STATE OF MICHIGAN

COURT OF APPEALS

LAURA LATORRE,	UNPUBLISHED
	May 18, 2004
Plaintiff-Appellant,	
v	No. 247964
	Lapeer Circuit Court
HUNTSMAN HUNT CLUB, INC.,	LC No. 02-031048-CL
Defendant-Appellee.	

Before: Saad, P.J., and Sawyer and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendant Huntsman Hunt Club, Inc., on plaintiff's claims of gender discrimination, retaliation, and retaliatory harassment under Michigan's Civil Rights Act, MCL 37.2101 *et seq.* We affirm.

Plaintiff first argues that the trial court improperly granted summary disposition in favor of defendant with regard to her claim of gender discrimination. A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). We disagree. When reviewing a (C)(10) motion, a trial court considers affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the nonmoving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

Plaintiff failed to submit direct evidence in this case and, therefore, must proceed through the *McDonnell-Douglas* framework. To establish a prima facie case of gender discrimination, plaintiff must prove by a preponderance of the evidence that (1) she was a member of the protected class; (2) she suffered an adverse employment action;[1] (3) she was qualified for the position; and (4) she was discharged under circumstances that give rise to an inference of gender discrimination. *Lytle v Malady*, 458 Mich 153, 172-173; 579 NW2d 906 (1998), citing *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973). At issue

[1] The only adverse employment action that is being challenged on this appeal is plaintiff's termination in August 2001.

in this case is element four—whether plaintiff established that 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).

To show that an employee was similarly situated, the plaintiff must prove that " 'all of the relevant aspects' of [her] employment situation were 'nearly identical' to those of [another employee's] employment situation." *Town, supra* at 700.

The record here supports the trial court's finding that plaintiff lacked the skills, training, and performance record of the other sous chefs and, therefore, failed to establish that other male employees were similarly situated to plaintiff and as a result received preferential treatment by defendant. Therefore, plaintiff failed to establish a prima facie case of gender discrimination.

Plaintiff's next argument is that the trial court improperly granted summary disposition in favor of defendant with regard to her claim of hostile work environment sexual harassment. We disagree.

To establish a prima facie case of hostile work environment sexual harassment, a plaintiff must prove the following five elements by a preponderance of the evidence: (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 in fact did substantially interfere with the employee's employment or created an intimidating, hostile, or offensive work environment; and (5) respondeat superior. *Radtke v Everett*, 442 Mich 368, 381; 501 NW2d 155 (1993). Neither party disputes that element one has been met, however, all four remaining elements are in dispute.

To establish element two, a plaintiff must show that she was subjected to sexual communication or conduct on the basis of her gender. *Id.* at 383-384. "[P]laintiff need only show that 'but for the fact of her sex, she would not have been the object of harassment.' " *Id.* at 383, quoting *Henson v Dundee*, 682 F2d 897, 904 (CA 11, 1982); see also *Haynie v Michigan*, 468 Mich 302; 664 NW2d 129 (2003). Plaintiff admits that all but two of the disputed incidents were gender-neutral.

We find that plaintiff failed to present evidence that a reasonable trier of fact could conclude that plaintiff was subjected to communication or conduct on the basis of her sex. It appears to this Court that neither of the two gender-related incidents complained of by plaintiff were done because of plaintiff's gender or were even specifically targeted at plaintiff. Therefore, plaintiff failed to establish a prima facie case of hostile work environment sexual harassment.

Plaintiff's final argument is that the trial court improperly granted summary disposition in favor of defendants with regard to her claim that defendant unlawfully retaliated against her by not recalling her after she alleged discrimination complaints with defendant. We disagee.

To establish a prima facie case of retaliation under the Civil Rights Act, a plaintiff must show "(1) that the plaintiff engaged in a protected activity, (2) that this was known by 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." *Meyer v*

City of Center Line, 242 Mich App 560, 568-569; 619 NW2d 182 (2000). At issue in this case is whether plaintiff established a causal connection between not being recalled after layoff and complaining about gender discrimination to defendant.

To show the causal connection, plaintiff must show that her participation in the protected activity was a significant factor in defendant's decision to not recall her. *Barrett v Kirtland Community College*, 245 Mich App 306, 315; 628 NW2d 63 (2001). In addition, this Court has held that the "[c]lose timing between the alleged protected activity and the termination of a plaintiff's employment may establish the 'causal connection' element of a plaintiff's prima facie case of retaliation, . . . '. . . as long as the evidence would enable a reasonable factfinder to infer that the employer's decision had a discriminatory [here, retaliatory] basis.' " *Taylor v Modern Engineering, Inc*, 252 Mich App 655, 661; 653 NW2d 625 (2002), quoting *Town*, *supra* at 697.

Plaintiff has failed to establish a causal connection between her allegations of discrimination and defendant's decision not to recall her from layoff. Specifically, plaintiff testified that after she discussed her concerns with defendant, there were no problems between them. Further, the evidence does not support plaintiff's assertion that defendant testified that plaintiff's complaints about discrimination played a role in his decision not to recall her, and defendant offered a legitimate reason for not recalling plaintiff. In addition, over eight months passed between plaintiff alleging her complaints and when the decision not to recall her occurred, which, standing alone, is too lengthy of a gap to suggest retaliation. See *Krough v Cessford Construction Co*, 336 F3d 710 (CA 8, 2003).

Affirmed.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Karen M. Fort Hood