STATE OF MICHIGAN

COURT OF APPEALS

LEANN SPRANGER,

Plaintiff-Appellant,

v

EPI PRINTERS, INC. and WILLIAM KNIGHT,

Defendants-Appellees.

UNPUBLISHED
October 27, 1998

No. 203402
Calhoun Circuit Court
LC No. 96-000854 NZ

Before: Whitbeck, P.J., and McDonald and T. G. Hicks*, JJ.

MEMORANDUM.

Plaintiff appeals as of right summary disposition in favor of defendants in this action for gender discrimination under the Civil Rights Act, MCL 37.2202; MSA 3.548(202). We decide this appeal without oral argument pursuant to MCR 7.214(E). We affirm.

Although acknowledged to be a competent, efficient, and valued employee, plaintiff's employment was terminated contemporaneously with her informing defendant employer of her readiness to return to work after a maternity leave. In opposing summary disposition, plaintiff asserted that she had made out a prima facie case of discrimination as defined in *McDonnell Douglas Corp v Green*, 411 US 792, 802; 93 S Ct 1817; 36 L Ed 2d 668 (1973), as applied to the Civil Rights Act in *Matras v Amoco Oil Co*, 424 Mich 675, 683; 385 NW2d 586 (1986). Plaintiff thus has established that she is a member of a protected class, suffered an adverse employment action, was qualified for her position, and that others, similarly situated and outside the protected class, were unaffected by the employer's adverse conduct, giving rise to an inference that discrimination may have been a determining factor in defendant's adverse conduct toward plaintiff. *Lytle v Malady (On Rehearing)*, ___ Mich ___; ___ NW2d ___ (Docket No. 102515, issued July 1, 1998.)

However, in response to plaintiff's prima facie case, defendants came forward with a neutral, nondiscriminatory explanation for their conduct. They asserted that plaintiff's position was eliminated due to a reduction in force caused by economic necessity, and that plaintiff, as opposed to others in her department, was selected for termination because her principal client base had taken its business

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

elsewhere, leaving her with fewer active customers than the employees who remained. After defendants carried their burden of production at this second stage of proof by clearly setting forth the reasons for plaintiff's rejection through the introduction of admissible evidence, the presumption of discrimination raised by the prima facie case was rebutted and the burden shifted back to plaintiff. *Id.* at 22-23. At the third stage of proof, plaintiff cannot merely show that defendants' proffered reason was pretextual, but has to show that it was a pretext for sex discrimination. *Id.* at 25. Plaintiff must prove discrimination with admissible evidence, either direct or circumstantial, sufficient to permit a reasonable trier of fact to conclude discrimination was a motivating factor for the employer's adverse action. *Id.* at 25-26.

Here, plaintiff came forward with no evidence to challenge the defendant's assertions, supported by affidavit, that its customer base in plaintiff's department decreased from 478 to 286 (40%) between May 1995, and May 1996, and that the number of active accounts placed with that department decreased from 69 in 1995 to 28 in 1996. The resulting decrease in personnel in that department was less than the decrease in customer activity, only 25%. Defendants also asserted that plaintiff was selected for termination because more of her customer base had eroded than that of the employees who were retained. Again, plaintiff adduced no evidence to contradict these assertions.

Furthermore, plaintiff did not come forward with any direct evidence of discriminatory animus. Comments made by plaintiff's immediate supervisor, defendant Knight, at a meeting before plaintiff went on maternity leave, regarding whether her position would be open when her leave ended, and regarding the anticipated date the leave would commence, do not suggest discriminatory animus. Instead, the comments suggest mere expectation based on the existing level of business activity and possible misunderstanding regarding the time when arrangements would need to be made to service plaintiff's customers due to her anticipated maternity leave.

On this record, there is no evidence from which a reasonable factfinder could conclude that plaintiff's termination was the product, in whole or in part, of gender discrimination, whether related to pregnancy, maternity, or otherwise. Summary disposition was therefore properly granted.

Affirmed.

/s/ William C. Whitbeck
/s/ Gary R. McDonald
/s/ Timothy G. Hicks