

STATE OF MICHIGAN
COURT OF APPEALS

PAULA GREEN-SMITH,

Plaintiff–Appellant,

v

OAKLAND COUNTY COMMUNITY COLLEGE,

Defendant–Appellee.

UNPUBLISHED

August 16, 1996

No. 174204

LC No. 92-433298-CZ

Before: Jansen, P.J., and Reilly and M.E. Kobza,* JJ.

PER CURIAM.

Plaintiff appeals as of right from a March 14, 1994, order of the Oakland Circuit Court granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). Plaintiff filed her complaint alleging race discrimination, violation of the equal pay act, and a racially hostile work environment. We affirm.

I

Plaintiff, an African-American female, was employed by defendant as an associate dean. Along with the three white females who also held that title, plaintiff requested that defendant increase their pay. Following defendant's reassessment of their compensation, defendant increased the pay of each of the associate deans. Of the associate deans, plaintiff had the least amount of experience, and was given the smallest pay increase. In her complaint and on appeal, plaintiff contends that the pay differential was due to her race and thus violated MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*

To establish a claim of disparate treatment, plaintiff must establish by a preponderance of the evidence that a prima facie case of discrimination existed. *Smith v ConRail Corp*, 168 Mich App 773, 778; 425 NW2d 220 (1988). Plaintiff must show that she was a member of a class entitled to protection under the Civil Rights Act (CRA), MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*, and

* Circuit judge, sitting on the Court of Appeals by assignment.

that, for the same or similar conduct, she was treated differently than one who was a member of a different race. *Sisson v Bd of Regents of the University of Michigan*, 174 Mich App 742, 746-747; 436 NW2d 747 (1989). If plaintiff succeeds in presenting a prima facie case, the burden shifts to defendant to articulate some legitimate, non-discriminatory reason for its actions. *Id.*, p 746. If defendant articulates such a reason, plaintiff must then prove by a preponderance of the evidence that defendant's reasons were a mere pretext for discrimination. *Id.*

As a member of a protected class who received lesser compensation than her white counterparts, plaintiff satisfied her initial burden of showing a prima facie case of discrimination based on disparate treatment. *Id.*, pp 746-747. The burden then shifted to defendant to articulate a legitimate, non-discriminatory reason for the disparate treatment of the associate deans. *Id.*, p 746. Defendant met this burden by showing that the compensation of each associate dean, including plaintiff, was determined by a pay scale based on the employee's experience. Plaintiff had the least amount of experience among the associate deans, and thus her pay increase was smaller than that of the more experienced employees. Because plaintiff was unable to make any showing that defendant's experience-based pay scale was a mere pretext, summary disposition on this issue was properly granted by the trial court. *Smith, supra*, pp 778-779.

II

Defendant hired Carlos Olivarez as an associate dean and compensated him according to the experience-based pay scale. In addition to his work as an associate dean, defendant employed Olivarez to perform a "Multicultural Studies Project," and compensated him \$12,000 for his work on the research study. Plaintiff argues that the additional \$12,000 paid to Olivarez constituted a violation of the equal pay act, MCL 408.397(1); MSA 17.255(17)(1), because she was not given similar compensation.

The essence of a gender discrimination claim is that for the same or similar conduct a female plaintiff was treated differently than a similarly situated male employee. *Lytle v Malady*, 209 Mich App 179, 191-192; 530 NW2d 135 (1995). Although as a female, plaintiff is a member of a protected class, she failed to show that she was similarly situated with Olivarez with respect to her employment duties. The evidence showed that the extra compensation received by Olivarez was based on his additional work on the research project. Thus, plaintiff and Olivarez were not engaged in the same or similar conduct and defendant did not violate MCL 37.2101 *et seq.*, MSA 3.548(101) *et seq.*; *Schultes v Naylor*, 195 Mich App 640, 645; 491 NW2d 240 (1992). Plaintiff failed to demonstrate that the research project was a mere pretext, and thus, summary disposition on this issue was properly granted by the trial court. *Smith, supra*, pp 778-779.

III

Finally, plaintiff claims that defendant created a racially hostile work environment pursuant to MCL 37.2103(h), 37.2202(1)(a); MSA 3.548(103)(h), 3.548(202)(1)(a).

In dealing with a claim of a hostile working environment based on sexual harassment, the Michigan Supreme Court set forth the following elements of a claim under MCL 37.2103(h), 37.2202(1)(a); MSA 3.548(103)(h), 3.548(202)(1)(a):

- (1) the employee belonged to a protected group;
- (2) the employee was subjected to communication or conduct on the basis of sex [or race];
- (3) the employee was subjected to unwelcome sexual [racial] conduct or communication;
- (4) the unwelcome sexual [racial] conduct or communication was intended to or in fact did substantially interfere with the employee's employment or created an intimidating, hostile, or offensive work environment; and
- (5) respondeat superior. [*Radtke v Everett*, 442 Mich 368, 382-383; 501 NW2d 155 (1993).]

Plaintiff's claim is based entirely on a list of racial stereotypes generated by employees of defendant during a seminar on racial sensitivity. Plaintiff claims that defendant's failure to "discourage racism and discrimination" created a racially hostile work environment. Plaintiff, however, admitted that the purpose of the seminar, which was sponsored by defendant, was to "talk about diversity issues, to hopefully heighten awareness and sensitivity to racial issues." In addition, plaintiff does not allege that any offensive words were directed at her or that the alleged harassment interfered with her employment. In light of the seminar's admitted purpose, the events at the racial-sensitivity seminar were insufficient to create a hostile work environment. Thus, the trial court properly granted summary disposition on this issue. MCL 37.2103(h), 37.2202(1)(a); MSA 3.548(103)(h), 3.548(202)(1)(a); *Radtke, supra*, pp 382-383.

Affirmed.

/s/ Kathleen Jansen
/s/ Maureen Pulte Reilly
/s/ Michael Eugene Kobza