STATE OF MICHIGAN

COURT OF APPEALS

VIDA SALDANA,

Plaintiff-Appellant,

v

AMERICAN NATIONAL RED CROSS and ROBERT MARKEY,

Defendants-Appellees.

UNPUBLISHED
October 10, 1997

No. 193305
Wayne Circuit Court
LC No. 95-506271-NZ

Before: Bandstra, P.J., and Murphy and Young, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) in this employment discrimination case brought under Michigan's Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq*.; MSA 3.548(101) *et seq*. We affirm.

On appeal, plaintiff argues that the trial court erred in granting defendants' motion for summary disposition because factual issues existed for the jury regarding whether plaintiff was denied an employment opportunity by defendants because she was married and had a family. This Court reviews a motion for summary disposition de novo. *Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). MCR 2.116(C)(10) permits summary disposition when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." *Id*. Therefore, a court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other admissible evidence in favor of the party opposing the motion, granting the non-moving party the benefit of any reasonable doubt, and determine whether there is a genuine issue of disputed material fact. *Id*.; *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994); *Marsh v Dep't of Civil Service (After Remand)*, 173 Mich App 72, 77-78; 433 NW2d 820 (1988).

Where a plaintiff is terminated due to an employer's reduction in force (RIF), which is essentially the situation presented in this case, in order to survive summary disposition, the plaintiff is required to provide sufficient evidence on the "ultimate question" – whether illegal discrimination was a determining factor in the employment decision. *Lytle v Malady*, 456 Mich 1, 34; ___ NW2d ___ (1997), quoting *Matras v Amoco Oil Co*, 424 Mich 675, 684-685; 385 NW2d 586 (1986). The evidence must be sufficient for the factfinder to reasonably conclude that the employment decision was motivated by illegal discriminatory animus. *Lytle*, *supra* at 35.

Here, plaintiff's sole evidence of discrimination is a remark made by the decision-maker, Robert Markey, in explaining why he chose another employee, David Rebant, for the position plaintiff sought. The remark indicated that Rebant was always at work, whereas plaintiff was "not there all the time because [she had] a family." Plaintiff initially claimed that this remark was evidence of marital status and familial status discrimination in violation of Elliott-Larsen. On appeal, plaintiff abandoned her familial status claim,[1] and instead asserts that the remark is evidence of marital discrimination. We disagree.

Nowhere in this record has plaintiff identified any action or statement of her employer that touched upon or related to plaintiff's spouse or her marriage or to any other characteristic protected under the Elliott-Larsen provision addressing prohibited acts by employers. The only alleged employer discrimination plaintiff has identified is the one remark noted above.[2] This evidence is not alone sufficient. The remark does not refer to a protected characteristic, but to the amount of time plaintiff devoted to *family* in contrast with the amount of time she spent on the job. This Court has previously held that an employer's failure to accommodate family obligations is not discrimination based on *marital status*. *Noecker v Corrections Dep't*, 203 Mich App 43, 47; 512 NW2d 44 (1993).

Because plaintiff has failed to produce any evidence, circumstantial or otherwise, to support her claim of marital status discrimination, we conclude that there was no genuine issue of material fact and, therefore, that the trial court properly granted summary disposition to defendants.

Affirmed.

/s/ Richard A. Bandstra
/s/ William B. Murphy
/s/ Robert P. Young, Jr.

[1] Although Elliott-Larsen declares familial status to be a "civil right," MCL 37.2102; MSA 3.548(102), the statute bars discrimination on the basis of familial status only in housing. See MCL 37.2502(1); MSA 3.548(502).

[2] We note in passing that the position for which plaintiff applied was initially offered to another applicant who, like plaintiff, was also married with children.