

STATE OF MICHIGAN
COURT OF APPEALS

MARGARET MORRISON,

Plaintiff-Appellant,

v

FORD MOTOR COMPANY,

Defendant-Appellee.

UNPUBLISHED

December 23, 1997

No. 199079

Wayne Circuit Court

LC No. 95-523103-CZ

Before: Michael J. Kelly, P.J., and Cavanagh and N. J. Lambros*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this employment discrimination case. We affirm.

Plaintiff and her husband, Vance Morrison (Morrison), were both employed by defendant at its Sheldon Road plant. In late 1993 and early 1994, the couple experienced marital problems, and plaintiff began a relationship with Sam Scott, a supervisor at the Sheldon Road plant. In January 1995, three Ford employees were killed at the Sheldon Road plant after one member of a lovers' triangle killed the other two and then turned the gun on himself. After other employees expressed concern that the relationship between plaintiff, Morrison, and Scott might prove similarly volatile, plaintiff and Scott were both transferred. Plaintiff filed the instant lawsuit, claiming that she was given an unfavorable transfer because of her sex and marital status in violation of the Civil Rights Act (CRA), MCL 37.2101 *et seq.*; MSA 3.548 (101) *et seq.*

On appeal, an order granting or denying summary disposition is reviewed de novo. A motion for summary disposition may be granted pursuant to MCR 2.116(C)(10) when, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Giving the benefit of reasonable doubt to the nonmovant, the trial court must determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Moore v First Security Casualty Co*, 224 Mich App 370, 375; 568 NW2d 841 (1997).

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

I

Plaintiff argues that the trial court erred in finding that she failed to create a genuine factual dispute with respect to a prima facie claim of disparate treatment under the CRA. We disagree.

To prove disparate treatment, a plaintiff must show that she was a member of the 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. *Meagher v Wayne State Univ*, 222 Mich App 700, 709; 565 NW2d 401 (1997). After a prima facie case is made out by the plaintiff, the burden of production shifts to the defendant to articulate some legitimate, non-discriminatory reason for its actions. If the defendant meets this burden of production, the plaintiff must prove by a preponderance of the evidence that the legitimate reason offered by the defendant was a mere pretext. *Id.* at 711.

In this case, plaintiff has not demonstrated that she was treated differently than similarly situated male or single coemployees. First, plaintiff attempts to compare herself to three other supervisors who received death threats but were not transferred or demoted; instead, defendant discharged or suspended the employees who made the threats. Plaintiff contends that, like these three individuals, she should have been allowed to retain her position. We find, however, that plaintiff was not similarly situated to these three supervisors. Morrison, unlike the other employees, did not make any overt threats, and defendant therefore had no basis to take any action against him.

Plaintiff next contends that she was treated differently than Morrison because he was allowed to remain in his position at the Sheldon Road Plant. However, plaintiff and Morrison were not similarly situated. Unlike plaintiff, Morrison was a member of the UAW. Defendant's ability to transfer him or take any other action was governed by the terms of the collective-bargaining agreement. The uncontested evidence was that defendant had to obtain the approval of the union prior to transferring Morrison, and the union indicated that it would resist any attempt to transfer Morrison.

Finally, plaintiff contends that defendant treated her differently than Scott. Scott was transferred from his supervisory position at the Plant to a position as a liaison between the Plant and one of its vendors. Plaintiff contends that this transfer was in name only and Scott was still employed by the plant. However, the record does not support this contention. Although Scott's new position required intermittent visits to the Sheldon Road plant, he spent most of his time at other facilities.

Plaintiff also notes that Scott's transfer was not as financially detrimental to him as plaintiff's was to her and attributes the disparity to her gender and marital status. This contention is unsupported by the record. Jerry Pompa, defendant's employee relations manager, attested in an affidavit that he did not know whether plaintiff was still married, divorced, or separated at the time of her transfer. Plaintiff has presented no contradictory evidence. Moreover, there is no evidence that defendant offered Scott the liaison position because of his gender or marital status. Finally, plaintiff and Scott were not similarly situated in that Scott had thirty years of service and was eligible to take early retirement, whereas plaintiff had worked for defendant less than twenty years and was not eligible for early retirement.

Even if plaintiff could establish a prima facie case of disparate treatment, her claim would still fail because defendant presented a legitimate, nondiscriminatory reason for its actions. Specifically,

defendant asserted that it transferred plaintiff and Scott because of safety concerns regarding the potentially violent situation created by the relationship between the three employees. Moreover, defendant maintained the decision to reassign plaintiff and Scott, rather than Morrison, was based on the fact that the latter was a member of the UAW and could not be transferred without its consent. Plaintiff has not established that these reasons for defendant's actions were pretextual. In fact, plaintiff admitted in her deposition that because she was not protected by the union, it was easier for defendant to transfer her than her husband. Accordingly, we conclude that the trial court properly granted defendant's motion for summary disposition on her CRA claim.

II

Next, plaintiff argues that the trial court erred in granting defendant's motion for summary disposition on her claim for violation of public policy. Plaintiff contends that Michigan has a policy of protecting women, and defendant's action of transferring her violates this policy.

The Supreme Court has recognized various causes of action when an at-will employee is discharged in violation of public policy. See *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich 692, 695 & n2; 316 NW2d 710 (1982). We decline to extend this theory of liability to cases where the action taken by the employer falls short of an actual termination of employment, particularly where plaintiff has failed to establish that the employer's actions were motivated by any improper factors.

III

Finally, plaintiff argues that she was entitled to partial summary disposition on her claim of unlawful retaliation. Plaintiff contends that because she is no longer seeing Scott, and she and Morrison have reconciled, she should be returned to her prior position at the Sheldon Road Plant. Plaintiff asserts that defendant's failure to reassign her indicates that defendant is retaliating against her for pursuing a civil rights claim.

In order to establish a prima facie case of unlawful retaliation under the CRA, a plaintiff must show (1) she engaged in a protected activity, (2) this was known by the defendant, (3) the defendant took an employment decision that was adverse to the plaintiff, and (4) there was a causal connection between the protected activity and the adverse employment action. *DeFlaviis v Lord & Taylor, Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997).

Plaintiff has presented no evidence that defendant failed to reassign her to the Sheldon Road plant in retaliation for pursuing a civil rights claim. Defendant, on the other hand, has presented evidence that the situation continues to warrant the separation of the parties, as another murder-suicide has occurred at the plant, and defendant was concerned that allowing plaintiff to return to the plant would have an adverse effect on employee morale. The soundness of defendant's management decisions is not a matter for court review in the absence of any illegal discrimination. See *Meagher, supra* at 715. Accordingly, the trial court did not err in granting defendant's motion for summary disposition.

Affirmed. Defendant being the prevailing party, it may tax costs pursuant to MCR 7.219.

/s/ Michael J. Kelly

/s/ Mark J. Cavanagh

/s/ Nicholas J. Lambros