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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0674**

Patricia Savoren,
Appellant,

vs.

LSI Corporation of America, Inc.,
Respondent.

**Filed February 24, 2009
Affirmed
Worke, Judge**

Hennepin County District Court
File Nos. 27-CV-07-9108, 27-CV-07-5015

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Considered and decided by Worke, Presiding Judge; Klaphake, Judge; and
Crippen, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges the district court's grant of summary judgment in favor of respondent and dismissal of her claims for marital-status employment discrimination and reprisal, arguing that the district court erred in determining that she failed to demonstrate any genuine issues of fact in regard to her claims. We affirm.

FACTS

In October 2001, appellant Patricia Savoren was hired as respondent LSI Corporation of America's human resources manager. Appellant was, and still is, married to Joseph Savoren, who was also employed by respondent as director of manufacturing.

In March 2006, another employee filed a sexual-harassment complaint against respondent. Joseph Savoren was named as one of the individuals who made inappropriate comments. Appellant conducted a brief investigation into the complaint. The matter was eventually resolved through mediation. Chuck Pineau, an executive from respondent's parent corporation, attended the mediation along with appellant and Joseph Savoren. Pineau believed that appellant and Joseph Savoren did a poor job of handling themselves at the mediation and poorly handled the environment in the workplace prior to the harassment complaint. Pineau reported his observations to the parent company's CEO, Darryl Rosser.

Due to his concern over respondent's declining annual profit and complaints from respondent's employees and customers, Rosser visited respondent's facility several times

in mid-2006. Based on his observations, Rosser believed that management changes were necessary and he terminated respondent's head of engineering, appellant, and Joseph Savoren. Respondent's president resigned when faced with termination.

Appellant filed a complaint against respondent alleging age discrimination, reprisal, and marital-status discrimination. The district court denied appellant's summary judgment motion and entered judgment in favor of respondent, finding that appellant failed to demonstrate any genuine issues of material fact required to survive summary judgment, and that appellant failed to establish prima facie cases on each of her claims. This appeal follows.

DECISION

“On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law.” *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). On appeal, we “must view the evidence in the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). Summary judgment is appropriate when the “record reflects a complete lack of proof on an essential element of the plaintiff's claim.” *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995). In a claim of unlawful employment discrimination, summary judgment is appropriate if the employee (1) fails to present a prima facie case of discrimination, or (2) having established a prima facie case, fails to show a genuine fact issue as to whether the

“employer’s proffered nondiscriminatory reasons for its employment decision were pretextual.” *Albertson v. FMC Corp.*, 437 N.W.2d 113, 116 (Minn. App. 1989).

Marital-Status Discrimination

Appellant argues that the district court erred in granting summary judgment in favor of respondent on her marital-status-discrimination claim because there are genuine issues of material fact and she established a prima facie case. The Minnesota Human Rights Act (MHRA) declares that it is an unfair employment practice to discharge an employee based upon marital status. Minn. Stat. § 363A.08, subd. 2(2) (2006). The Minnesota Supreme Court has adopted a broad construction of marital status. *Kraft, Inc. v. State by Wilson*, 284 N.W.2d 386, 388 (Minn. 1979). In *Kraft*, the supreme court held that absent a bona fide occupational qualification, an employer may not discriminate against an applicant because of what his or her spouse was doing, which in *Kraft* was working full time for the same employer. *Id.* Following *Kraft*, the supreme court declined to further extend the definition of “marital-status” discrimination to encompass distinctions by an employer based on the “identity” or “situation” of a prospective employee’s spouse. *Cybyrke v. Indep. Sch. Dist. No. 196*, 347 N.W.2d 256, 261 (Minn. 1984). The legislature then amended the MHRA to expand the definition of “marital status” in employment cases to “include[] protection against discrimination on the basis of identity, situation, actions, or beliefs of a spouse or former spouse.” Minn. Stat. § 363A.03, subd. 24 (2006). Since the amendment, this court has held that to be

actionable, the alleged marital-status discrimination must be “directed at the marital status itself.” *Gunnufson v. Onan Corp.*, 450 N.W.2d 179, 182 (Minn. App. 1990).

At the time of appellant’s termination, she was married to another full-time employee of respondent. Appellant’s discrimination claim, however, is based on the simple fact that she was married. Appellant has not alleged that the discrimination was based on her husband’s situation, actions, or beliefs. Besides the fact that appellant was married to another employee, who was also terminated, there is nothing in the evidence that indicates that respondent considered appellant’s marital status when making its decision to terminate her. Further, the record shows that respondent’s parent corporation CEO, Darryl Rosser, terminated appellant based on concerns with her job performance. Therefore, appellant has failed to create a genuine issue of material fact demonstrating that respondent’s action was a direct attack on the institution of marriage. Thus, appellant has failed to show genuine fact issues as to the elements necessary to prove a prima facie case of marital-status discrimination, and the district court did not err in granting summary judgment in favor of respondent on this claim.

Reprisal

Appellant also argues that the district court erred in granting summary judgment in favor of respondent on her reprisal claim because she established a causal connection between statutorily protected conduct and her termination. Under the MHRA, it is an unfair discriminatory practice for an employer to intentionally engage in a reprisal action against an employee when that employee, “[o]pposed a practice forbidden under this

chapter or has filed a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.” Minn. Stat. § 363A.15(1) (2006). Reprisal includes “any form of intimidation, retaliation, or harassment.” Minn. Stat. § 363A.15 (2006). In a reprisal action, the employee must first present a prima facie case of reprisal by establishing the following: “(1) statutorily-protected conduct by the employee; (2) adverse employment action by the employer; and (3) a causal connection between the two.” *Hubbard v. United Press Int’l, Inc.*, 330 N.W.2d 428, 444 (Minn. 1983).

In order to establish a prima facie case for reprisal, appellant must first show that she engaged in statutorily protected conduct. An employee engages in statutorily protected conduct when she opposes employer practices that violate the MHRAL:

It is a reprisal for an employer to do any of the following with respect to an individual because that individual has [participated in any manner in an investigation, proceeding, or hearing under this chapter]: refuse to hire the individual; depart from any customary employment practice; transfer or assign the individual to a lesser position in terms of wages, hours, job classification, job security, or other employment status; or inform another employer that the individual has engaged in the activities listed in clause (1) or (2).

Minn. Stat. § 363A.15. However, employees do not engage in protected activity when making reports in the normal course of their job duties. *See Freeman v. Ace Tel. Ass’n*, 404 F. Supp. 2d 1127, 1140-41 (D. Minn. 2005) (holding that CEO was simply doing his job in making report because he was responsible for the financial health of the company and had a duty to report to the board any irregularities in the board’s practices), *aff’d*, 467

F. 3d 695 (8th Cir. 2006). While appellant participated in the sexual-harassment investigation and mediation, she did so as part of her job duties as human resources manager. She did not do so in order to oppose practices of respondent that violated the MHRA. Because appellant did not participate in statutorily protected conduct, she has failed to establish any genuine issues of material fact or a prima facie case for reprisal, and the district court did not err in granting summary judgment in favor of respondent.

Affirmed.