STATE OF MICHIGAN

COURT OF APPEALS

REBECCA RENÉ MILLER,

Plaintiff-Appellant,

v

GRUBERS VALUE WORLD, INC., and JAMES A. GRUBER,

Defendants-Appellees.

UNPUBLISHED
March 30, 1999

No. 202201
Monroe Circuit Court
LC No. 96-004586 CZ

Before: MacKenzie, P.J., and Gribbs and Wilder, JJ.

PER CURIAM.

Plaintiff, who was denied access to a public New Year's Eve party hosted by defendants, appeals as of right from an order granting defendants' motion for summary disposition. We affirm.

The trial court indicated that it granted the motion under MCR 2.116(C)(8) and (C)(10). Since the court relied on materials outside the pleadings, however, we will review the ruling under the standards applicable to MCR 2.116(C)(10); *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997). We review de novo a trial court's grant of summary disposition under MCR 2.116(C)(10). *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). Like the trial court, we look at the entire record, view the evidence in favor of the nonmoving party, and decide if there exists a relevant issue about which reasonable minds might differ. *Id.* If, as in the instant case, the nonmoving party would bear the burden of proof at trial, that party, in order to avoid summary disposition, must provide documentary evidence showing the existence of a disputable issue. *Quinto v Cross & Peters*, 451 Mich 358, 362; 574 NW2d 314 (1996).

Plaintiff argues that questions of fact existed regarding whether defendants discriminated against her on the basis of gender. She alleges that defendants violated § 302 of the Civil Rights Act, MCL 37.2302; MSA 3.548(302), which provides, among other things, that persons may not be excluded from places of public accommodation because of their gender. To establish a viable claim under § 302, plaintiff had to provide evidence of intentional discrimination, disparate treatment, or disparate impact. See *Schellenberg v Rochester Elks*, 228 Mich App 20, 32; 577 NW2d 163 (1998), and *Koester v*

Novi, 458 Mich 1, 19-20; 580 NW2d 835 (1998). As discussed *infra*, plaintiff provided evidence for none of these theories.

To establish a case of intentional discrimination under § 302, plaintiff had to show: (1) that she was a member of a protected class; (2) that she was discriminated against at a place of public accommodation; (3) that defendants were predisposed to discriminate against persons in the class; and (4) that defendants acted upon that disposition when the discrimination occurred. *Schellenberg, supra* at 33. The parties do not dispute that plaintiff, as a female, was a member of a protected class. Nor do they dispute that the hall at which the New Year's Eve party took place was a "place of public accommodation" under § 302. However, plaintiff produced no evidence that defendants were predisposed to discriminate against females or that they acted upon that disposition when denying plaintiff access to the hall. She showed only that defendants may have had a predisposition to discriminate against persons, like plaintiff, who had sued them in the past. Such persons do not constitute a protected class, and plaintiff therefore did not establish a viable intentional discrimination case.

To establish a case of disparate treatment under § 302, plaintiff had to show that she was a member of a protected class and that she was treated differently than a man for the same or similar conduct. *Id*. Plaintiff did not show that she was treated differently than a similarly situated man. She presented no evidence that men who had sued defendants in the past were allowed into the hall on New Year's Eve. Although she claimed that such men existed, this claim was insufficient to combat a motion for summary disposition under MCR 2.116(C)(10), since a party opposing a (C)(10) motion, in order to avoid dismissal of the case, must provide *documentary* evidence of a relevant, disputable issue. *Quinto, supra* at 358. Thus, plaintiff did not establish a viable disparate treatment case. Nor did she establish a viable disparate impact case, which, in the present context, requires a showing that a facially neutral policy impacted females more severely than males. *Koester, supra* at 19-20. Plaintiff did not show that defendants' apparent policy of excluding former litigants from their hall affected females differently than males. The trial court properly granted summary disposition in favor of defendants with regard to plaintiff's sex discrimination claim.

Next, plaintiff argues that the trial court erred in granting defendants' motion for reconsideration regarding her intentional infliction of emotional distress claim. The court had previously denied defendant's motion for summary disposition on this claim, and plaintiff believes that because the motion for reconsideration raised no new issues and demonstrated no error, it should have been denied. We review a trial court's decision to grant or deny a motion for reconsideration for an abuse of discretion. *In re Beglinger Trust*, 221 Mich App 273, 279; 561 NW2d 130 (1997). The trial court indicated that it granted the motion because it presented a dispositive legal issue that defendants had earlier failed to raise. Although defendants briefly mentioned the issue in question – that they had a right, as a private business and private business owner, to exclude persons from their premises as long as no statutes were violated – during oral arguments on their summary disposition motion, they did not raise it in the motion itself or in the supporting brief. They did, however, discuss it thoroughly in their motion for reconsideration. This thorough discussion likely alerted the court to a possible error in its ruling, and,

consequently, the court did not abuse its discretion in granting the reconsideration motion. See MCR 2.119(F)(3).

Nor did the court err in granting defendants summary disposition with respect to the intentional infliction of emotional distress claim. For such a claim to be viable, plaintiff had to show that defendants' conduct was extreme, outrageous, and beyond all possible bounds of decency. *Haverbush v Powelson*, 217 Mich App 228, 233-234; 551 NW2d 206 (1996). Here, there was no evidence that defendant James Gruber did anything other than tell plaintiff that she had to leave the hall. This act, as a matter of law, could not support an intentional infliction of emotional distress claim. The claim was properly dismissed.

Finally, plaintiff argues that the trial court should have granted her motion to amend her complaint to allege a violation of the Michigan Equal Accommodations Act, MCL 750.146, 750.147; MSA 28.343; MSA 28.344. We review a trial court's grant or denial of a motion to amend for an abuse of discretion. *Jenks v Brown*, 219 Mich App 415, 420; 557 NW2d 114 (1996). A viable claim under the Equal Accommodations Act required, in the context of this case, a showing that defendants discriminated against plaintiff because of her gender. *Ferrell v Vic Tanny*, 137 Mich App 238, 246; 357 NW2d 669 (1984). As discussed earlier, plaintiff failed to present evidence that defendants denied her access to the hall because she was a female. Accordingly, the proposed amendment would have been futile, and the trial court therefore did not abuse its discretion in denying the motion to amend. *Jenks, supra* at 420.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Roman S. Gribbs
/s/ Kurtis T. Wilder