STATE OF MICHIGAN

COURT OF APPEALS

DARNELLA ANCHRUM, Plaintiff-Appellant,	UNPUBLISHED May 25, 2001
v	No. 215455 Oakland Circuit Court
AIRTOUCH CELLULAR and GLYNIS MCBAIN, Defendants-Appellees.	LC No. 97-002072-NZ

Before: Zahra, P.J., and Smolenski and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

In November 1995, plaintiff, an African American woman, began employment with defendant Airtouch Cellular as a Customer Care Supervisor. Defendant McBain was plaintiff's supervisor. Plaintiff's duties involved the supervision of several Customer Care Representatives. On February 10, 1997, defendant McBain informed plaintiff that she was terminated because she failed to provide documentation of coaching sessions that plaintiff was required to perform with her direct employees. Specifically, defendant McBain claimed she was unable to confirm that the coaching sessions took place. Plaintiff filed this suit, alleging race discrimination, wrongful interference and intentional infliction of emotional distress. Only plaintiff's claims of race discrimination and intentional infliction of emotional distress are at issue on appeal.

I

Plaintiff first argues that the trial court erred in dismissing her race discrimination claim. We disagree.

We review a trial court's decision on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), this Court should consider the affidavits, pleadings, depositions, admissions or any other documentary evidence submitted in a light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999); *Rollert v Dep't of Civil Service*, 228 Mich App 534, 536; 579 NW2d 118 (1998). The party opposing the motion

has the burden of showing by evidentiary materials that a genuine issue of disputed fact exists. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). The disputed factual issue must be material to the dispositive legal claims. *State Farm Fire & Casualty Co v Johnson*, 187 Mich App 264, 267; 466 NW2d 287 (1990). All reasonable inferences are resolved in the nonmoving party's favor. *Hampton v Waste Mgt of MI, Inc*, 236 Mich App 598, 602; 601 NW2d 172 (1999).

The Elliott-Larsen Civil Rights Act (CRA), MCL 37.2101 *et seq*.; MSA 3.548(101) *et seq*., prohibits race discrimination in employment decisions, providing:

> (1) An employer shall not do any of the following:
>
> (a) Fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status. [MCL 37.2202(1)(a); MSA 3.548(202)(1)(a).]

A plaintiff may establish a prima facie case of discrimination under the CRA by showing that she was:

> (1) a member of a protected class, (2) subject to an adverse employment action, (3) qualified for the position, and that (4) others, similarly situated and outside the protected class, were unaffected by the employer's adverse conduct. [*Town v Michigan Bell Telephone Co*, 455 Mich 688, 695; 568 NW2d 64 (1997), citing *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973).]

If the plaintiff establishes a prima facie case, a presumption of discrimination arises that the defendant may rebut by articulating a legitimate, nondiscriminatory reason for the employment decision. *Town*, *supra* at 695-696. If the employer rebuts the presumption of discrimination, the plaintiff must then raise a triable issue that the stated reason for the adverse employment decision was merely pretext for discriminatory animus. *Id.* at 696-697.

In the present case, the parties dispute whether plaintiff has presented evidence that she was treated less favorably than any similarly situated, non-African-American employee who engaged in the same or similar conduct. Plaintiff asserts that none of the other five Customer Care Supervisors were discharged. She notes that one Caucasian supervisor was merely written-up for failing to coach her employees. Significantly, however, there is no evidence that any of the other five supervisors were ever believed to have falsified coaching reports. Conduct that defendant McBain claimed warranted immediate dismissal. Plaintiff admits that McBain requested her coaching reports in January 1997 and acknowledges that she did not provide McBain with reports for each of her employees. To show that an employee was similarly situated, the plaintiff must prove that "'all of the relevant aspects' of his employment situation were 'nearly identical' to those of [another employee's] employment situation." *Town*, *supra* at 699-700. Having failed to present evidence suggesting that any similarly situated, non-African-American employee was treated differently for the same or similar conduct, plaintiff's claim fails as a matter of law.

Furthermore, even assuming plaintiff could establish a prima facie case of discrimination, she failed to present evidence to create an issue of fact as to whether defendants' nondiscriminatory reason for discharging plaintiff was mere pretext for discrimination. Defendants met their burden of presenting a legitimate, nondiscriminatory reason for plaintiff's discharge when they asserted that plaintiff was terminated because she was believed to have falsified coaching reports. *Town, supra* at 695-696. Plaintiff has not presented sufficient evidence to rebut that claim. See *id*. at 696. Plaintiff claims that statements made by her co-supervisors during meetings were evidence of discriminatory animus.[1] Defendant McBain's single alleged comment that employees might avoid jury duty by claiming they are "prejudiced" is not evidence that race was a motivating factor in plaintiff's discharge. Moreover, there is no evidence that the other alleged comments were made by individuals with any authority to affect plaintiff's discharge. Plaintiff's proofs regarding her performance show, at most, that defendants perhaps made a poor business judgment in discharging plaintiff. "[P]laintiff cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent." *Town, supra* at 704, quoting *Fuentes v Perskie*, 32 F3d 759, 765 (CA 6, 1994). Under these circumstances, the trial court properly granted summary disposition for defendants.

II

Plaintiff next argues that the trial court erred in dismissing her claim of intentional infliction of emotional distress. Again, we disagree.

In order to establish a claim of intentional infliction of emotional distress, a plaintiff must establish (1) extreme and outrageous conduct; (2) intent or recklessness; (3) causation; and (4) severe emotional distress. *Graham v Ford*, 237 Mich App 670, 674; 604 NW2d 713 (1999). Liability may be found only where the conduct complained of has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community and does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. *Id*. The test is whether an average member of the community would find the facts so resentful to exclaim, "Outrageous!" *Id.* at 675.

In this case, viewing the evidence in a light most favorable to plaintiff, the facts do not satisfy the test for an intentional infliction of emotional distress claim. Plaintiff has failed to show defendants' conduct to be extreme and outrageous. As discussed *supra*, the evidence does not suggest that defendants' actions were motivated by discriminatory animus. Furthermore,

[1] Plaintiff alleges that the following statements were made by co-supervisors during her employment at Airtouch. While referring to a trainee, one co-supervisor allegedly stated: "Well you know she lives with a black man." Another co-supervisor allegedly asked plaintiff how she could deal with hearing gunshots on a continuous basis, referring to plaintiff's residence in Detroit. Another time, a co-supervisor allegedly stated that she did not "understand the big deal" over Martin Luther King Jr.'s, birthday. Plaintiff also alleges that defendant McBain advised employees to claim they were "prejudiced" in order to avoid jury duty.

while the alleged comments made by co-supervisors may be said to demonstrate ignorance, they do not rise to the level of extreme and outrageous conduct. Accordingly, this claim fails as a matter of law.

Affirmed.

/s/ Brian K. Zahra
/s/ Michael R. Smolenski
/s/ Hilda R. Gage