STATE OF MICHIGAN

COURT OF APPEALS

LINDA PEARCE, Plaintiff-Appellee,	UNPUBLISHED June 26, 2012
v	No. 302621 Genesee Circuit Court
RADIOSHACK CORPORATION, JEFF BOWRON, and DAVID GRAHAM, Defendants-Appellants.	LC No. 09-091937-NO

Before: MURRAY, P.J., and WHITBECK and RIORDAN, JJ.

MURRAY, P.J. (*concurring*).

I concur in the result and rationale set forth in the majority opinion, but write separately to briefly address plaintiff's argument that the federal summary judgment standard articulated in *White v Baxter Healthcare Corp*, 533 F3d 381 (CA 6, 2008), should be applied in Michigan. For several reasons *White's* rationale does not apply to this case.

First, *White's* summary judgment standard for "mixed motive" cases was based on the United States Supreme Court's decision in *Desert Palace Inc v Costa*, 539 US 90; 123 SCt 2148; 156 LEd2d 84 (2003), see *White*, 533 F3d at 398-399. The *Desert Palace* holding was, in turn, premised upon the 1991 amendments to Title VII of the Civil Rights Act of 1964 that specifically set forth a new and specific standard for mixed motive cases. 42 USC § 2000e-2(m). *Desert Palace*, 539 US at 101. Michigan's civil rights act does *not* contain language similar to that contained in 42 USC § 2000e-2(m), and so the foundation for the *Desert Palace* holding (and thus the *White* standard) does not exist under Michigan law.[1]

[1] Although Michigan case law generally follows federal cases addressing analogous federal civil rights statutes, as recognized by Judge ROSEN in *Millner v DTE Energy Co*, 285 F Supp2d 950, 967 n 18 (ED Mich, 2003), this is a general rule not always followed by Michigan courts. Deviation from this general rule most often appears where the statutes have significantly different language. And, here in particular, not only is the language relied upon by the *Desert Palace* Court not within our state anti-discrimination laws, but there is other language within the 1991 amendments to Title VII that several courts have found evidence a legislative trade-off to

Second, even if the *White/Desert Palace* standard did generally apply in Michigan, it would not apply in this case. Numerous courts, if not all the federal circuit courts of appeal, have held that the *Desert Palace* standard does not apply in a retaliation case because those claims were not affected by the 1991 amendments, which, again, were what *Desert Palace* was premised upon. See *Porter v Natsios*, 414 F3d at 19, and *Pennington v City of Huntsville*, 261 F3d 1262, 1269 (CA 11, 2001). Consequently, because plaintiff is only pursuing a retaliation claim, even if we applied the federal summary judgment standard from *White*, it is not at all clear that it would apply here.

/s/ Christopher M. Murray

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the "more lenient" mixed motive standard contained in 42 USC § 2000e-2(m). See *Spees v James Marine Inc*, 617 F3d 380, 390 (CA 6, 2010) and *Porter v Natsios*, 414 F3d 13, 18-19 (CADC, 2005). Again, because Michigan law does not contain language like that in the 1991 Title VII amendments, there was also no legislative "trade-off" to balance out the effects of any new standard.