

STATE OF MICHIGAN
COURT OF APPEALS

ANITA WILSON,

Plaintiff-Appellee,

v

ALGER MAXIMUM CORRECTIONAL
FACILITY and DEPARTMENT OF
CORRECTIONS,

Defendants-Appellants.

UNPUBLISHED

July 3, 2003

No. 239224; 240230

Marquette Circuit Court

LC No. 99-036400-NZ

Before: Smolenski, P.J., and Griffin and O’Connell, JJ.

SMOLENSKI, P.J. (*dissenting*).

I respectfully dissent. Confining my comments to the only issue the majority addressed, the question is whether plaintiff presented sufficient evidence to create a genuine issue of material fact as to whether plaintiff suffered an adverse employment action. I find that plaintiff put forth sufficient evidence to allow the question to be considered by the jury.

As the majority noted, a supervisor’s failure to take action to stop “sufficiently severe” harassment by co-workers in retaliation for an employee’s opposition to a violation of the CRA can constitute an adverse employment action.” Here, plaintiff stated that her co-workers had always been hostile towards her, giving several examples, which led to her filing a union grievance regarding her hostile work environment. Plaintiff then complained of multiple instances of intensified harassment by both her co-workers and her supervisors *after* she filed the grievance. Plaintiff alleged that her supervisor accused her of lying about a derogatory remark purportedly made regarding Native Americans, and that a week later the warden blocked her path in a hallway, grabbed her by the shoulders, and made menacing facial expressions, which “scared the hell out of her.” Plaintiff described the act as an “intimidation tactic.” Reporting the incident to her supervisors, she was only given a copy of the harassment policy and referred to a counselor. Plaintiff also alleged that on another occasion the warden touched her inappropriately on the back of her neck, lifting up her hair.

Plaintiff also alleged that during a meeting, her supervisor reminded her that litigation was expensive, especially if she lost. Additionally, the warden was given a calendar on which one page included the pictures of seven persons, including plaintiff, who had all filed a grievance or had some type of legal issue regarding their employment. Lastly, plaintiff related an incident

in which her supervisor berated her for thirty-five minutes regarding her work; a situation in which another employee actually tried to intervene, but was unsuccessful.

If plaintiff is believed, not only did plaintiff's supervisors fail to take action against the harassment, but were actively involved in the harassment. At a minimum, I would find that these acts created a question of fact to be resolved by the jury as to whether they were retaliatory and "sufficiently severe" so as to constitute an adverse employment action. Therefore, I would affirm the trial court's denial of defendants' motions for summary disposition and directed verdict.

/s/ Michael R. Smolenski