

STATE OF MICHIGAN
COURT OF APPEALS

MARY LOUISE KOKOSZKA,

Plaintiff-Appellant,

v

GILL INDUSTRIES, INC,

Defendant-Appellee.

UNPUBLISHED
November 9, 2004

No. 249226
Oakland Circuit Court
LC No. 2002-040915-CZ

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition in this age discrimination and retaliation action under the Civil Rights Act (CRA), MCL 37.2101 *et seq.* We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating the motion, the trial court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in a light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

On appeal, plaintiff only challenges the dismissal of her retaliation claim. To establish a *prima facie* case of retaliation under the Civil Rights Act, MCL 37.2701(a), a plaintiff must show:

(1) that the plaintiff engaged in a protected activity, (2) that this was known by the defendant, (3) that the defendant took an employment action adverse to the plaintiff, and (4) that there was a causal connection between the protected activity and the adverse employment action. To establish causation, the 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 causal link between the two. [*Barrett v Kirtland Community College*, 245 Mich App 306, 315; 628 NW2d 63 (2001) (internal citations and quotations omitted).]

Thus, a plaintiff cannot prevail on a retaliation claim under the CRA without establishing that she engaged in an activity protected under the act. Under MCL 37.2701(a), a protected activity is opposition to a violation of the act, or participation in an investigation, proceeding, or hearing under the act.

Here, plaintiff alleged that she opposed a violation of the act, i.e., age discrimination, and that this was evidenced by her January 29, 2002 letter indicating that she could not work in a hostile environment where she was denied promotions and placed under a new supervisor. Plaintiff presented no evidence that she complained about age discrimination or failure to follow company policies prior to her dismissal. Where a plaintiff does not show that adverse treatment constituted a violation of the CRA, the plaintiff cannot establish that the employer retaliated against him or her for opposition to a violation of the CRA. *Barrett, supra* at 323-324. The trial court properly granted defendant's motion for summary disposition where plaintiff failed to present evidence that she engaged in a protected activity.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Michael R. Smolenski