

STATE OF MICHIGAN
COURT OF APPEALS

CIRILA PRZYBYLSKI,

Plaintiff-Appellant,

v

STATE OF MICHIGAN, DEPARTMENT OF
MENTAL HEALTH, COLDWATER REGIONAL
MENTAL HEALTH CENTER, WEICHER VAN
HOUTEN, M.D., and CHARLES VOGLER, D.O.,

Defendant-Appellees.

UNPUBLISHED

December 3, 1996

No. 186743

LC No. 94-076867-CZ

Before: Neff, P.J., and Hoekstra and G.D. Lostracco,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's grant of summary disposition in defendants' favor pursuant to MCR 2.116(C)(10). Plaintiff alleged violations of the Civil Rights Act, MCL 37.2101; MSA 3.548(101), and other claims in connection with her employment at a Department of Mental Health facility in Coldwater. Although plaintiff retired from her position as a psychiatrist at this facility, she asserts that the circumstances under which she did so constituted a constructive discharge. We affirm.

We review a grant of summary disposition de novo. *Frick v North Bank*, 214 Mich App 177, 179; 542 NW2d 331 (1995). In reviewing a grant of summary disposition under MCR 2.116(C)(10), we consider the entire record, viewed in the light most favorable to the nonmoving party with all reasonable inferences drawn in the nonmovant's favor. *Fitch v State Farm Fire & Casualty Co*, 211 Mich App 468, 470-471; 536 NW2d 273 (1995). Summary disposition pursuant to MCR 2.116(C)(10) is proper if there is no genuine issue regarding a material fact and the moving party is entitled to judgment as a matter of law. *Weymers v Khera*, 210 Mich App 231, 234; 533 NW2d 334 (1995).

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

Plaintiff first claims that there were genuine issues of material fact with respect to whether she was subject to harassment rising to the level of discrimination on the basis of her gender, age, color, race and/or national origin, and therefore, plaintiff's circuit court case was improperly dismissed. In *Quinto v Cross & Peters Co*, 451 Mich 358, 368; 547 NW2d 314 (1996), our Supreme Court, while not deciding whether a hostile environment claim could be maintained under the Civil Rights Act based on conduct involving a plaintiff's gender, age, or national origin, concluded that even assuming a claim could be maintained on such conduct, the plaintiff had failed to rebut with documentary evidence the defendant's contention that no genuine issue of material fact existed. To establish such a claim, assuming it exists, a party would have to show, in part, conduct that "was intended to, or in fact did, substantially interfere with her employment or created an intimidating, hostile, or offensive work environment." *Id.* at 369, quoting *Radtke v Everett*, 442 Mich 368, 394; 501 NW2d 155 (1993).

Here, Plaintiff asserted in her deposition testimony that she was repeatedly "harassed" and that defendants' conduct was "continually" demeaning and humiliating without providing specific details about this alleged harassment. Such conclusory testimony is insufficient to establish a factual issue regarding the existence of an objectively hostile work environment. *Id.* at 370. Further, plaintiff opined that defendant Van Houten did not like her because of her age, national origin and sex, but did not provide any factual basis for concluding that his asserted dislike for her was based on these factors. Plaintiff's evidence amounted to nothing more than mere conjecture and speculation, which is insufficient to establish a genuine issue of material fact. *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 192-193; 540 NW2d 297 (1995). Plaintiff failed to meet her burden of establishing a prima facie case of national origin, sex or age discrimination and, accordingly, we find that the trial court properly granted defendants' motion for summary disposition.

Plaintiff next claims that the trial court erred in granting summary disposition on the five counts contained in her complaint filed in the Court of Claims because defendants only moved for summary disposition on the three counts contained in the complaint filed in circuit court. We disagree. Because of the procedural history of this case, some confusion arose after the motion for summary disposition was heard regarding whether plaintiff's charges filed in the Court of Claims were dismissed along with the counts filed in the circuit court case. Initially, plaintiff filed an eight count complaint against defendants. Subsequently, counts IV through VIII were dismissed and refiled in the Court of Claims. The two files were then joined by order and essentially thereafter were dealt with as one case by the trial court. Apparently, because defendant did not specifically reference the counts filed in the Court of Claims, plaintiff believes that the trial court erred by granting summary disposition regarding those counts.

Defendants' motion for summary disposition was captioned to include the Court of Claims case, and was entitled a motion for summary disposition, as opposed to partial summary disposition. From the procedural history and captioning of the motion, we believe it was not unreasonable for the court to dispose of all of plaintiff's claims, as plaintiff was fairly on notice that all of her claims were at issue in the motion. Further, plaintiff's allegations contained in counts IV through VIII that were refiled in the Court of Claims relied on the same basic facts and legal theory of constructive discharge based on discrimination that the trial court rejected. Plaintiff has not cited this Court to any additional facts or

circumstances that were not previously considered by the trial court that demonstrate that these counts should not have been summarily dismissed.

Affirmed.

/s/ Janet T. Neff

/s/ Joel P. Hoekstra

/s/ Gerald D. Lostracco