

STATE OF MICHIGAN
COURT OF APPEALS

ELIZABETH A. COPLAND,

Plaintiff-Appellant,

v

GIL S. BORLAZA, JOHN E. FREITAS, DAVID J.
FUGENSCHUH, LOUIS S. MAGANA, and
JAMES J. SHIELDS,

Defendants-Appellees.

UNPUBLISHED

February 25, 2000

No. 213862

Washtenaw Circuit Court

LC No. 96-003576-NO

Before: Sawyer, P.J., and Gribbs and McDonald, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition under MCR 2.116(C)(10). We affirm.

We review the trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). We consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party, *Ritchie-Gamester v Berkley*, 461 Mich 73, 76-77; 597 NW2d 517 (1999), and review the record in the same manner as the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998).

A plaintiff alleging sex discrimination must first establish a prima facie case. *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 358-359; 597 NW2d 250 (1999). Once the plaintiff establishes a prima facie case by a preponderance of the evidence, which creates a rebuttable presumption that the defendant engaged in unlawful discrimination, the burden shifts to the defendant employer to articulate a legitimate, nondiscriminatory reason for its employment decision. *Town v Michigan Bell Telephone Co*, 455 Mich 688, 695-697; 568 NW2d 64 (1997); *Wilcoxon, supra*, 358-359. If the defendant carries this burden, the burden shifts back to the plaintiff to prove by a preponderance of the evidence that the defendant's reasons for the employment decision were not its

true reasons, but were merely a pretext for discrimination. *Town, supra*, 695-697. The ultimate burden of persuasion, however, always remains on the plaintiff. *Id.*, 696-697.

In the present case, plaintiff established a prima facie case of sex discrimination for the following reasons: (1) As a woman, plaintiff is a member of a protected class under the Civil Rights Act, MCL 37.2202(1)(a); MSA 3.548(202)(1)(a), (2) she is a qualified radiologist, (3) she was fired by defendants, the five-doctor board of directors at Huron Valley Radiology, P.C. (HVR), and (4) she was reprimanded for being unavailable (i.e., spending too much time in her office), whereas similarly situated male HVR radiologists were not reprimanded for the same conduct. *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973)

To rebut plaintiff's prima facie case of sex discrimination, defendants articulated a legitimate, nondiscriminatory reason why plaintiff was fired. The board noted that the two hospitals with which HVR contracted to provide radiological services, Chelsea Community Hospital (Chelsea) and St. Joseph Mercy Hospital (St. Joseph's), asked HVR not to send plaintiff to their facilities because they were dissatisfied with plaintiff's unprofessional demeanor and questionable film interpretations. The board honored the requests because it wanted to ensure its continued business relationship with both hospitals. After honoring the requests, the board determined that HVR did not have a position for plaintiff.

Significantly, defendants presented evidence that buttressed their claim that plaintiff's gender did not affect the board's decision to fire plaintiff. First, Dr. Maureen E. Forrest, a female radiologist shareholder of HVR, specifically stated in her affidavit that she had never been treated differently from her male colleagues at HVR, and that she had always been part of the decision-making process for HVR. Further, Dr. James Shields, the chairman of the HVR board, stated in his affidavit that HVR includes female doctors at twice the percentage of published national averages for women in this specialty. Plaintiff's own deposition revealed that HVR hired two women soon after plaintiff left HVR. Lastly, the overwhelming deposition testimony of HVR shareholders and medical staff from Chelsea and St. Joseph's corroborates the HVR board's conclusion that plaintiff's interpersonal skills jeopardized HVR's business relationship with Chelsea and St. Joseph's. Because defendants have met their burden of producing a legitimate, nondiscriminatory reason for firing plaintiff, the burden shifts back to plaintiff to prove that defendants' proffered reason was pretextual.

Even if plaintiff had been able to raise an issue regarding the credence of defendants' proffered reason for firing her, plaintiff was unable to demonstrate that sex discrimination was a motivating factor in HVR's decision to fire her. There is a distinction between a triable issue of falsity and a triable issue of discrimination:

[P]laintiff must not merely raise a triable issue that the employer's proffered reason was pretextual, but that it was a pretext for . . . sex discrimination. Therefore, we find that, in the context of summary disposition, a plaintiff must prove discrimination with admissible evidence, either direct or circumstantial, sufficient to permit a reasonable trier of fact to conclude that discrimination was a motivating factor for the adverse action

taken by the employer toward the plaintiff. [*Lytle v Malady (On Rehearing)*, 458 Mich 153, 175-176; 579 NW2d 906 (1998).]

Here, even were we to assume that defendants' proffered reason for firing plaintiff was false, plaintiff failed to demonstrate the nexus between unlawful sex discrimination and defendants' reason.

In other words, even if plaintiff demonstrated that she was treated differently from male radiologists in isolated incidents, she failed to show that her gender was a factor in HVR's decision to terminate her employment. In her deposition, plaintiff claimed that Dr. Shields told her that she should smile more often, and that she should make an effort to appear as though she enjoyed her work. Even if Dr. Shields' alleged comments could be considered gender-oriented, plaintiff has failed to demonstrate the connection between her gender and the board's decision to fire her.

At most, plaintiff's claim merely attacks the soundness of the board's business judgment. *Town, supra*, 703-705. The soundness of an employer's business judgment may not be questioned as a means of showing pretext. *Dubey v Stroh Brewery Co*, 185 Mich App 561, 566; 462 NW2d 758 (1990). Defendants alleged that the HVR board fired plaintiff because of her unprofessional demeanor and deficient performance. Specifically, the two hospitals that provided the source of HVR's revenue did not want plaintiff at their facilities. HVR's board made a business decision based upon its reasonable belief that plaintiff was jeopardizing HVR's business relationship with Chelsea and St. Joseph's. Dr. Forrest noted that plaintiff had reduced medical technologists to tears, and that she had received complaints regarding plaintiff's ability to interpret film. A defendant board member, Dr. John E. Freitas, recounted numerous instances of HVR radiologists requesting not to work with plaintiff. Dr. Freitas believed that plaintiff's deficient performance and unprofessional demeanor jeopardized HVR's professional relationship with St. Joseph's.

Plaintiff's mere allegations of sex discrimination are not enough to create a genuine issue for trial. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Similarly, plaintiff's subjective belief that she was fired because of her gender constitutes speculation and conjecture, which is insufficient to demonstrate the existence of a genuine issue for trial. *Detroit v GMC*, 233 Mich App 132, 139; 592 NW2d 732 (1998). Because plaintiff has offered no proof that would permit a jury to conclude that gender was a determining factor in the board's decision to ask her to leave HVR, and because there is overwhelming evidence that plaintiff's further interaction with Chelsea and St. Joseph's would jeopardize HVR's business relationship with the two hospitals, plaintiff failed to raise a triable question of fact that her discharge was motivated by gender discrimination. *Lytle, supra*, 181. Therefore, the trial court properly entered summary disposition under MCR 2.116(C)(10).

Affirmed.

/s/ David H. Sawyer
/s/ Roman S. Gribbs
/s/ Gary R. McDonald

