STATE OF MICHIGAN

COURT OF APPEALS

DEBRA L. PIPER,

Plaintiff-Appellee,

v

MICHIGAN STATE UNIVERSITY,

Defendant-Appellant.

UNPUBLISHED
August 30, 2002

No. 226930
Ingham Circuit Court
LC No. 98-088596-NZ

Before: Bandstra, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right a judgment entered after a jury verdict in favor of plaintiff, who claimed that defendant delayed reclassifying her job position in 1998 in retaliation for engaging in activity protected under Michigan's Civil Rights Act (CRA), MCL 37.2101 *et seq.*, including the filing of an age discrimination lawsuit in 1996. Defendant argues that the trial court erred in denying its motion for judgment notwithstanding the verdict (JNOV) or new trial. We agree and reverse.

Defendant first argues that the trial court should have granted its motion for JNOV because plaintiff failed to prove that she suffered a materially adverse employment action. We agree. We review de novo a trial court's decision to deny a motion for JNOV, *Ewing v Detroit*, __ Mich App __, __; __ NW2d __ (2002) (Docket No. 225401, rel'd July 9, 2002), viewing the testimony and all legitimate inferences that may be drawn from the testimony in a light most favorable to the nonmoving party, *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 260; 617 NW2d 777 (2000). "If reasonable jurors could have honestly reached different conclusions, the jury verdict must stand." *Morinelli, supra* at 260-261. JNOV is appropriate only if the evidence fails to establish a claim as a matter of law. *Barrett v Kirtland Community College*, 245 Mich App 306, 312; 628 NW2d 63 (2001).

The CRA prohibits retaliating or discriminating against a person "because the person has opposed a violation of this act, or because the person has made a charge [or] filed a complaint . . . under this act." MCR 37.2701(a). "To establish a prima facie case of unlawful retaliation under the Civil Rights Act, a plaintiff must show (1) that he engaged in a protected activity; (2) that this was known by the defendant; (3) that the defendant took an employment action adverse to the 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 CRA cases, the adverse employment action element requires a plaintiff to

prove that the employment action was "materially adverse." *Meyer v City of Center Line*, 242 Mich App 560, 569; 619 NW2d 182 (2000); *Wilcoxon v Minnesota Min & Mfg Co*, 235 Mich App 347, 365; 597 NW2d 250 (1999). Materially adverse actions include "termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation." *Wilcoxon, supra* at 363, citing *Kocsis v Multi-Care Mgt, Inc*, 97 F3d 876, 886 (CA 6, 1996) (internal quotations omitted).

Here, in addressing defendant's motion for JNOV or new trial, the trial court found that plaintiff fulfilled the third element by showing "loss of bargaining unit seniority" and "humiliation"; however, the record does not support these findings. Concerning seniority, the record reveals, contrary to the trial court's finding, that plaintiff's bargaining unit seniority is computed from the day of hire and is unrelated to reclassification dates. Further, testimony of defendant's decision-makers indicated that reclassification and promotion decisions are based not on how long an employee has been classified at a certain level, but rather how long the employee has actually been performing the job functions that are pertinent to the classification or job opening, respectively. The trial court's finding that a reasonable juror could have concluded that plaintiff had suffered humiliation as a result of her delayed reclassification was also factually unsupported. Although plaintiff testified regarding humiliation, during that testimony she was referring to her reaction to a prior demotion not at issue in this appeal. Moreover, the actions that plaintiff cites as adverse are either unsupported by the record or are not *materially* adverse. Because plaintiff failed to establish that she suffered a materially adverse employment action, the trial court erred in denying defendant's motion for JNOV.

Having determined that reversal is necessary, we need not address defendant's other issues on appeal. We do note, however, that defendant's failure to move for directed verdict does not preclude JNOV because a motion for directed verdict is no longer a prerequisite to a motion for JNOV. MCR 2.610(A); *Napier v Jacobs*, 429 Mich 222, 229, 231, n 1; 414 NW2d 862 (1987).

Reversed. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell