

STATE OF MICHIGAN
COURT OF APPEALS

PAMELA PEREZ,

Plaintiff-Appellant,

v

FORD MOTOR COMPANY and DANIEL P.
BENNETT,

Defendants-Appellees.

UNPUBLISHED

June 6, 2006

No. 249737

Wayne Circuit Court

LC No. 01-134649-CL

ON REMAND

Before: Murray, P.J., and Meter and Owens, JJ.

MURRAY, P.J. (*concurring in part, dissenting in part*).

Because we must reconsider our prior ruling regarding defendant Bennett in light of the Supreme Court's decision in *Elezovic v Ford Motor Co*, 472 Mich 408; 697 NW2d 851 (2005), I concur with the majority opinion that defendant Bennett is potentially liable as an individual under the Civil Rights Act (CRA), MCL 37.2101 *et seq.* The *Elezovic* Court unequivocally held that an individual *may* be held liable under the CRA, but did not further address *when* an individual can be found liable. See *Elezovic, supra* at 422 n 20. Those important issues can therefore be raised and argued to the trial court on remand, as has apparently been done in at least one other related case. However, I again disagree with the majority's conclusion that the trial court erred in granting defendant Ford Motor Company's (Ford) motion for summary disposition as to plaintiff's sexual harassment claim.

As I indicated on my separate concurring/dissenting opinion in the prior appeal, the record submitted to the trial court does not create a genuine issue of material fact that defendant Ford was on notice that Bennett was allegedly sexually harassing plaintiff. The record before us on remand is, of course, the same record that we reviewed in the prior appeal. Thus, my conclusion stays the same, as do the reasons. Rather than restating those reasons again, I would simply direct the reader to my prior opinion. See *Perez v Ford Motor Co*, unpublished opinion per curiam of the Court of Appeals, issued March 10, 2005 (Docket Number 249737) (Murray, P.J., concurring in part/dissenting in part).

The Supreme Court's decision in *Elezovic* only confirms this conclusion, both as a factual and legal matter. Factually, the *Elezovic* Court upheld our Court's prior determination that Ford was entitled to a directed verdict because it had no actual or constructive notice of Bennett's actions against Elezovic. *Elezovic, supra* at 426-431. The Court's conclusion that Ford was not

on notice of Bennett's activities simply reinforces the conclusion that Bennett's acts towards Elezovic did not provide notice to Ford as to any actions by Bennett against Perez.

Legally, the *Elezovic* Court confirmed the law set out in my prior opinion when it stated that the dispositive issue on constructive notice "is whether Ford knew or reasonably should have known, under the totality of the circumstances, of *Bennett's harassment of plaintiff.*" *Elezovic, supra* at 426 (emphasis added). Framed in this manner, the Court held that Ford was not on constructive notice about Bennett's harassment of the plaintiff, *id.*, at 430, and plaintiff in this case has likewise failed to submit sufficient evidence on this to allow a jury to decide the issue of constructive notice.

For all these reasons, I would affirm the trial court's order granting Ford's motion for summary disposition of plaintiff's claim of sexual harassment, and I concur in the conclusion that defendant Bennett may be held individually liable under the CRA.

/s/ Christopher M. Murray