STATE OF MICHIGAN

COURT OF APPEALS

MINERVA STRAMAN and
RUSSELL T. STRAMAN,

Plaintiffs-Appellants,

v

WARREN E. MINDER, ANDREWS UNIVERSITY, d/b/a THE RUTH MURDOCK ELEMENTARY SCHOOL, and WILLIAM GREEN,

Defendants-Appellees.

UNPUBLISHED
September 17, 1996

No. 164099
LC No. 92-003883-CK

Before: Gribbs, P.J., and Hoekstra and C.H. Stark,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's grant of summary disposition pursuant to MCR 2.116(C)(4) (lack of subject-matter jurisdiction), (C)(7) (claim barred by the statute of limitations), and (C)(10) (no genuine issue of material fact regarding certain claims). We affirm.

Plaintiff Minerva Straman (plaintiff) served as principal of the Ruth Murdock Elementary School (RMES) for eight years, pursuant to an alleged oral agreement entered into with Andrews University (University) on or about July 1, 1983. In August 1991, plaintiff began to feel that the governing board of RMES, particularly Warren Minder and William Green, were implementing policies and establishing committees which worked to threaten her position and reduce her authority. Plaintiff believed these activities took place through unscheduled visits to RMES, pressure placed upon her to perform different job functions, and setting agendas or introduction of non-agenda items at meetings without notice to her. In October 1991, Minder, the academic vice-president and governing board chairman, wrote a letter to Robert Robinson, noting the ethical responsibilities of the elementary school principal. This letter was copied to several other persons, including plaintiff. Plaintiff asserts this letter defamed her in her profession. Plaintiff filed suit alleging breach of contract, sexual discrimination, civil conspiracy, intentional infliction of emotional distress, and defamation. Her husband has joined his derivative claim for loss of consortium.

---

* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff first argues that the trial court erred in dismissing her claims based on a lack of jurisdiction over the activities of the Seventh Day Adventist Church and its organizations. The trial court concluded that Straman's employment related to the ecclesiastical activities of the church and was therefore protected against adjudication in a secular court under the Free Exercise Clause, US Const, Am I, extended to the states through the Fourteenth Amendment. The Free Exercise Clause prevents governmental regulation or judicial interference of religious belief. *Wisconsin v Yoder*, 406 US 205, 219; 92 S Ct 1526, 32 L Ed 2d 15 (1972). The protections afforded religious organizations are limited to matters involving doctrine or ecclesiastical policy. *Dlaikan v Roodbeen*, 206 Mich App 591; 522 NW2d 719 (1994).

Regarding the breach of contract claim, we find it involves matters protected under the First Amendment. In determining whether defendants are insulated by the protection of the Free Exercise Clause, a court needs to examine the specific issue it is being called upon to decide, regardless of the label the parties may have given the issue. *Id.* at 599. If a claim involving the services for which the organization enjoys First Amendment protection is outside the jurisdiction of civil law, any claimed contract for such services is likely outside the jurisdiction of civil law as well. *Id.* at *593*. In this regard, there is no distinction between a church providing a liturgical service in its sanctuary and a church providing education consistent with its religious doctrine in its parochial school. *Id*. Plaintiff's role as an educator in this church-sponsored school falls within the protected area afforded the church and the organizations it sponsors. She freely admits that her role involved the implementation of the beliefs of the Seventh Day Adventist Church within the school. The decisions made by the University and the governing board regarding plaintiff's position and duties, including her contract, are ecclesiastical matters and are protected by the Free Exercise Clause. Summary disposition on this issue was proper.

Plaintiff's other claims do not involve matters protected under the Free Exercise Clause and thus we must address whether these claims were properly dismissed on other grounds. Plaintiff's next argument is that the trial court erred in granting summary disposition on her claim under the Michigan Civil Rights Act because of plaintiff's failure to establish a prima facie case of sex discrimination and because the claims were barred by the statute of limitations. Although we believe the statute of limitations defense is waived because of defendant's failure to raise it in their answer or an amended answer, MCR 2.116(D)(2), the court properly granted summary disposition based on plaintiff's failure to establish a prima facie case of sex discrimination. A plaintiff must demonstrate a genuine issue of material fact to support a prima facie case of discrimination. Under the disparate treatment theory, a plaintiff needs to show that she is a member of a protected class and that for the same conduct she was treated differently because of her gender. *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 651; 513 NW2d 441 (1994). While plaintiff is a member of a protected class, she has offered no evidence of disparate treatment.

Next, plaintiff contends that the trial court erred in dismissing her claim for intentional infliction of emotional distress, claiming that this was an issue of fact for the jury to decide. We disagree. Intentional infliction of emotional distress requires a showing of (1) extreme and outrageous conduct; (2) intent or recklessness; (3) causation; and (4) severe emotional distress. *Doe v Mills*, 212 Mich App

73, 91; 536 NW2d 824 (1995). Extreme and outrageous refers to conduct that goes beyond all possible bounds of decency and may be regarded as atrocious and utterly intolerable in a civilized community. *Id*. Liability is not found based on mere insults, threats, annoyances, indignities or petty oppressions. *Id*. Summary disposition is appropriate if the defendant's conduct could not reasonably be regarded as extreme and outrageous enough to permit recover. *Id*. Here, plaintiff testified to feeling increased stress due to her relationship with Minder and other members of the governing board. This stress allegedly created emotional and physical symptoms. Plaintiff, however, has failed to demonstrate how defendants' conduct was so extreme and outrageous as to command this result. The elements required to show intentional infliction of emotional distress are not met and the grant of summary disposition on this claim was proper.

Plaintiff's next argument is that there were sufficient facts to maintain a claim for civil conspiracy. Evidence used to prove civil conspiracy must support a reasonable inference that two or more persons planned or acted in concert to accomplish a criminal or unlawful purpose. *Rencsok v Rencsok*, 46 Mich App 250, 252; 207 NW2d 910 (1973). No such inference can be drawn from the evidence here. Plaintiff alleges that Minder sometimes conspired with Green and other associates to induce a breach of her contract with the university, yet she fails to substantiate this claim factually. The grant of summary disposition on this issue was also proper.

Next, plaintiff argues that the trial court erred in dismissing her claim of defamation because it involves a fact question which should have been left to a jury. Plaintiff's defamation claim is based on a letter written by Minder on or about October 9, 1992. The letter sent to Robert Robinson states, in pertinent part:

> In no instance is it ethical, or proper, for the Principal of the School to recommend School Board members for Nominating Committee consideration, or in any way, except through Board channels established by University Trustee vote, determine who should or should not be an elected board member.

Plaintiff claims that this letter defames her in her profession and is libelous per se. Here, we conclude from the record that the elements of libel are not present. The letter is not defamatory on its face and no showing has been made that its implications are defamatory. In addition, Minder possessed qualified privilege in writing and disseminating the letter. Minder wrote the letter in his capacity as the chairman of the governing board of RMES. No evidence has been presented that the letter was published to others beyond those to whom it was written and copied, nor is there any evidence that defendants acted with malice. Qualified privilege may be rebutted only by a showing of actual malice, or knowledge of its falsity or reckless disregard of the truth. *Id*. Plaintiff's allegations of defamation and malice are not factually supported, and summary disposition was proper.

Finally, Russell Straman argues that his claim for loss of consortium was sufficiently supported. However, his claim is merely derivative of the claims asserted by his wife, without which his claim cannot be upheld.

Affirmed.

/s/ Roman S. Gribbs
/s/ Joel P. Hoekstra
/s/ Charles H. Stark