STATE OF MICHIGAN

COURT OF APPEALS

TONY LOGAN,

Plaintiff-Appellee,

v

CITY OF DETROIT and THE DETROIT POLICE DEPARTMENT,

Defendants-Appellants,

and

BRENDA NIMOCK,

Defendant.

UNPUBLISHED
March 16, 2001

No. 214656
Wayne Circuit Court
LC No. 95-513630-CL

Before: Neff, P.J., and Holbrook, Jr., and Jansen, JJ.

PER CURIAM.

Defendants City of Detroit and the Detroit Police Department appeal as of right from a judgment awarding plaintiff $200,000 on his complaint for sexual harassment under the Civil Rights Act (CRA), MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.* The jury found that defendant Brenda Nimock[1] sexually harassed plaintiff and that defendants-appellants City of Detroit and the Detroit Police Department (hereinafter collectively referred to as defendants) failed to take prompt remedial action. Defendants' motions for judgment notwithstanding the verdict, new trial, and remittitur were denied. We affirm.

Defendants argue that the trial court erred in denying their motion for a directed verdict because the evidence failed to show that plaintiff was subjected to unwelcome sexual conduct that created an intimidating, hostile, or offensive work environment, and also failed to establish respondeat superior liability. Defendants similarly argue that the jury verdict was against the great weight of the evidence. We disagree with both of these arguments.

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[1] Defendant Nimock is not a party to this appeal.

This Court reviews a trial court's decision on a motion for a directed verdict de novo. *Allen v Owens-Corning Fiberglass Corp*, 225 Mich App 397, 406; 571 NW2d 530 (1997). "A motion for a directed verdict . . . should be granted only when, viewing the evidence and all legitimate inferences in the light most favorable to the nonmoving party, there are no issues of material fact with regard to which reasonable minds could differ." *Cipri v Bellingham Foods*, 235 Mich App 1, 14; 596 NW2d 620 (1999). A trial court's denial of a motion for a new trial on the ground that the verdict was against the great weight of the evidence is reviewed for an abuse of discretion. *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998). "When a party claims that a jury's verdict was against the great weight of the evidence, we may overturn that verdict 'only when it was manifestly against the clear weight of the evidence.'" *Ellsworth v Hotel Corp*, 236 Mich App 185, 194; 600 NW2d 129 (1999), quoting *Watkins v Manchester*, 220 Mich App 337, 340; 559 NW2d 81 (1996). This Court gives substantial deference to a trial court's determination that the verdict is not against the great weight of the evidence and to the trial court's unique ability to judge the weight and credibility of the testimony. *Ellsworth , supra* at 194.

MCL 37.2103(i); MSA 8.548(103)(i) provides, in pertinent part:

> Discrimination because of sex includes sexual harassment. Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature under the following conditions:
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> * * *
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> *(iii)* The conduct or communication has the purpose or effect of substantially interfering with an individual's employment . . . or creating an intimidating, hostile, or offensive employment . . . environment.

To establish sexual harassment based on a hostile work environment, a plaintiff must prove the following:

> (1) the employee belonged to a protected group; (2) the employee was subjected to communication or conduct on the basis of sex; (3) the employee was subjected to unwelcome sexual conduct or communication; (4) the unwelcome sexual conduct or communication was intended to or did in fact substantially interfere with the employee's employment or created an intimidating, hostile, or offensive work environment; and (5) respondeat superior. [*Koester v Novi*, 213 Mich App 653, 666; 540 NW2d 765 (1995), modified on other grounds 458 Mich 1 (1998).]

"[W]hether a hostile work environment existed shall be determined by whether a reasonable person, in the totality of circumstances, would have perceived the conduct at issue as substantially interfering with the plaintiff's employment or having the purpose or effect of creating an intimidating, hostile, or offensive employment environment." *Radtke v Everett*, 442 Mich 368, 394; 501 NW2d 155 (1993). "[A]n employer may avoid liability under the CRA if it adequately investigated and took prompt and appropriate remedial action upon notice of the alleged hostile work environment.'" *Grow v W A Thomas Co*, 236 Mich App 696, 702; 601

NW2d 426 (1999), quoting *Downer v Detroit Receiving Hosp,* 191 Mich App 232, 234; 477 NW2d 146 (1991).

A review of the record discloses sufficient evidence to support the jury's determination that plaintiff was subjected to unwelcome sexual conduct that created an intimidating, hostile or offensive work environment. The evidence indicated that plaintiff received unwelcomed, sexually explicit notes and letters from Nimock, which she left on his car at work, at the precinct desk, and with other officers. See *Radtke, supra* at 384 (observing that "the gravamen of a . . . sexual harassment claim is that the alleged sexual advances were unwelcome"). On one occasion, Nimock approached plaintiff as he was sitting in his patrol car and propositioned him for sex. She also made other unwelcome sexual advances, followed plaintiff around the precinct, followed plaintiff in his scout car, and, in one incident, pressed her body up against plaintiff and touched him inappropriately.

Defendants contend that Nimock's conduct did not "substantially interfere" with plaintiff's employment because plaintiff received high performance ratings during the relevant period. However, plaintiff presented evidence demonstrating that he was adversely affected by Nimock's conduct. Specifically, plaintiff presented evidence indicating that Nimock's conduct affected plaintiff's relationship with his wife and children. Further, plaintiff's partner testified that plaintiff was so distracted by Nimock's conduct that the partner became concerned about plaintiff's job performance. The evidence also established that plaintiff was placed on sick leave for a period of time and also received both individual and family counseling because of the situation.

We further find that the evidence was sufficient to support the jury's conclusion that defendants failed to take prompt and appropriate remedial action upon notice of the allegations. The evidence demonstrated that plaintiff reported the situation to his supervisor, the internal affairs department, and the EEO Coordinator. Although plaintiff's supervisor arranged a meeting with plaintiff and Nimock in an attempt to rectify the situation, the evidence indicated that the harassment continued and, despite further complaints by plaintiff, no follow-up action was taken by plaintiff's supervisor. While the internal affairs department did conduct an investigation, the department had no authority to recommend discipline or penalties or take any action in the workplace. Although internal affairs ultimately recommended to the prosecutor's office that Nimock be charged with misdemeanor stalking, it took four months to conduct the investigation and make the recommendation, during which time the harassment continued. There was no evidence that defendants made any attempt to discipline or even speak to Nimock about the situation during this time period.[2]

Plaintiff also complained to the EEO Coordinator, whose job it was to investigate complaints of harassment. However, the evidence indicated that the coordinator did not take any remedial action. Although she told plaintiff that she would investigate the situation, her only action was to send a memo to the internal affairs department. The coordinator was presented

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[2] Nimock was eventually suspended and discharged for "insubordination, outside employment and AWOL," reasons unrelated to the situation with plaintiff.

with plaintiff's telephone tracer records documenting Nimock's numerous telephone calls to his home, she was aware that plaintiff was upset and attending counseling, and she received numerous follow-up calls from plaintiff inquiring about the "investigation." Despite all this, she never interviewed or spoke to Nimock, never conducted an investigation, and never prepared a complaint or a report.

In sum, sufficient evidence was presented to enable a reasonable person to conclude that Nimock engaged in unwelcome conduct within the workplace so as to impose upon defendants a duty to take remedial action, and that defendants failed to take appropriate remedial action upon receiving adequate notice of the situation. *Radtke*, *supra* at 395. Accordingly, we conclude that the trial court did not err in denying defendants' motion for directed verdict. We likewise conclude that the trial court did not abuse its discretion in denying defendants' motion for a new trial.

Next, defendants argue that the jury's verdict in favor of plaintiff on his claim for negligent infliction of emotional distress was against the great weight of the evidence. Although plaintiff's complaint originally included a claim for negligent infliction of emotional distress, plaintiff withdrew this claim before trial and it was not presented to the jury. Accordingly, this issue provides no basis for relief.

Finally, we reject defendants' assertion that the trial court abused its discretion in denying defendants' motion for remittitur. *Leavitt v Monaco Coach Corp*, 241 Mich App 288, 305; 616 NW2d 715 (2000). The amount awarded was supported by the evidence. *Henry v City of Detroit*, 234 Mich App 405, 414; 594 NW2d 107 (1999).

Affirmed.

/s/ Janet T. Neff
/s/ Donald E. Holbrook, Jr.
/s/ Kathleen Jansen