

STATE OF MICHIGAN
COURT OF APPEALS

RACHELLE MARTIN,

Plaintiff-Appellant,

v

THE BOARD OF EDUCATION OF THE
SCHOOL DISTRICT FOR THE CITY OF
PONTIAC,

Defendant-Appellee.

UNPUBLISHED

November 29, 2005

No. 262041

Oakland Circuit Court

LC No. 2004-059534-NZ

Before: Whitbeck, C.J., and Saad and O’Connell, JJ.

PER CURIAM.

Plaintiff Rachele Martin appeals as of right the grant of summary disposition in favor of defendant Board of Education of the School District for the City of Pontiac (the Board) on her claims of gender discrimination and retaliatory discharge. We affirm.

I. Basic Facts And Procedural History

Martin initiated her employment with the Board in June 1996, serving as a custodian. Martin continued her employment as a custodian until January 24, 2002, when the Board promoted her to assistant engineer following her filing of a discrimination complaint with the Michigan Department of Civil Rights. Martin asserted that less senior male employees had been promoted and that the failure of the Board to previously promote her to the position of assistant engineer was due to discrimination based on gender. In March 2002, Martin’s civil rights complaint was settled and her promotion to assistant engineer confirmed. Martin received an award of retroactive pay, with her seniority as an assistant engineer being calculated as beginning December 17, 2001. Martin contended that, following her promotion, she was systematically discriminated against based on her gender. Martin asserted that she was routinely precluded from receiving information regarding ongoing training sessions for assistant engineers, subjected to vicious and untrue rumors, and told that she was unqualified for her position.

Martin was assigned to work at Washington Junior High School. David Evans conducted training classes for assistant engineers, including Martin and newly promoted male employees, Rickey Thomas and Justin Thorington. Locations of the training sessions were rotated to encompass all schools within the district. The rotation existed to cross-train assistant engineers by allowing them to be exposed to a variety of schools. The training sessions did not occur on a

regular or set schedule of days or times. Martin contended that she was specifically omitted from notification of the training sessions or that the schedule would be altered, resulting in her missing training sessions or appearing at the wrong location or time.

Specifically, in June 2002, a summer training schedule was issued for the engineers. While the announcement listed the schools and engineers that would participate, and the daily start time for the training without the delineation of specific dates, Martin and her school, Washington Junior High School, were omitted from the list. The Board contended that the omission was due to the principal of Washington Junior High School, Billie Fair, not wanting to be included in the current rotational system for engineers. Martin complained about the omission, indicating that she wished to participate in training, and a second list, which included Martin and Washington Junior High School, was issued on June 19, 2002, two days after the first training session was scheduled to have occurred. Martin indicated that she learned about the issuance of the initial training list from another female engineer who had received the notification

Martin indicated that Evans informed her that he would provide her training for any classes that she missed. Martin acknowledged that the training schedule was variable, with classes being routinely rescheduled or cancelled. Martin asserted that she missed classes because she was not informed of the schedule and would only learn that she had missed a class when questioned about her absence by another student, such as Thomas. Martin contended that she would leave phone messages for Evans inquiring about class scheduling but that he would not return her calls. Martin contended that Evans told her it was her responsibility to find out the class schedule. Martin acknowledged that Evans would announce, at the end of each class, when and where the next training class would be held, but she contended that if she missed a class, her only available source of information regarding the schedule would be another employee. Completion of the training sessions was not tied to Martin's, or any other employee's, certification, job evaluation, or performance reviews, raises, or promotions.

Facilities supervisor, Brian Ralph, denied that Martin ever approached him to complain of her treatment or preclusion from attendance at training sessions. However, Wallace L. Dunn, Jr., the Board's Assistant Superintendent for Human Relations, indicated that Martin had verbally complained to him that Gibson was discriminating against her based on her gender. Dunn asserted that Ralph was present for a meeting with Martin where she was given the opportunity to voice her concerns. Dunn reported meeting with Gibson regarding Martin's assertions and that Gibson had denied any discriminatory actions on his part but indicated that Martin was uncooperative in following certain directives regarding job-related tasks.

On July 1, 2002, Martin was instructed to go to a school for a training class to clean boilers. Martin complained that on her arrival at the session, no one would speak to her, that coworkers would move away from her, and that she was not selected to work as anyone's partner. During the training, Evans instructed Martin to climb onto one of the boilers and remove the manhole cover. Martin acknowledged that boiler manhole covers are heavy and that removal often requires an engineer to be in an awkward or precarious position. Another engineer that was present, Chris Webb, offered to assist Martin, but Evans told him, "She can do it herself, she's tough." Another engineer, Larry Blackburn, remarked, "[W]e finally have beautiful women working here." Reportedly, Evans responded to the remark by stating, "We don't

discriminate against women here.” Martin indicated she found the comments by Evans to be “offensive” and “sarcastic” and that she left the class crying.

After leaving the class, Martin encountered Gibson and asked him why he was spreading false rumors that she did not want to be in class and was trying to stop the rotation schedule. Reportedly, Gibson did not respond to these inquiries, but instead instructed Martin to attend an engineering meeting at another location later that day.

Martin attended the meeting but asserted that she was isolated by her coworkers. At the meeting, Ralph reported to those present that the rotation schedule would continue. Ralph explained that the school principals and another engineer, Ray Bell, had been attempting to stop the rotation schedule. Following Ralph’s announcement, Martin asserted that Gibson took control of the meeting and asked the group to tell Martin “why they don’t like her.” In contrast, Thomas, who was present at the meeting, indicated that Gibson had asked those present to comment on “what they thought of each other, not Martin in particular.” Martin contended that the meeting degenerated into people “yelling at me,” and culminated in another engineer, Marvin Beasley, suggesting to her that if she had attended the classes, like another recently hired female engineer, Ella Wallace, “you’d have made it.” Thomas’ version of the event included the observation that only Evans voiced a complaint at the meeting. Martin left the meeting and never returned to work.

Martin filed a complaint in Oakland Circuit Court alleging gender discrimination and retaliation in accordance with the Michigan Civil Rights Act.¹ The Board moved for summary disposition under MCR 2.116(C)(8) and (C)(10). After conducting a brief hearing on the motion for summary disposition, the trial court issued a written opinion and order granting the Board’s motion in accordance with MCR 2.116(C)(10). The trial court distilled the premises of Martin’s sexual discrimination claim as follows:

- (1) she was not included on the list for the training class;
- (2) she was subjected to various rumors and comments in regard to her promotion and her job performance;
- and (3) Defendant’s agents intentionally declined to inform her of the site and schedule of the training classes.

Discussing the elements necessary to establish a prima face case of discrimination, and specifically noting the necessity of “an employment action that was ‘materially adverse,’” the trial court ruled, in relevant part:

Here, there is no evidence whatsoever of any adverse employment action. Plaintiff essentially makes vague complaints that women were treated differently, but does not address the fact that there are a number of female engineers employed by Defendant School District, or that there was another female, Ella Williams [sic], in her training class.

¹ MCL 37.2101 *et seq.*

The trial court indicated that Martin did not complain to Ralph or Dunn regarding the changes to training classes and noted that the classes were not mandatory for participation. The trial court found no evidence that Martin suffered an adverse employment action based on her failure to attend training classes. Further, although Martin asserted a conspiracy regarding the constant change and movement of training classes as targeting her based on gender, the trial court opined “that the record reflects that the purpose of moving the class was to educate the students about each building. In any event, it was Plaintiff’s responsibility to determine the class schedule. Her allegations and claims are unfounded.” Discussing Martin’s initial omission from the training list, the trial court found that the decision was based on the preferences of the principal at Martin’s assigned school not to participate in the engineering rotation. The trial court determined that “[p]laintiff was not subjected to adverse employment action because she was added to the list and had the opportunity to attend classes.” Additionally, the trial court addressed Martin’s complaint that she was the subject of rumors and comments as comprising only “workplace gossip about and against many employees, both – male and female.” The trial court determined that the alleged rumors and comments did not result in an adverse employment action against Martin.

With regard to Martin’s claim of retaliation, the trial court reviewed the necessary elements, indicating an absence of evidence of an adverse employment action. Noting its inability to “make factual findings or weigh credibility” when ruling on a motion for summary disposition, the trial court ruled, in relevant part:

However, a review of the record finds no support for Plaintiff’s dramatic characterization of her workplace environment. Indeed, Plaintiff mischaracterizes much of the testimony, even of her coworker, Ricky [sic] Thomas, who had no problem with her and who assisted her in many instances. Plaintiff does not even address her relationship with the other female in the training class, but claims that no one sat with her or spoke with her in class. It appears that any problems between Plaintiff and her co-workers were not based on gender issues, but on personality issues. Most importantly, there is no evidence whatsoever of any adverse employment action.

II. Disparate Treatment

A. Standard Of Review

Martin asserts that the trial court erred in granting summary disposition because the trial court improperly required her to demonstrate that the Board engaged in gender discrimination against other female engineers in addition to herself. We review a trial court’s decision on a motion for summary disposition de novo on appeal.²

² *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

B. A Prima Facie Case

A prima facie case of discrimination in accordance with the Civil Rights Act can be established by proving disparate treatment.³ To prove disparate treatment it is necessary to demonstrate either intentional discrimination against protected employees or against an individual plaintiff.⁴ In order to avoid summary disposition, a plaintiff must present sufficient evidence to allow a reasonable trier of fact to find that for the same or similar conduct that plaintiff was treated differently from similarly situated male employees.⁵ Gender must be shown to be a determining factor in the allegedly discriminatory conduct.⁶

In evaluating disparate treatment cases, this Court applies the criteria elucidated in *McDonnell Douglas Corp v Green*.⁷ To establish a prima facie case of gender discrimination a plaintiff must prove by a preponderance of the evidence that she was (1) a member of a protected class; (2) subject to an adverse employment action; (3) qualified for the position; and (4) discharged under circumstances that give rise to an inference of prohibited or unlawful discrimination.⁸ While there is no dispute regarding her membership in a protected class, Martin cannot demonstrate that she was subjected to an adverse employment action. An adverse employment action for the purpose of proving unlawful discrimination:

(1) must be materially adverse in that it is more than ‘mere inconvenience or an alteration of job responsibilities,’ and (2) must have an objective basis for demonstrating that the change is adverse, rather than the mere subjective impressions of the plaintiff.⁹

When Martin left her job, she had not been discharged, laid off, or experienced any change in benefits, pay, responsibilities, or status. Martin failed to demonstrate that the methodology to notify employees of training was applied to her in a differential or discriminatory manner. Martin acknowledged that the system to inform engineers regarding training sessions was informal and often occurred at the end of a training session. The testimony of other male employees verified that they did not receive individualized notification of scheduled training sessions. Martin failed to demonstrate that any alleged lack of responsiveness to her inquiries regarding scheduled training was exclusively applicable to her or that the trainer was more responsive to similar inquiries by her male counterparts. Even if Martin was manipulated and excluded, there is no demonstration that it was based on her gender given the

³ *Duranceau v Alpena Power Co*, 250 Mich App 179, 181-182; 646 NW2d 872 (2002).

⁴ *Id.*

⁵ *Id.* at 182.

⁶ *Id.*

⁷ *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973).

⁸ *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 361; 597 NW2d 250 (1999).

⁹ *Meyer v Centerline*, 242 Mich App 560, 569; 619 NW2d 182 (2000) (citation omitted).

receipt of training notifications by other female engineering staff. The observation by the trial court that Martin failed to present evidence of gender discrimination against other female engineers was neither improper nor the imposition of an additional burden of proof. Rather, the trial court's observation is related to the necessity of Martin's proving that gender was a determining factor in the allegedly discriminatory conduct. Martin's failure to demonstrate that other female engineers were subject to the same asserted misconduct seriously calls into question her assertion of discrimination based on gender.

Further, while the necessity of tracking down training schedules was undoubtedly inconvenient, Martin fails to demonstrate that, when she appeared for training, she was denied access or participation in the class. Although Martin asserts that she was ostracized by coworkers, she has not alleged that she was precluded from full participation in training classes or that the expectations for her performance differed from similarly situated male employees. While Martin contends female engineers were criticized if they requested assistance to perform certain tasks, she provides no evidentiary support to substantiate her perception of disparate or discriminatory treatment.

C. Retaliation

To establish a prima facie case of retaliation, a plaintiff is required to demonstrate that she engaged in a protected activity, that the protected activity was known by the defendant, that the defendant took an employment action adverse to the plaintiff, and that a causal connection or nexus existed between the protected activity and the adverse employment action.¹⁰ While an adverse employment action need not involve monetary consideration, it must be materially and objectively adverse and more than a "mere inconvenience."¹¹ Here, Martin presented no evidence that the alleged misconduct resulted in her loss of status, responsibility, salary, or a negative performance evaluation. The difficulties Martin encountered in securing attendance at training classes, rumors pertaining to her conduct, or the alleged verbal abuse encountered at a meeting with coworkers, without any further consequences initiated by the Board, fail to constitute a materially adverse employment action necessary to establish her claim of retaliation.

III. Findings Of Fact

A. Standard Of Review

Martin asserts that the trial court improperly made findings of fact and determined issues of credibility. We also review this claim de novo.

B. The Necessity For A Dispute

We first note that, while Martin refers to a number of facts that the trial court allegedly determined regarding the basis for her asserted disparate treatment, she does not demonstrate

¹⁰ *Barrett v Kirtland Community College*, 245 Mich App 306, 315; 628 NW2d 63 (2001).

¹¹ *Wilcoxon, supra* at 363-364; *Meyer, supra* at 569.

how these facts were actually in dispute. Martin's argument extends beyond the accepted principle that, when considering a motion pursuant to MCR 2.116(C)(10), a trial court must resolve any factual disputes in favor of the non-moving party, to imply that the trial court may not engage or consider facts that are not disputed in determining whether a genuine issue of material fact even exists.

Specifically, Martin contends that the trial court improperly determined that her omission from the training list was due to the preference of a school principal rather than gender discrimination. Martin supports this assertion by noting that exclusion of the school as a training site is distinguishable from her omission from any scheduled training. Rather than engaging in fact-finding, the trial court evaluated the evidence consistent with the burden-shifting framework mandated by *McDonnell Douglas* and its progeny.¹² Martin asserted that her omission from the training list was due to gender. The Board responded that omission of Martin and her school from the training list was done at the behest of the school principal, who did not wish to be included in the engineering rotation, and provided a legitimate nondiscriminatory reason for defendant's actions. Martin failed to come forward with any evidence to demonstrate that this explanation was a pretext for discrimination.

Martin also takes issue with the trial court's purported factual determination that the training was meaningless. It was undisputed that participation in training was not linked to receipt of any future employment benefit or promotion, or a factor in any form of discipline or evaluation for plaintiff or any other employee. Martin failed to demonstrate that she was precluded from participation in training. Following her complaint of exclusion, Martin was added to the training list and offered an opportunity to receive individual training for any missed sessions.

Martin's contention that rumors regarding her attempts to terminate the rotational system could have resulted in her retaliatory exclusion from training is mere speculation and does not serve to dispute the Board's alleged basis for its actions or demonstrate pretext. Martin ignores that, following her complaint, she was immediately added to the scheduled training list or that the Board did not tie her participation in training to any future or corrective employment actions. When combined with the undisputed fact that other female engineering staff were not excluded from the training list, the trial court properly determined that Martin failed to demonstrate the existence of a genuine issue of material fact regarding discriminatory treatment based on gender. Hence, the trial court's discussion of evidence pertaining to Martin's allegation of discriminatory conduct is not improper fact finding but merely its proper engagement in the burden shifting analysis required to evaluate Martin's claim of disparate treatment. References to Martin's problems being "personality issues" rather than gender discrimination are more accurately characterized as opinions of the trial court and not findings of fact, given Martin's failure to demonstrate gender discrimination.

¹² See *Sniecinski v Blue Cross & Blue Shield of Mich*, 469 Mich 124, 133-134; 666 NW2d 186 (2003).

Further, Martin's allegation that the trial court's statement that her complaints were merely "dramatic characterizations" and that the trial court failed to consider evidence of her involvement in psychological treatment and proof of injury are irrelevant. Based on the trial court's ruling that Martin did not suffer an adverse employment action, any characterization of her injuries is neither necessary nor dispositive to demonstrate the existence of a genuine issue of material fact that would permit her claims to survive or proceed to a determination of damages.

We further observe that Martin fails to support her allegation that the trial court improperly engaged in determinations of credibility. Martin's description of the informal nature of the scheduling of training is consistent with testimony provided by other employees. Martin's version of events at the final meeting that she attended differed from the recollections of others present. However, any discrepancies in description of this event did not require the trial court to make determinations of credibility. The trial court granted the Board's motion based on the Martin's failure to demonstrate an adverse employment action. The accuracy of either description of the meeting events is irrelevant to the trial court's determination that an adverse employment action did not occur.

Martin asserts that the trial court erred when it stated that she failed to complain of disparate treatment. The testimony verifies that Martin did complain regarding issues of training and disparate treatment. Martin does not dispute that her complaints were addressed, but rather, contends the method of intervention was ineffectual. However, these facts are not relevant to the trial court's ruling granting summary disposition based on the absence of an adverse employment action. Further, Martin testified that she only complained regarding her omission from the training schedule. Since there is no factual dispute that, following Martin's complaint, the schedule was immediately revised to include her, there is no evidence to suggest that the Board failed to take "prompt and appropriate remedial action" after having been placed on notice regarding concerns pertaining to Martin's exclusion from training.¹³

IV. Constructive Discharge

A. Standard Of Review

Martin contends that the grant of summary disposition was improper based on the trial court's failure to recognize her constructive discharge as an adverse employment action. According to Martin, she was compelled to resign her employment based on protracted and offensive gender discrimination and retaliation, as evidenced by the Board's failure to routinely inform her of training sessions, the occurrence of rumors regarding her job performance and interference in the engineering rotation schedule, and her subjection to verbal attacks by coworkers. Martin asserts that these events and conditions created an intolerable work environment that culminated in her constructive discharge. We also review these claims de novo.

¹³ *Grow v W A Thomas Co*, 236 Mich App 696, 702; 601 NW2d 426 (1999).

B. Elements And Evaluation Of A Claim Of Constructive Discharge

It is well recognized that “a constructive discharge occurs only where an employer or its agent’s conduct is so severe that a reasonable person in the employee’s place would feel compelled to resign.”¹⁴ The actions of the employee are evaluated using an objective standard of reasonableness.¹⁵ Establishment of a constructive discharge permits a plaintiff to be treated as though their employer actually discharged or fired them.¹⁶

C. Martin’s Allegations

We conclude that Martin’s assertions of mistreatment do not rise to the level of a constructive discharge. A finding of constructive discharge depends on the facts of each case.¹⁷ Martin does not contend that she was transferred to an alternative position, demoted, paid a lower salary, or given additional or reduced responsibilities. Martin merely asserts that she was repeatedly omitted from training notifications. The omissions do not amount to conduct that would cause a reasonable person to feel compelled to resign. Martin’s contention that she was the subject of rumor does not indicate gender discrimination or distinguish her from other employees who reportedly experienced the same phenomena. Martin’s allegation that she was verbally attacked by coworkers is not sufficient, in and of itself, to comprise a constructive discharge. While unpleasant, such an interaction does not rise to the level of severity or pervasiveness required to demonstrate constructive discharge. Even assuming Martin was constructively discharged, it is still incumbent on her to establish the existence of a nexus between the discharge and her protected activity. Martin has failed to demonstrate this relationship.

Finally, we note that Martin’s inference that she was subjected to a hostile work environment was neither pleaded nor supported by the record. Martin has not provided any evidence or allegation of unwelcome sexual conduct or communication,¹⁸ thus making unavailable the pursuit of this particular legal theory or cause of action to establish or support her claim of constructive discharge.

Affirmed.

/s/ William C. Whitbeck

/s/ Henry William Saad

/s/ Peter D. O’Connell

¹⁴ *Jacobson v Parda Fed Credit Union*, 457 Mich 318, 328; 577 NW2d 881 (1998), quoting *Champion v Nationwide Security, Inc*, 450 Mich 702, 710; 545 NW2d 596 (1996)

¹⁵ *Id.*

¹⁶ *Id.* at 329.

¹⁷ *Wolff v Automobile Club of Mich*, 194 Mich App 6, 15; 486 NW2d 75 (1992).

¹⁸ See *Grow*, *supra* at 706.