STATE OF MICHIGAN

COURT OF APPEALS

APRIL L. TROUTEN, Plaintiff-Appellant,	UNPUBLISHED December 7, 2004
v	No. 232690 Hillsdale Circuit Court
AUTOZONE, INC., d/b/a AUTOZONE MICHIGAN, INC., Defendant-Appellee.	LC No. 00-000018-NZ ON REMAND

Before: Meter, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Plaintiff sued defendant for sexual harassment, alleging that four of defendant's employees sexually harassed her during the course of her twenty-six-month employment with defendant at an Autozone store. The circuit court granted defendant's motion for summary disposition under MCR 2.116(C)(10). After plaintiff appealed as of right to this Court, we found many of plaintiff's claims untenable and therefore affirmed the circuit court's order in part. *Trouten v Autozone, Inc (Trouten I)*, unpublished opinion per curiam of the Court of Appeals, issued July 15, 2003 (Docket No. 232690), slip op, pp 4-6. However, we remanded the case for trial with regard to one of plaintiff's claims – her allegation that a store manager, William Hall, engaged in quid pro quo sexual harassment. *Id.* at 4, 6. Defendant appealed this ruling to the Supreme Court, which has remanded the case to us for reconsideration in light of *Corley v Detroit Bd of Ed*, 470 Mich 274; 681 NW2d 342 (2004) (*Corley II)*. See *Trouten v Autozone, Inc (Trouten II)*, 471 Mich 879, 879; 686 NW2d 487 (2004). We discern nothing in *Corley II* that serves to change our prior analysis. Accordingly, we once again affirm the circuit court's ruling in part, reverse it in part, and remand this case for further proceedings.

In *Trouten I*, we stated:

> The only allegation that fits within the quid pro quo framework here is plaintiff's contention that a store manager, Hall, treated her harshly because she had "broke [his] heart." Plaintiff cites *Corley v Detroit Bd of Education*, 246 Mich App 15; 632 NW2d 147 (2001) [(*Corley I)*, reversed by *Corley II, supra*]. We agree that *Corley* [*I*] supports plaintiff's argument, because *Corley* [*I*] acknowledged that a quid pro quo sexual harassment claim can be premised on an employer's (or an employer's agent's) adverse treatment of an employee due to a past, consensual, romantic relationship. See *id.* at 20-23. Under *Corley* [*I*], if

> plaintiff can establish a constructive discharge like that at issue in *Champion [v Nationwide Security, Inc*, 450 Mich 702, 711; 545 NW2d 596 (1996)], and that resulted from the circumstances of a prior romantic relationship between her and Hall, then her quid pro quo sexual harassment claim can succeed. While such a claim might not ultimately succeed at trial, plaintiff has set forth at least some facts demonstrating (1) that Hall viewed his earlier relationship with plaintiff as romantic and (2) that Hall treated plaintiff harshly and made her working conditions intolerable because of the termination of this relationship. Accordingly, we conclude that the summary dismissal of this claim was inappropriate and that a remand for trial is necessary. [*Trouten I, supra* at 4.]

The Supreme Court's opinion in *Corley II* does not change our analysis. In *Corley II*, the pertinent facts were as follows:

> Plaintiff was employed part-time as a counselor, and defendant Smith was her supervisor. During the course of their employment, plaintiff and Smith became romantically involved in a relationship that lasted three or four years. The relationship ended when Smith started dating another employee, defendant Barbara Finch. Plaintiff alleges that after Smith and Finch became involved, defendant Smith repeatedly threatened plaintiff with adverse employment action if she said or did anything that interfered with his relationship with Finch. Plaintiff also alleges that Finch taunted, embarrassed, and humiliated her by causing plaintiff's work station to be moved and by engaging in "catty" conversations with others that were about plaintiff and intended to be overheard by her. [*Corley II, supra* at 276.]

The Supreme Court, examining the language of the pertinent statute pertaining to sexual harassment claims – MCL 37.2103(i) – concluded that "actionable sexual harassment requires conduct or communication that *inherently* pertains to sex." *Corley II, supra* at 279 (emphasis in original). The Supreme Court then stated that "[t]he conduct and communication alleged by plaintiff do not meet this definition." *Id.* It stated that "defendant Smith's alleged threats that he would fire plaintiff if she interfered with his new relationship were not inherently sexual in nature" and that "the asserted communication by Finch conveyed nothing more than Finch's personal animosity towards plaintiff." *Id.* at 280. The Court concluded that the pertinent statute "does not forbid the communication of enmity between romantic rivals, even if the predicate for the dislike is sexual competition, as long as the conduct or communication is not inherently sexual." *Id.*

The situation between plaintiff and Hall in the instant case is not comparable to the situation surrounding the *Corley II* plaintiff. Indeed, Hall was not acting with simple animosity towards plaintiff because of the dynamics of a past romantic relationship with her and a new romantic relationship with a different employee. Instead, there is evidence that Hall harassed plaintiff and treated her poorly because she rejected him earlier as a romantic partner. Plaintiff testified that she and Hall had some type of prior relationship and that when she moved into another man's home, Hall stated that he did not immediately speak to her about it because he "was so mad I would have smacked you in the face." Plaintiff further testified that when she asked Hall why he was treating her poorly at work, he stated, "[b]ecause you broke my heart."

This is fundamentally different from the situation in *Corley II* and fits squarely within the following quid pro quo framework set forth in *Chambers* :

> In order to establish a claim of quid pro quo harassment, an employee must, by a preponderance of the evidence, demonstrate:
>
> "(1) that she was subject to any of the types of unwelcome sexual conduct or communication described in the statute, and (2) that her employer or the employer's agent used her submission to or rejection of the proscribed conduct as a factor in a decision affecting her employment." [*Chambers v Trettco, Inc*, 463 Mich 297, 319-324; NW2d (2000), quoting *Champion, supra* at 708-709.]

In other words, plaintiff presented sufficient evidence to raise a question of fact concerning whether Hall treated her poorly (and allegedly constructively discharged her) because of her earlier rejection of a romantic relationship with him. We do not read *Corley II* as requiring that the manner *in which a spurned lover treats his former love interest* be inherently sexual in order for a quid pro quo sexual harassment claim to survive. In other words, a quid pro quo sexual harassment claim can be viable if an employer asks an employee to become involved with him romantically, she initially rejects his advances (or does so after an established relationship), and he then treats her poorly (but not in an inherently sexual manner) *because* of that rejection. Essentially, the entire transaction of the defendant making an advance, the plaintiff rejecting that advance, and the defendant then retaliating (in some nonsexual fashion) for the rejection is, *in itself*, inherently sexual and fits within the framework set forth in MCL 37.2103(i). This differs from the situation in *Corley II*, wherein the defendants merely acted with personal animosity towards the plaintiff because of a romantic rivalry. *Corley II* is simply inapplicable to the instant case.

Moreover, and significantly, even if there *were* some requirement that a spurned lover harass his former love interest in an *inherently sexual* manner in order for a quid pro quo sexual harassment claim to survive, plaintiff has met this burden. Indeed, Hall admitted during his deposition that he called plaintiff a "squaw" and made her a nametag with the word "squaw" on it. Plaintiff testified that she became offended by this because she had been informed that "squaw" meant "Indian whore." Plaintiff additionally testified that Hall responded, "[w]e have one woman too many," when she asked him if another woman could be hired to work at the store. She also testified that Hall told her, "[i]t's kind of really sick that you go spend the weekend with your ex and his wife. Do you sleep between them?" This conduct and communication, viewed as a whole, inherently relates to sex.

The evidence, viewed most favorably to plaintiff, demonstrates that Hall treated plaintiff poorly (and in an inherently sexual fashion) because he was angry that their earlier relationship did not develop into a romantic partnership. Moreover, plaintiff indicated in a resignation letter that she was resigning from her employment with defendant because of "long term sexual harassment[.]" We once again conclude, as we did in *Trouten I*, that this was sufficient to raise a question of fact concerning whether plaintiff was effectively "constructively discharged." See *Champion, supra* at 711, and *Chambers, supra* at 319-324.

Plaintiff presented evidence sufficient to raise a question of fact concerning whether she was subject to unwelcome conduct or communication by Hall and that her rejection of the

conduct or communication amounted to her constructive discharge. See, generally, *Chambers*, *supra* at 310, 319-324. Accordingly, we again remand this case for further proceedings concerning the quid pro quo sexual harassment claim against Hall. The additional claims raised by plaintiff were properly dismissed for the reasons set forth in *Trouten I*, see *Trouten I, supra* at 4-6, and we once again affirm the trial court's dismissal of these claims.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Janet T. Neff
/s/ Pat M. Donofrio