STATE OF MINNESOTA
IN COURT OF APPEALS
A10-543

Carol J. LaMont,
Appellant,

vs.

Independent School District No. 728,
Respondent.

Filed February 1, 2011
Affirmed
Toussaint, Judge

Sherburne County District Court
File No. 71-CV-09-602

James H. Kaster, David E. Schlesinger, Nichols Kaster, PLLP, Minneapolis, Minnesota (for appellant)

Thomas A. Harder, Lisa A. Lamm-Bachman, Foley & Mansfield, PLLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Toussaint, Presiding Judge; Stoneburner, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Judge

Appellant Carol J. LaMont brought an action under the Minnesota Human Rights Act (MHRA) alleging gender discrimination and sexual harassment based on a hostile

work environment. She challenges the district court's grant of summary judgment to respondent Independent School District No. 728 on her claim of sexual harassment. Because the district court did not err in concluding that appellant's sexual-harassment claim fails as a matter of law, we affirm.

D E C I S I O N

On appeal from summary judgment, this court reviews de novo whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). This court must view the evidence in the light most favorable to the nonmoving party. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

The MHRA prohibits an employer from discriminating against an employee on the basis of sex. Minn. Stat. § 363A.08, subd. 2(3) (2010). Sexual harassment is a form of sex discrimination prohibited by the MHRA. Minn. Stat. § 363A.03, subd. 13 (2010). Sexual harassment includes

> unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when:
>
> . . . .
>
> (3) that conduct or communication has the purpose or effect of substantially interfering with an individual's employment . . . or creating an intimidating, hostile, or offensive employment . . . environment.

Id., subd. 43 (2010).

To successfully oppose summary judgment, the plaintiff must establish evidence of every element of a prima facie claim of sexual harassment. *Goins v. West Grp.*, 635

N.W.2d 717, 724-25 (Minn. 2001). To set forth a prima facie case, the plaintiff must show that (1) he or she is a member of a protected class; (2) he or she was subject to unwelcome harassment; (3) the harassment was based on membership in a protected group; and (4) the harassment affected a term, condition, or privilege of his or her employment. *Frieler v. Carlson Mktg. Grp.*, 751 N.W.2d 558, 571 n.11 (Minn. 2008) (citing *Goins*, 635 N.W.2d at 725). Harassment affects a term, condition, or privilege of employment when it is "so severe or pervasive as to alter the conditions of the [employee's] employment and create an abusive working environment." *Id.* (quotation omitted). This is a high threshold. *Cummings v. Koehnen*, 568 N.W.2d 418, 424 (Minn. 1997). Courts gauge the hostility of an environment by viewing "the totality of the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Gagliardi v. Ortho-Midwest, Inc.*, 733 N.W.2d 171, 176 (Minn. App. 2007) (quotation omitted).

In support of her sexual-harassment claim, appellant presented evidence that her male supervisor made sexist statements about the role of women at home and in employment settings. She offered further evidence that the supervisor placed restrictions on the women that did not apply to the men, such as not talking during work, checking in with him before and after breaks, wearing uniforms, and dropping off their personal belongings before clocking in. The district court granted summary judgment to respondent because it determined that, with one exception, none of the alleged conduct or statements meets the statutory definition of sexual harassment.

The record supports the district court's conclusion. Nothing in the record demonstrates that appellant's supervisor made unwelcome sexual advances, requested sexual favors, or engaged in sexually motivated physical contact. The sole possible incident of harassment involved a conversation between appellant and her supervisor, in which appellant warned the supervisor not to lift a large cabinet because he would "screw up" his back. The supervisor responded: "The only screwing I do is with my wife." This constitutes "verbal . . . communication of a sexual nature." Minn. Stat. § 363A.03, subd. 43 (defining sexual harassment). But this single incident is not sufficiently severe to meet the threshold of a hostile work environment. *See Meriwether v. Caraustar Packaging Co.*, 326 F.3d 990, 993 (8th Cir. 2003) (finding that a single incident of grabbing employee's buttocks did not demonstrate hostile work environment); *cf. Klink v. Ramsey Cnty. by Zacharius*, 397 N.W.2d 894, 901 (Minn. App. 1986) ("Foul language and vulgar behavior in the workplace does not automatically trigger an actionable claim . . . ."), *review denied* (Minn. Feb. 13, 1987) *abrogated on other grounds by Cummings*, 568 N.W.2d at 420 n.2.

Moreover, appellant testified that after she told her supervisor not to discuss his personal life with her, he never mentioned it again. Similarly, in *Geist-Miller v. Mitchell*, 783 N.W.2d 197, 203-04 (Minn. App. 2010), we reasoned that a supervisor's "inappropriate sexual banter," unsuccessful pursuit of a relationship with the claimant, and unwelcome physical contact did not create a hostile work environment because when the supervisor's "advances were rebuffed, he took no more invasive action."

Appellant claims that the district court erred in limiting its analysis to evidence of harassment of a sexual nature. She argues that the MHRA prohibits not only sexual harassment but harassment based on gender. This reading is inconsistent with the plain language of the MHRA. "When interpreting a statute, we first look to see whether the statute's language, on its face, is clear or unambiguous." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). The MHRA defines sexual harassment as "unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature." Minn. Stat. § 363A.08, subd. 43. Wholly excluded from this definition is sexist, misanthropic, or otherwise gender-based communication or conduct. The unambiguous language of the MHRA requires appellant to present evidence of harassment based on sexuality, not gender.

Appellant urges us to follow federal law, which recognizes a cause of action for gender harassment under Title VII. *See Turner v. Gonzales*, 421 F.3d 688, 695 (8th Cir. 2005) (listing the elements of a hostile-work-environment claim). Minnesota state courts look to federal interpretations of Title VII in construing the MHRA when the language of the two statutes is similar. *See, e.g.*, *Sigurdson v. Isanti Cnty.*, 386 N.W.2d 715, 719 (Minn. 1986). But Title VII and the MHRA are dissimilar in their treatment of sexual harassment in that Title VII prohibits gender discrimination while the MHRA specifically prohibits sexual harassment. *See* 42 U.S.C. § 2000e-2(a)(1) (2006); Minn. Stat. § 363A.03, subd. 13. As a result, Minnesota state courts do not rely on Title VII caselaw for guidance in sexual-harassment claims. *Cummings*, 568 N.W.2d at 423 n.5; *see also*

Krueger v. Zeman Constr. Co., 758 N.W.2d 881, 887 (Minn. App. 2008) (citing *Cummings* for the rule that Minnesota courts "have declined to follow federal law when the statutory language differs"). The MHRA and Minnesota state caselaw alone inform our consideration of appellant's claim.

Appellant asserts that a Minnesota federal district court concluded that an employee's sexual-harassment claim survived summary judgment even though it was based wholly on allegations of nonsexual conduct. *Sturm-Sandstrom v. Cnty. of Cook*, 552 F. Supp. 2d 945, 951 (D. Minn. 2008). But the employee in that case alleged that she was the "victim of sex discrimination in violation of Title VII *and* the Minnesota Human Rights Act" and "was subjected to gender discrimination and harassment." *Id.* at 947 (emphasis added). There is no indication that the employee claimed gender harassment solely under the MHRA. In fact, the *Sturm-Sandstrom* court cited exclusively to federal caselaw in analyzing the employee's harassment claim. *See id.* at 951. In this case, appellant alleged violations of the MHRA only, not Title VII; as such, she must demonstrate that she suffered harassment as that term is defined by the MHRA.

Viewing the facts in the light most favorable to appellant, we conclude that the district court properly granted summary judgment to respondent. Without excusing the supervisor's conduct and statements or minimizing its effect on her, we agree that appellant failed to present an actionable claim of sexual harassment under the MHRA.

Affirmed.