for the injuries. *Sanchez v Eagle Alloy, Inc*, 254 Mich App 651, 659; 658 NW2d 510 (2003), citing MCL 418.301(1). In exchange, employees are limited to benefits payable under the WDCA as their exclusive remedy for such injuries and may not generally bring a tort action against their employers. *Id.*, citing MCL 418.131. However, "[t]he one exception to this recovery scheme is when an employer commits an intentional tort." *Travis v Dreis & Krump Mfg Co*, 453 Mich 149, 161; 551 NW2d 132 (1996).

The trial court relied on this Court's decision in *Schwartz v Golden*, 126 Mich App 790; 338 NW2d 218 (1983), in holding that it did not have jurisdiction to decide whether plaintiff's claim fell within the intentional tort exception to the WDCA exclusive remedy provision. In *Schwartz*, we held that the Bureau has jurisdiction to decide whether an injury occurred within the scope of employment or outside of it. *Schwartz*, *supra* at 793-794. But the WDCA states that "'[t]he issue of whether an act was an intentional tort shall be a question of law *for the court*.'" *Travis*, *supra* at 188-189, quoting MCL 418.131(1) (emphasis added). If a trial court finds that the plaintiff alleges an intentional tort as a matter of law, the question whether the facts are as the plaintiff alleges is a question for the jury. *Id*. Here, the trial court improperly concluded that it had no jurisdiction to decide whether the act was an intentional tort.

In plaintiff's complaint, under the heading "Intentional Assault or Infliction of Mental Distress," she alleged that defendant "violently attacked and assaulted and battered the Plaintiff." Plaintiff next averred that the City was "liable under the doctrine of respondeat superior."

MCL 418.131 states, in relevant part:

> The right to the recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease. The only exception to this exclusive remedy is an intentional tort. An intentional tort shall exist only when an employee is injured as a result of a deliberate act of the employer and the employer specifically

> intended an injury. An employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. The issue of whether an act was an intentional tort shall be a question of law for the court. This subsection shall not enlarge or reduce rights under law. [(Emphasis added).]

Even accepting plaintiff's allegations that defendant assaulted plaintiff as true, plaintiff failed to plead any facts which would give rise to even an inference that the employer either had knowledge of the actions or that the employer intended to injure the plaintiff. Plaintiff's allegations do not meet the necessary legal criteria to establish a prima facie case giving rise to the intentional tort exception to the WDCA. Therefore, plaintiff failed to state a claim that would put her cause into the WDCA's intentional tort exception. Thus, we affirm the trial court's result, although reached for the wrong reason. *Mulholland v DEC Int'l Corp*, 432 Mich 395, 411 n 10; 443 NW2d 340 (1989), citing *Washtenaw Co Health Dep't v T & M Chevrolet, Inc*, 406 Mich 518, 520; 280 NW2d 822 (1979), and *Fout v Dietz*, 401 Mich 403; 258 NW2d 53 (1977).

Having found that plaintiff failed to state a cause of action for which relief may be granted, we need not address plaintiff's other issues raised on appeal.

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard Allen Griffin
/s/ Stephen L. Borrello