STATE OF MICHIGAN

COURT OF APPEALS

PAMELA A. RYAN,

Plaintiff-Appellant,

v

ELECTRONIC DATA SYSTEMS CORPORATION and ROBERT KNAGGS,

Defendants-Appellees.

UNPUBLISHED
July 27, 2001

No. 220808
Oakland Circuit Court
LC No. 98-005999-CL

Before: K.F. Kelly, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

In this gender discrimination case brought under the Civil Rights Act, MCL. 37.2101 *et seq*., plaintiff, who was terminated from her part-time job with defendant Electronic Data Systems Corporation after returning from a leave of absence, appeals by right from an order granting defendants' motion for summary disposition under MCR 2.116(C)(10). We affirm.

As a threshold matter, we reject defendants' argument that because of the manner in which plaintiff framed her claim of appeal, the appeal must be limited to the trial court's decision denying plaintiff's motion for reconsideration of the summary disposition order. Indeed, the motion for reconsideration merely extended the time for filing a claim of appeal. See MCR 7.204(A). The order granting summary disposition was the final order appealable by right. See MCR 7.202(7)(a) and 7.203(A). See also *People v Torres*, 452 Mich 43, 57; 549 NW2d 540 (1996) (indicating that a party appealing a final order in a civil case is free to raise issues related to other orders in the case).

Plaintiff contends that the trial court erred in granting defendants summary disposition because she presented direct proof that defendants terminated her employment, in part, because of her gender. We review a trial court's ruling 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 granted under MCR 2.116(C)(10), 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. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). 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 & Peter Co*, 451 Mich 358, 362; 574 NW2d 314 (1996).

Plaintiff claims that certain remarks made by defendant Knaggs, the individual who fired her, created a question of fact regarding whether her termination was motivated by gender discrimination. We disagree. Indeed, disregarding the inadmissible hearsay statements, the only evidence cited by plaintiff in her appellate brief with regard to Knaggs' alleged discriminatory animus is the following: (1) plaintiff's deposition testimony that Knaggs, in the course of the telephone conversation regarding her termination, told her that "I had hoped it wouldn't make any difference with your family situation but your skill set no longer meets our need . . .";[1] (2) plaintiff's deposition testimony that Knaggs, after the termination or demotion of another female, part-time worker, told plaintiff that she did not have anything to worry about with regard to her own job; (3) plaintiff's deposition testimony that Knaggs, when holding a meeting about "making no assumptions," indicated that a common assumption in college was "I thought she was on the pill"; (4) plaintiff's deposition testimony that during another meeting, Knaggs, while rehearsing a skit, made a comment about the singer Madonna "fooling around in the back of [a] rocking . . . truck"; and (5) plaintiff's deposition testimony that Knaggs made a comment about his wife one day, stating that "she was a real estate appraiser and that was okay for now until his job improved so that she could be home where she belonged."

We disagree that this evidence created a question of fact regarding whether plaintiff's termination resulted from gender discrimination. Indeed, the only statement from the above list that potentially evidenced gender bias relating to plaintiff's employment situation is the statement about Knaggs' wife. However, plaintiff herself acknowledged that in making this statement, Knaggs referred only to his own wife and did not give an indication that he believed all women belonged at home. Moreover, plaintiff did not establish a time frame during which Knaggs made the statement. Accordingly, this statement did not permit a reasonable inference that Knaggs terminated plaintiff because of her gender. While plaintiff may have subjectively felt that she was fired because of her gender, such feelings are not sufficient to create a question of fact for the jury. See, e.g., *SSC Associates Ltd Partnership v General Retirement System*, 192 Mich App 360, 364; 480 NW2d 275 (1991) ("[o]pinions, conclusory denials, unsworn averments, and inadmissible hearsay do not satisfy the court rule [MCR 2.116(C)(10)]; disputed fact (or the lack of it) must be established by admissible evidence"). See also *Pauley v Hall*, 124 Mich App 255, 262; 335 NW2d 197 (1983). Plaintiff failed to present sufficient direct evidence of gender discrimination to survive summary disposition.

Alternatively, plaintiff contends that she sufficiently established a prima facie case of gender discrimination under the burden-shifting test set forth in *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973). Under this approach, a plaintiff alleging discrimination must show, as an initial matter, that

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[1] Knaggs testified that in making this statement, he meant to convey that he had hoped that plaintiff planned on voluntarily not returning to work so that he would not have to put her through the pain of having to terminate her.

> (1) she belongs to a protected class, (2) she suffered an adverse employment action, (3) she was qualified for the position, and (4) the job was given to another person under circumstances giving rise to an inference of unlawful discrimination. [*Hazle v Ford Motor Co*, ___ Mich ___; ___ NW2d ___ (Docket No. 116162, decided 7/3/01), slip op, p 13).]

Here, while plaintiff asserts that she satisfied these elements, her brief in support is cursory, and she has not supported her assertion with factual citations to the record. In fact, she does not even *identify* (disregarding the lack of citations) the individual to whom she believes the job was given under circumstances giving rise to an inference of unlawful discrimination. Therefore, we need not review this claim. As stated in *People v Norman*, 184 Mich App 255, 260; 457 NW2d 136 (1990), an appellant may not leave it to this Court to search for the factual basis to sustain or reject a position. See also *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984). Even if we *were* to review this claim, we would find no basis for reversal, since the record does not support elements 3 or 4 of the *McDonnell-Douglas* test for establishing a prima facie case.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Michael R. Smolenski
/s/ Patrick M. Meter