

STATE OF MICHIGAN  
COURT OF APPEALS

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SHANNON A. MORAN,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

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UNPUBLISHED

April 25, 2006

No. 258647

Wayne Circuit Court

LC No. 02-223156-CD

Before: Fort Hood, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

In this sexual harassment action, the trial court entered a judgment of no cause of action, following a jury trial. Plaintiff's posttrial motion for judgment notwithstanding the verdict (JNOV) or a new trial was denied. Plaintiff appeals as of right. We affirm.

Plaintiff, a female firefighter, was on "cot duty," where she slept on a cot near a computer to monitor and alert the other firefighters of any calls for service. Plaintiff was woken up by her direct supervisor, Sergeant Terry Tatum, when he inappropriately touched her underneath her shorts. Plaintiff was able to leave the firehouse and report the inappropriate contact. She also reported the incident to Detroit police. Plaintiff and her assailant were immediately separated to different firehouses. Lengthy investigations into the incident occurred. Plaintiff did not waiver in her account of the assault. However, Sergeant Tatum gave various accounts of the incident, alleging that plaintiff was dreaming, the incident was fabricated to "set him up," and plaintiff was under the influence at the time of the alleged incident. Ultimately after nearly a two-year period, Sergeant Tatum was dismissed from his employment following the investigation by the city's legal department, the plea of no contest to criminal charges, and the exhaustion of the proceedings involving the fire union. Plaintiff filed suit alleging sexual harassment because defendant allegedly failed to take prompt and appropriate remedial action following notice of the inappropriate sexual contact. The jury rendered a decision of no cause of action.

Plaintiff first alleges that the trial court erred in denying her motion for JNOV or a new trial. We disagree. We review the evidence de novo to determine whether the trial court erred in denying a motion for JNOV. *Badalamenti v William Beaumont Hosp*, 237 Mich App 278, 284; 602 NW2d 854 (1999). The evidence and all legitimate inferences must be viewed in the light most favorable to the nonmoving party. Only if the evidence so viewed fails to establish a claim or defense as a matter of law should the motion be granted. *Forge v Smith*, 458 Mich 198, 204; 580 NW2d 876 (1998).

A new trial may be granted if a verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e); *Domako v Rowe*, 184 Mich App 137, 144; 457 NW2d 107 (1990), aff'd 438 Mich 347 (1991). A trial court's decision whether to grant a new trial is reviewed for an abuse of discretion. *Kelly v Builders Square, Inc*, 465 Mich 29, 34; 632 NW2d 912 (2001).

The principal issue at trial was whether defendant promptly and adequately responded to plaintiff's complaint of sexual harassment. "[E]mployer responsibility for sexual harassment can be established only if the employer had reasonable notice of the harassment and failed to take appropriate corrective action." *Elezovic v Ford Motor Co*, 472 Mich 408, 426; 697 NW2d 851 (2005); see also *Radtke v Everett*, 442 Mich 368, 396; 501 NW2d 155 (1993).

There was evidence that defendant began to investigate plaintiff's complaint as soon as it was made, that the matter was referred to the "top man" in the department, and that plaintiff believed he took her complaint seriously. Further, the evidence showed that defendant immediately took action to ensure that plaintiff and the offending supervisor were assigned to different stations, and plaintiff was offered a permanent assignment that she admitted would have been much nicer for her, but she declined it to avoid the appearance that she was receiving special treatment. The offending supervisor did not cooperate with the investigation, and plaintiff conceded that proceedings may have been delayed because she also filed criminal charges. Defendant's law department found plaintiff's complaint credible and recommended that the supervisor be discharged. In the end, after a trial board recommended against terminating the supervisor, a commissioner took the unusual step of overturning the trial board's decision and the offending supervisor was terminated from his employment. On these facts, the jury could have concluded that defendant responded promptly, but that proceedings were delayed because of the supervisor's refusal to cooperate, due process concerns, ongoing criminal proceedings, and union safeguards. The jury also could have concluded that defendant made other offers of remedial action that plaintiff declined because she wanted to avoid the appearance of special treatment.<sup>1</sup> The jury's conclusion that defendant responded promptly and adequately is not against the great weight of the evidence. The trial court did not clearly err in denying plaintiff's motion for JNOV, or abuse its discretion in denying plaintiff's motion for a new trial.

Plaintiff also argues that the trial court abused its discretion by permitting defendant to use a demonstrative aid during closing argument. We disagree.<sup>2</sup> The trial court's decision

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<sup>1</sup> Plaintiff alleged that there was no evidence that the criminal proceedings had any bearing on any delay and that a former union president testified that union proceedings were held before any criminal charges were resolved. In fact, the former union president testified that the cases differed. In some cases, union proceedings were held before the resolution of criminal charges and sometimes they were held after. He also testified that although there were time frames for investigation and resolution of charges, they were not always followed. In some cases, union charges were investigated promptly, but in other cases, it could take two years to resolve union charges.

<sup>2</sup> The demonstrative aid challenged by plaintiff on appeal is not contained in the lower court record. Plaintiff, as the appellant, had the burden of filing a complete record on appeal, and the failure to present record support for a proposition is fatal to a claim. *Band v Livonia Associates*,  
(continued...)

whether to permit a visual aid is reviewed for an abuse of discretion. *Campbell v Menze Constr Co*, 15 Mich App 407, 409; 166 NW2d 624 (1968).

The use of blackboards, charts and other visual aids at a trial is common practice. Counsel for both sides should be encouraged to present their case in a way that will be most clearly understood by the jury. The extent to which visual aids can be used, when and whether they are to be marked for the record and the comment to be made by preliminary or final instructions that such drawing, charts, or calculations are not evidence rests within the sound discretion of the trial court. [*Id.*]

Plaintiff did not dispute the accuracy of the “stream of chronology” contained in defendant’s demonstrative aid, but objected because the dates and details of some of the events mentioned were not all matters of record. Thus, plaintiff did not dispute the accuracy of the dates or the details. Moreover, when pressed by the trial court, plaintiff’s counsel acknowledged that although there was no direct testimony of certain events contained in the record, certain dates or events were provided in the investigative reports that were admitted into evidence. Additionally, the demonstrative aid was used only in closing argument, it was not admitted into evidence or provided to the jury, and the jury was instructed to disregard any attorney arguments that were not supported by the evidence. Under the circumstances, the trial court did not abuse its discretion in allowing the demonstrative aid at trial.

Affirmed.

/s/ Karen M. Fort Hood  
/s/ David H. Sawyer  
/s/ Patrick M. Meter

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(...continued)

176 Mich App 95, 103-104; 439 NW2d 285 (1989). Despite this deficiency, we address this issue to the extent permitted by the allegations contained in the parties’ pleadings.