

STATE OF MICHIGAN  
COURT OF APPEALS

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KATHLEEN M. FITZGERALD,

Plaintiff-Appellant,

v

WAYNE STATE UNIVERSITY BOARD OF  
GOVERNORS,

Defendant-Appellee.

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UNPUBLISHED

September 15, 2009

No. 284136

Wayne Circuit Court

LC No. 06-628855-NO

Before: O’Connell, P.J., and Talbot and Stephens, JJ.

PER CURIAM.

In this action involving claims for gender discrimination and unlawful retaliation under the Michigan Civil Rights Act (“CRA”), MCL 37.2101 *et seq.*, plaintiff appeals as of right from a judgment of no cause of action entered following a jury trial. We affirm.

This action arises from plaintiff’s termination from her position as director of public affairs for the Wayne State University School of Medicine. Plaintiff alleges that she was discriminated against because of her gender, and was terminated in retaliation for filing an internal complaint of gender discrimination with the university’s Office of Equal Opportunity (“OEO”). Plaintiff’s sole issue on appeal is that the trial court erred when it excluded evidence of an investigator’s draft disposition of plaintiff’s OEO complaint, which concluded that the university’s act of hiring an outside male to supervise employees formerly under plaintiff’s supervision “created a disparate impact that subjected [plaintiff] to discrimination based on gender.” Jeannie Jackson, the OEO staff member who prepared the draft disposition, testified in her deposition that she later realized that she prepared the draft disposition using an incorrect analysis of a gender discrimination claim. The disposition that was ultimately issued by Jackson’s supervisor, Marjorie Powell, concluded that there were “no facts supporting [plaintiff’s] gender discrimination claim.”

Before trial, defendant filed a motion in limine to exclude the evidence of the draft disposition on the ground that it was irrelevant and unduly prejudicial. Plaintiff conceded that the draft disposition was not relevant to her gender discrimination claim, but argued that it was relevant to her retaliation claim. The trial court ruled that the evidence was not relevant, and further concluded that any minimal relevancy was substantially outweighed by the danger of unfair prejudice under MRE 403, because of the likelihood that the jury would consider the

evidence for the improper purpose of determining whether there was discrimination. Accordingly, the trial court excluded the evidence.

A trial court's decision to admit or exclude evidence is within its sound discretion and will not be disturbed on appeal absent an abuse of that discretion. *Campbell v Sullins*, 257 Mich App 179, 196; 667 NW2d 887 (2003). The abuse of discretion standard is more deferential than de novo review. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). This standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome. *Id.* When the trial court selects one of these principled outcomes, it has not abused its discretion and, thus, it is proper for the reviewing court to defer to the trial court's judgment. *Id.*

All logically relevant evidence is admissible at trial, except as otherwise prohibited by the rules of evidence, the state or federal constitutions, or other court rules. MRE 402; *Lewis v LeGrow*, 258 Mich App 175, 199; 670 NW2d 675 (2003). Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401; *Lewis, supra*.

To establish a prima facie case of retaliation, a plaintiff must show (1) that she engaged in 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 connected activity and the adverse employment action. *Garg v Macomb Co Community Mental Health Services*, 472 Mich 263, 273; 696 NW2d 646 (2005).

Plaintiff contends that the evidence suggests that defendant's agents manipulated the disposition in order to create a more favorable environment in which to terminate her. Plaintiff offered no evidence that Jackson or Powell had any role in her termination, or that Dean Robert Mentzer, the person who actually terminated her, was even aware of the draft disposition or had any role in its revision. The only issue before the jury was whether plaintiff's termination or alleged under-compensation was attributable to her OEO complaint. The trial court did not abuse its discretion when it concluded that the evidence was not logically relevant to that issue.

Furthermore, the trial court reasonably concluded that there was a high likelihood that, if admitted, the jury would consider the evidence for the improper purpose of determining whether there was discrimination and, accordingly, any probative value would be substantially outweighed by the danger of unfair prejudice, thereby justifying exclusion of the evidence under MRE 403.

For these reasons, the trial court did not abuse its discretion in excluding the challenged evidence.

Affirmed.

/s/ Peter D. O'Connell

/s/ Michael J. Talbot

/s/ Cynthia Diane Stephens