

STATE OF MICHIGAN
COURT OF APPEALS

MICHELLE ORVIS and DARWIN ORVIS,

Plaintiffs-Appellants,

v

DELPHI AUTOMOTIVE SYSTEMS, INC. and
BETTE M. WALKER,

Defendants-Appellees.

UNPUBLISHED

August 12, 2003

No. 239625

Genesee Circuit Court

LC No. 01-069897-CL

Before: Jansen, P.J., and Neff and Kelly, JJ.

PER CURIAM.

Defendants were granted summary disposition pursuant to MCR 2.116(C)(10) in this case alleging pregnancy discrimination. We affirm.

A motion for summary disposition under MCR 2.116(C)(10) “tests the factual support of a plaintiff’s claim.” *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The trial court hearing the motion “considers the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party to determine whether a genuine issue of any material fact exists to warrant a trial.” *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). The trial and appellate courts draw all reasonable inferences in the nonmoving party’s favor. *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 617-618; 537 NW2d 185 (1999).

Plaintiffs first argue that a question of fact exists regarding plaintiff Michelle Orvis’s claim of employment discrimination based on her pregnancy in violation of the Michigan Civil Rights Act. MCL 37.2102; MCL 37.2201(d).

Unless a plaintiff presents direct evidence of employment discrimination, the plaintiff must establish a prima facie case of discrimination. *DeBrow v Century 21 Great Lakes, Inc (After Remand)*, 463 Mich 534, 537-540; 620 NW2d 836 (2001). To establish a prima facie case of employment discrimination, a plaintiff must show that (1) the plaintiff was a member of a protected class; (2) an adverse employment action was taken against the plaintiff; (3) the plaintiff was qualified for the position; and (4) the person who replaced the plaintiff was not a member of

the protected class. *Feick v Monroe Co*, 229 Mich App 335, 338; 582 NW2d 207 (1998). To show an adverse employment action, a plaintiff must show (1) the action is materially adverse in that it is more than mere inconvenience or an alteration of job responsibilities, and (2) an objective basis for demonstrating that the change is adverse. *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 364; 597 NW2d 250 (1999).

Here, the trial court found that Michelle Orvis failed to show there was an adverse employment action. The trial court made this determination based on its findings that (1) Walker did not have the independent authority to demote employees, and (2) Delphi's personnel director had no record that Michelle Orvis had been demoted. The trial court further found, "[T]he Court has before it undisputed evidence, despite what Ms. Walker may have said, from Mr. Krieger, who was the person in charge of that personnel department, that nothing was ever sent to effectuate any type of a demotion, nor was [there] even a recommendation for a demotion forwarded to the personnel department in this case."

Without Krieger's letter in response to Michelle Orvis' resignation letter, this case would be a mere credibility contest, i.e., a case where summary disposition is inappropriate. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994); *Michigan Nat'l Bank-Oakland v Wheeling*, 165 Mich App 738, 744-745; 419 NW2d 746 (1988). However, even construing all reasonable inferences in Michelle Orvis' favor, Krieger's letter makes it clear that, as far as Delphi was concerned, she was still a sixth-level executive secretary. While Krieger's deposition testimony indicates that others "were looking at a job change for Michelle," no job change had been made at the time Michelle resigned. In other words, there was no issue of material fact regarding whether Michelle Orvis experienced an adverse employment action, and summary disposition was properly granted on this basis. See *Wilcoxon, supra* at 366.

The trial court correctly noted that constructive discharge is not itself a cause of action. *Jacobson v Parda Fed Credit Union*, 457 Mich 318, 321 n 9; 577 NW2d 881 (1998). Instead, "constructive discharge is a defense against the argument that no suit should lie in a specific case because the plaintiff left the job voluntarily." *Vagts v Perry Drug Stores, Inc*, 204 Mich App 481, 487; 516 NW2d 102 (1994). A constructive discharge occurs "when working conditions become so difficult or unpleasant that a reasonable person in the employee's shoes would feel compelled to resign." *Mourad v Automobile Club Ins Ass'n*, 186 Mich App 715, 721; 465 NW2d 395 (1991). A court looks to the employee's action, i.e., the resignation, and not the employer's actions in determining when a constructive discharge occurred. See *Jacobson, supra* at 327-328. A cause of action must underlie a plaintiff's constructive discharge claim. *Vagts, supra* at 487.

Using this analysis, the reasonableness of Michelle Orvis' resignation would be assessed on April 16, 2001 – the date of her resignation letter. *Jacobson, supra* at 327. Even assuming that she had an employment discrimination claim, there is no evidence that working conditions at that time were so unpleasant that a reasonable person would feel compelled to resign. *Mourad, supra* at 721. Indeed, as the trial court noted, Michelle Orvis did not know where or with whom she would work on her return from leave. It is possible that she resigned in anticipation of unpleasantness, but this does not suffice to establish constructive discharge.

Plaintiffs next argue that defendants were improperly granted summary disposition of plaintiff Darwin Orvis' loss of consortium claim. Because his wife's underlying employment discrimination claim was properly dismissed, plaintiff Darwin Orvis' claim for loss of consortium deriving from violation of his wife's civil rights was also properly dismissed. See *Eide v Kelsey-Hayes Co*, 431 Mich 26, 29-30; 427 NW2d 488 (1988).

Affirmed.

/s/ Kathleen Jansen

/s/ Janet T. Neff

/s/ Kirsten Frank Kelly