STATE OF MICHIGAN

COURT OF APPEALS

CHRISTINE D'AGOSTINI,

Plaintiff-Appellant,

v

DR. TIMOTHY WILLIAMS d/b/a TIIMOTHY M. WILLIAMS, D.D.S.,

Defendant-Appellee.

UNPUBLISHED
March 18, 1997

No. 186671
LC No. 94-476599-CK

Before: Hood, P.J. and Saad and Thomas S. Eveland*, JJ.

PER CURIAM.

Plaintiff, Christine D'Agostini, appeals as of right from a ruling by the lower court granting defendant's motion for summary disposition on her claims of weight and sex discrimination. We affirm..

We review a lower court's ruling on a motion for summary disposition under a de novo standard of review. *Borman v State Farm Fire & Casualty Co*, 198 Mich App 675, 678; 499 NW2d 419 (1993); *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). When, as here, the motion is brought under MCR 2.116(C)(10), the party opposing such a motion must set forth specific facts to show that there is a genuine issue of material fact for trial. *Patterson, supra*, 447 Mich 432. Viewing the record below in a light most favorable to plaintiff to determine whether a factual issue has been developed, we find no genuine issue of material fact. *Farm Bureau Mut Ins Co of Michigan v Stark*, 437 Mich 175, 184-185; 468 NW2d 498 (1991).

Plaintiff 's appeal is based on her claims of weight and sex discrimination. Discrimination claims can be established by proving either intentional discrimination or disparate treatment discrimination. *Manning v City of Hazel Park*, 202 Mich App 685, 696-697; 509 NW2d 874 (1993). In order to establish a prima facie case of intentional discrimination, a plaintiff must show that she was a member of an affected class, that she was discharged, and that the person discharging her was predisposed to discriminate against persons in the affected class and actually acted on that predisposition. *Id*., 697. To prove discrimination under a disparate treatment theory, a plaintiff must show that she was a member of

a class entitled to protection under the act and that she was treated differently than persons of a different class for the same or similar conduct. *Id*. Here, on both her claims of weight and sex discrimination plaintiff has failed to present any evidence to establish a genuine issue of material fact that defendant was either predisposed against women or overweight individuals, or that she was treated differently from persons of a different class for the same or similar conduct. Therefore, the court did not err in granting defendant summary disposition under theses theories.

In addition, plaintiff contends that she was discriminated against on the basis of sexual harassment. Section 103 of the Elliott-Larsen Civil Rights Act, MCL 37.2103(h); MSA 3.548(103)(h), provides that discrimination because of sex includes sexual harassment, which can be manifested by quid pro quo sexual harassment or hostile work environment sexual harassment. *Champion v Nationwide*, 450 Mich 702, 708; 545 NW2d 596 (1996).

A party pursuing a claim under a quid pro quo theory of sexual harassment must establish two things:

> (1) That she was subject to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature; and
>
> (2) that her employer used her submission to or rejection of the proscribed conduct as a factor in a decision affecting her employment. [*Id*.]

Examining the record, plaintiff has failed to provide evidentiary support for her claim of quid pro quo sexual harassment. The only testamentary evidence presented by plaintiff indicated that in fact she did not feel discriminated against, nor did her co-employees feel that the only way to obtain advancement or job-related benefits was to engage in a personal relationship with defendant. Therefore, plaintiff has failed to raise any genuine issues of material fact that defendant subjected her to unwelcome sexual advances or requests, and that her submission to or rejection of the conduct was a factor in her discharge.

In order to establish a prima facie case of sexual harassment under a hostile work environment theory, plaintiff must present evidence to substantiate five necessary elements:

> (1) That the employee belonged to a protected group;
>
> (2) the employee was subjected to communication or conduct on the basis of sex;
>
> (3) the employee was subjected to unwelcome sexual conduct or communication;
>
> (4) the unwelcome sexual 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; 501 NW2d 155 (1993).]

Plaintiff here claims a hostile work environment by being subjected to the unwelcome sexual conduct of defendant and his paramour, which she claims created an intimidating, hostile or offensive work environment. We have addressed this issue in *Hickman v W-S Equipment Co, Inc*, 176 Mich App 17; 438 NW2d 872 (1989), wherein we held that although the facts alleged may have indicated an unfair termination, they did not state a claim for sex discrimination. *Id*. "Favoritism of one female over another was not the Legislature's target" in enacting the Elliott-Larsen Act. *Id*. Therefore, the lower court's grant of summary disposition on this basis was proper.

Affirmed.

/s/ Harold Hood
/s/ Henry William Saad
/s/ Thomas S. Eveland