STATE OF MICHIGAN

COURT OF APPEALS

JULIE EDICK,

Plaintiff-Appellant,

v

COUNTRY FRESH, INC., f/k/a MCDONALD DAIRY COMPANY, INC.,

Defendant-Appellee.

UNPUBLISHED
November 16, 2001

No. 218134
Genesee Circuit Court
LC No. 97-060518-CL

Before: Doctoroff, P.J., and Holbrook, Jr., and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant summary disposition under MCR 2.116(C)(10) on plaintiff's claim of retaliatory discharge brought pursuant to the Civil Rights Act, MCL 37.2101 *et seq.*[1] We affirm.

Plaintiff was terminated from her position as a secretary at defendant company. Plaintiff alleges that she was fired because she had complained about being sexually harassed by defendant's sales manager. Defendant contends that plaintiff was discharged because on two separate occasions plaintiff breached the duty of confidentiality required of her position. Plaintiff argues that this reason was merely a pretext for her unlawful discharge. Plaintiff asserts that her termination, therefore, constituted a violation of her rights under MCL 37.2701(a).[2] We disagree.

[1] Plaintiff's claims of quid pro quo sexual harassment, hostile work environment, and marital status discrimination were dismissed pursuant to a separate grant of summary disposition to defendant. Those claims are not a part of this appeal.

[2] This subsection states that a person shall not "[r]etaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act." MCL 37.2701(a).

"On appeal, an order granting or denying a motion for summary disposition is reviewed de novo." *Walters v Bloomfield Hills Furniture*, 228 Mich App 160, 162; 577 NW2d 206 (1998).

> A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to damages as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).]

The Civil Rights Act provides that "[a]n employer shall not . . . discharge . . . an individual with respect to employment . . . because of . . . sex . . . ." MCL 37.2202(1)(a). "Discrimination because of sex includes sexual harassment." MCL 37.2103(i)(iii). The Civil Rights Act also prohibits employers from taking adverse employment actions in order to retaliate against people who exercise their civil rights under the Act. MCL 37.2701(a); *Feick v Monroe Co*, 229 Mich App 335, 344; 582 NW2d 207 (1998).

> To establish a prima facie case of unlawful retaliation under the Civil Rights Act, a plaintiff must show (1) that [plaintiff] engaged in a protected activity; (2) that this was known by defendant; (3) that the defendant took an employment action adverse to plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action. [*DeFlaviis v Lord & Taylor, Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997).]

In the present case, plaintiff established both the first and third element of her prima facie case. Plaintiff believed that defendant's sales manager was making comments to her which were sexually harassing. Plaintiff engaged in a protected activity when she complained about these comments to defendant's Controller. *McLemore v Detroit Receiving Hosp & Univ Medical Ctr*, 196 Mich App 391, 396; 493 NW2d 441 (1992). Further, it is undisputed that plaintiff was subject to an adverse employment action. *DeFlaviis, supra* at 436.

However, plaintiff has not presented sufficient evidence to establish the second element of her prima facie case, i.e., that the person who decided to terminate her was aware of her engagement in a protected activity at the time the termination decision was made. *Id.*. Plaintiff's supervisor was the individual responsible for the decision to discharge plaintiff. To establish that plaintiff's supervisor had knowledge of plaintiff's complaint, plaintiff relies on testimony by defendant's Controller that he informed plaintiff's supervisor of plaintiff's complaint. However, defendant's Controller did not testify that he understood plaintiff to be making a complaint of sexual harassment. Rather, he testified that he understood plaintiff to be complaining about "derogatory" and "inappropriate" comments made by defendant's sales manager. Comments may be both derogatory and inappropriate without raising a spectre of sexual harassment.

More importantly, there is also no indication in the evidence that defendant's Controller communicated to plaintiff's supervisor that plaintiff had complained of sexual harassment.

Viewing this evidence in the light most favorable to plaintiff, we agree with the trial court that plaintiff failed to present evidence that plaintiff's supervisor had knowledge that plaintiff had complained of sexual harassment.[3] Accordingly, we conclude that plaintiff failed to establish her prima facie case of unlawful retaliatory discharge.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Donald E. Holbrook, Jr.
/s/ Joel P. Hoekstra

[3] Because we have concluded that plaintiff failed to establish the second element of the prima facie case, we need not examine whether she satisfied the fourth element. In any event, we conclude that plaintiff also failed to establish this element of her prima facie case. Plaintiff argues that the one-month time frame between her complaint and her termination is sufficient evidence of a causal connection between the protected activity and the adverse employment action to establish the causal element. See *Terzano v Wayne Co*, 216 Mich App 522, 533; 549 NW2d 606 (1996). However, plaintiff has failed to present any other evidence of a causal connection between her complaint and termination. Further, the evidence shows that plaintiff's supervisor initially expressed to plaintiff his concern regarding her ability to maintain confidentiality in July 1996, two or three months before plaintiff complained of sexual harassment.