[Cite as *Wood v. Metrohealth Sys.*, 2001-Ohio-4224.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 78105

TINA L. WOOD	:	
	:	JOURNAL ENTRY
Plaintiff-Appellant	:	
	:	and
-vs-	:	
	:	OPINION
METROHEALTH SYSTEM	:	
	:	
Defendant-Appellee	:	
	:	

DATE OF ANNOUNCEMENT OF DECISION: JULY 5, 2001

CHARACTER OF PROCEEDING: Civil appeal from Common Pleas Court Case No. CV-384350

JUDGMENT: Affirmed.

DATE OF JOURNALIZATION:

APPEARANCE:

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PATRICIA ANN BLACKMON, J.:

{¶1} Appellant Tina Wood appeals from the decision of the trial court dismissing her claim against appellee MetroHealth for hostile work environment sexual harassment and intentional infliction of emotional distress. Wood argues the trial court erred by granting MetroHealth's motion *in limine* preventing testimony to the effect that her miscarriage resulted from the stress associated with sexual harassment. Wood also argues the trial court erred by not charging the jury regarding wrongful termination/discharge and retaliation. Wood assigns the following as errors for our review:

> **{¶2}** *THE TRIAL COURT ABUSED ITS DISCRETION AND COMMITTED REVERSIBLE ERROR IN GRANTING DEFENDANT'S MOTION IN LIMINE TO EXCLUDE THE EXPERT MEDICAL TESTIMONY OF DR. MICHAEL KELLY. (TRIAL, PP. 49; 54).*

> **{¶3}** *THE TRIAL COURT ABUSED ITS DISCRETION AND COMMITTED REVERSIBLE ERROR IN FAILING TO CHARGE THE JURY ON THE ISSUES OF WRONGFUL TERMINATION/DISCHARGE AND RETALIATION. (TRIAL, PP. 1283-1285; 1467-1468).*

{¶4} Having reviewed the record and the legal arguments of the parties, we affirm the decisions of the trial court. The apposite facts follow.

{¶5} MetroHealth employed Wood, an at-will employee, as a communication specialist from March 1995 until July 1997 when MetroHealth terminated Wood's employment. During the course of her

employment, Wood allegedly suffered sexual harassment from another MetroHealth employee and experienced a miscarriage.

{¶6} Wood filed a complaint against MetroHealth for hostile work environment, sexual harassment, and intentional infliction of emotional distress. To establish that her miscarriage resulted from stress caused by the alleged sexual harassment, Wood offerred Dr. R. Michael Kelly as an expert witness. MetroHealth filed a motion *in limine* to exclude Kelly's testimony. The trial court granted MetroHealth's motion *in limine* on the grounds that he was not qualified to testify as an expert in this matter.

{¶7} At the close of evidence, the court charged the jury with instructions for sexual harassment and intentional infliction of emotional distress. Wood objected to the court's decision to not charge the jury with wrongful termination/discharge and retaliation. The jury found for MetroHealth on both counts. This appeal followed.

{¶8} In her first assignment of error, Wood argues the trial court erred by excluding Kelly's expert testimony. If permitted, Kelly's testimony would not have weighed on whether Wood was subjected to sexual harassment or emotional distress. The substance of Kelly's testimony was to establish a link between the alleged occupational stress caused by MetroHealth and Wood's unfortunate miscarriage. As such, Kelly's testimony especially

bore on damages, not on the essential elements of sexual harassment or intentional infliction of emotional distress.

{¶9} In order to prove hostile work environment sexual harassment, Wood had to factually establish the following:

> **{¶10}** that the harassment was unwelcome, (2) that the harassment was based on sex, (3) that the harassing conduct was sufficiently severe or pervasive to affect the "terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment," and (4) that either (a) the harassment was committed by a supervisor, or (b) the employer, through its agents or supervisory personnel, knew or should have known of the harassment and failed to take immediate and appropriate corrective action.

{¶11} *Hampel v. Food Ingredients Specialties* (2000), 89 Ohio St.3d 169; 729 N.E.2d 726, paragraph 2 of the syllabus.

{¶12} In order to prove intentional infliction of emotional distress, Wood had to factually establish the following:

> **{¶13}** that the actor either intended to cause emotional distress or knew or should have known that actions taken would result in serious emotional distress to the plaintiff; b) that the actor's conduct was extreme and outrageous, that it went beyond all possible bounds of decency and that it can be considered as utterly intolerable in a civilized community; c) that the actor's actions were the proximate cause of the plaintiff's psychic injury; and d) that the mental anguish suffered by plaintiff is serious and of a nature that no reasonable person could be expected to endure it.

{¶14} *Pyle v. Pyle* (1983), 11 Ohio App.3d 31; 463 N.E.2d 98, paragraph two of the syllabus.

{¶15} Wood failed to prove her case in either of these regards, and as we discussed, Kelly's testimony would have offered no

assistance. We hold Wood failed to establish liability; consequently, any issues relating to damages are immaterial. Accordingly, Wood's first assignment of error is without merit.

{¶16} In her second assignment of error, Wood argues the trial court erred by not charging the jury regarding wrongful termination/ discharge and retaliation. When an appellant raises the trial court's refusal to give a requested jury charge we proceed under an abuse of discretion standard. *State v. Wolons* (1989), 44 Ohio St.3d 64, 541 N.E.2d 443; *State v. Sims* (June 12, 1997), Cuyahoga App. No. 71236, unreported. The Ohio Supreme Court recently defined the abuse of discretion standard as follows:

> **{¶17}** The term discretion itself involves the idea of choice, of an exercise of the will, of a determination made between competing [***] considerations." *State v. Jenkins* (1984), 15 Ohio St.3d 164, 222, 15 Ohio B. Rep. 311, 361, 473 N.E.2d 264, 313, quoting *Spalding v. Spalding* (1959), 355 Mich. 382, 384-385, 94 N.W.2d 810, 811-812. In order to have an abuse of that choice, the result must be so palpably and grossly violative of fact or logic that it evidences not the exercise of will but the perversity of will, not the exercise of judgment but the defiance of judgment, not the exercise of reason but instead passion or bias. *Nakoff v. Fairview General Hospital* (1996), 75 Ohio St.3d 254, 256-257, 662 N.E.2d 1, 3.

{¶18} A trial court should confine its instructions to the issues raised by the pleadings and the evidence. *Becker v. Lake Cty. Mem. Hosp. West* (1990), 53 Ohio St.3d 202, 208, 560 N.E.2d 165. A party is not entitled to a particular jury instruction if no evidence was presented that may support that instruction. *Sims, supra.* However, a court ordinarily should give requested instructions if they are correct statements of law applicable to the facts in the case and reasonable minds might reach the conclusion sought by the specific instruction. *Murphy v. Carrollton Mfg. Co.* (1991), 61 Ohio St.3d 585, 591, 575 N.E.2d 828.

{¶19} Wood argues that she was entitled to jury instructions regarding wrongful termination/discharge and retaliation because she sufficiently pled facts to put MetroHealth on notice she intended to litigate such claims and because the evidence adduced at trial required the court to instruct the jury regarding these matters.

{¶20} Although Wood alluded to wrongful termination/discharge and retaliation in her complaint, she failed to present sufficient evidence at trial that would support such charges. Consequently, reasonable minds could not reach the conclusions Wood sought by the specific instructions she sought. Therefore, the trial court was fully within its discretion in deciding not to charge the jury with wrongful termination/discharge and retaliation.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES D. SWEENEY, P.J.,and

ANN DYKE, J., CONCUR.

PATRICIA ANN BLACKMON
JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).