

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SHELLY PRETZER,

Plaintiff-Appellee,

v

MICHIGAN DEPARTMENT OF CORRECTIONS,  
PAMELA K. WITHROW, Warden, and  
SGT. FRANK ACKERSON,

Defendants-Appellants.

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UNPUBLISHED  
November 1, 1996

No. 184634  
LC No. 93-015396

Before: Michael J. Kelly, P.J., and O'Connell and E.W. Schmidt,\* JJ.

PER CURIAM.

Defendants bring this interlocutory appeal from the trial court's denial of their motion for summary disposition pursuant to MCR 2.116(C)(4) and (C)(10) in this discrimination case. We affirm in part, reverse in part, and remand.

First, defendants contend that there is no genuine issue of material fact as to whether defendants violated §202 of the Elliott-Larsen Civil Rights Act ("CRA"), MCL 37.2202 MSA 3.5480(202). We agree. It is not disputed that plaintiff is a member of a protected class. However, plaintiff has not established that for the same or similar conduct or performance, she was treated differently than a man. *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 651; 513 NW2d 441 (1994). In addition, plaintiff did not prove that defendants had a discriminatory motive, which is required in order to establish a prima facie case of disparate treatment. *Civil Rights Dept v Brighton*, 171 Mich App 428, 439; 431 NW2d 65 (1988). Once defendants presented a legitimate nondiscriminatory reason for their actions, the burden shifted to plaintiff, who failed to demonstrate that the proffered reason was merely a pretext for discrimination. *Coleman-Nichols, supra*, 203 Mich App 651. Moreover, plaintiff's sexual harassment allegations are not timely because the suit was not brought within three years of the alleged

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

discriminatory event. *Sumner v Goodyear Co*, 427 Mich 505, 510; 398 NW2d 368 (1986); *Slayton v Michigan Host, Inc*, 144 Mich App 535, 553; 376 NW2d 664 (1985).

Upon a review of the lower court file, granting the benefit of any reasonable doubt to plaintiff, we conclude that no record can be developed that would leave open an issue upon which reasonable minds might differ. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993); *Pickney Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). Accordingly, the trial court erred in denying defendants' motion for summary disposition as to Count II of plaintiff's complaint.

Next, defendants argue that the plaintiff did not establish a genuine issue of material fact as to whether defendants violated the Michigan Handicapper's Civil Rights Act ("MHCRA"), MCL 37.1101 *et seq.*; MSA 3.550(101) *et seq.*; because plaintiff did not have a "handicap" as defined within the act. We agree. The MHCRA defines "handicap" as:

[a] determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic . . . substantially limits one or more of the major life activities of that individual and is *unrelated to the individual's ability to perform the duties of a particular job or position . . .* [MCL 37.1103(e)(i)(A); MSA 3.550(103)(e)(i)(A) (emphasis added.)]

According to plaintiff's own admissions, she was not able to work during her pregnancy, and she even applied for long-term disability insurance benefits because she was "fully disabled."

Since plaintiff's pregnancy was related to her ability to perform the duties of her job or position, it was not a handicap that was subject to the protections of the MHCRA against employment discrimination. *Koester v Novi*, 213 Mich App 653, 661-662; 540 NW2d 765 (1995). Moreover, contrary to plaintiff's assertions, defendants did not have a duty to accommodate plaintiff by assigning her to light duty. *Id.* at 663. The MHCRA does not "require employers to adjust or modify job duties otherwise required by the job description in order to accommodate a handicapped employee." *Hatfield v St Mary's Medical Center*, 211 Mich App 321, 326; 535 NW2d 272 (1995). Thus, plaintiff has not established a genuine issue of material fact and the trial court erred in failing to grant defendants' motion for summary disposition as to Count III of plaintiff's complaint. *Skinner v Square D Co*, 445 Mich 153, 160; 516 NW2d 475 (1994).

Finally, defendants maintain that the Court of Claims has exclusive jurisdiction over plaintiff's claims of retaliatory discharge and misrepresentation. We conclude that the circuit court has jurisdiction over plaintiff's retaliatory discharge claim. MCL 37.2701(a); MSA 3.548(701)(a); MCL 37.2801; MSA 3.548(801); *Littsey v Board of Gov of Wayne State Univ*, 108 Mich App 406, 414; 310 NW2d 399 (1981); *Anzaldua v Band*, 216 Mich App 561; \_\_\_ NW2d \_\_\_ (1996). However, the Court of Claims has exclusive jurisdiction over plaintiff's misrepresentation claim. *Kell v Johnson*, 186

Mich App 562, 564; 465 NW2d 26 (1990); *Lowery v Dep't of Corrections*, 146 Mich App 342, 348; 380 NW2d 99 (1985). Thus, the trial court correctly denied defendants' motion for summary disposition as to Count IV of plaintiff's complaint, and should have granted defendants' summary disposition as to Count V of plaintiff's complaint.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Michael J. Kelly

/s/ Peter D. O'Connell

/s/ Kenneth W. Schmidt