

**Court of Appeals, State of Michigan**

**ORDER**

Janice M Powers v Post-Newsweek Stations Michigan Inc

Docket No. 288582

LC No. 07-705775-CD

Karen M. Fort Hood  
Presiding Judge

Kirsten Frank Kelly

Christopher M. Murray  
Judges

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The Court orders that the motion for immediate consideration is GRANTED.

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the October 8, 2008, order of the Wayne Circuit Court denying summary disposition to defendants hereby is REVERSED IN PART. The record currently before this Court does not reflect evidence of the requisite elements to sustain a claim of intentional infliction of emotional distress, see *Frohriep v Flanagan (On Remand)*, 278 Mich App 665, 683; 754 NW2d 912 (2008). Plaintiff has not alleged any conduct by defendants that is so extreme it could be called "outrageous." Thus, relief may not be granted on this claim and it is DISMISSED. In all other respects, the application for leave to appeal is DENIED for failure to persuade the Court of the need for immediate appellate review.

The motion for stay is DENIED.

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.

Murray, J. (*concurring in part, dissenting in part*). I agree with the reversal of plaintiff's intentional infliction of emotional distress claim, as nothing in the record comes close to establishing the high level of outrageous behavior necessary to establish this claim. However, I would also reverse the trial court's denial of defendants' motion as to plaintiff's discrimination claims relating to her obtaining the General Sales Manager position. Although there may be "fact issues" between the parties on certain immaterial events, there is no *genuine issue of material fact* that plaintiff cannot establish a sex or race discrimination claim. MCR 2.116(C)(10). There is no evidence that plaintiff was denied this position in favor of someone else while Kell remained in the position, or that any decision-maker about leaving

Kell in the position had made any discriminatory remark related to any employment decision. *Hazle v Ford Motor Co*, 464 Mich 456, 462; 628 NW2d 515 (2001). Plaintiff was also unavailable to apply for the position (she was out on long-term disability) when the position was filled more than a year later by someone in one of her protected categories.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

DEC 11 2008

Date

*Sandra Schultz Mengel*

Chief Clerk