

STATE OF MICHIGAN
COURT OF APPEALS

CONSTANCE M. BROWN,

Plaintiff-Appellant,

v

MT. CLEMENS DODGE, INC. and TIBOR
GYARMATI,

Defendants-Appellees.

UNPUBLISHED

January 26, 2001

No. 218001

Macomb Circuit Court

LC No. 97-005888-NO

Before: Collins, P.J., and Doctoroff and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse and remand.

Plaintiff was employed as a driver by Mt. Clemens Dodge. She was fired when it was learned that she did not have a valid driver's license. She then filed this action under the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*, claiming that she had been subjected to sexual harassment by defendant Gyarmati. The trial court dismissed her complaint on the ground that Gyarmati's harassment was not a factor in the decision to terminate plaintiff's employment.

An employer is prohibited from discharging, adversely affecting the status of, or otherwise discriminating against a person with respect to employment, compensation, or a condition, term or privilege of employment on the basis of sex. MCL 37.2202(a)-(c); MSA 3.548(202)(a)-(c). Discrimination on the basis of sex includes sexual harassment. MCL 37.2103(i); MSA 3.548(103)(i). Sexual harassment is defined as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature" when (1) a person must submit to the conduct or communication to obtain employment, (2) an employee's submission to or rejection of the conduct or communication is used as a factor in decisions affecting the employee's employment, or (3) the conduct or communication has the purpose or effect of substantially interfering with an individual's employment or creating an intimidating, hostile, or offensive employment environment. *Id.* The first two types are quid pro quo sexual harassment; the third is hostile work environment sexual harassment. *Champion v Nation Wide Security, Inc*, 450 Mich 702, 708; 545 NW2d 596 (1996).

Whether plaintiff's submission to or rejection of Gyarmati's advances led to her discharge is only relevant if plaintiff's claim was based on quid pro quo harassment. Quid pro quo sexual harassment is not involved in this case. Rather, plaintiff's claim is one for a hostile work environment. The elements of such a claim are (1) the plaintiff was a member of a protected class, (2) the plaintiff was subjected to communication or conduct on the basis of her protected status, (3) the communication or conduct was unwelcome, (4) the unwelcome communication or conduct was intended to or did substantially interfere with the employee's employment or created an intimidating, hostile or offensive work environment, and (5) respondeat superior. *Quinto v Cross & Peters Co*, 451 Mich 358, 368-369; 547 NW2d 314 (1996). The plaintiff need not suffer the loss of her job or other tangible benefit to establish a hostile work environment claim. Rather, it is the harassment and resulting change in the work environment itself that constitutes the injury. *Radtke v Everett*, 442 Mich 368, 385; 501 NW2d 155 (1993).

Because the trial court applied the wrong legal analysis to plaintiff's sexual harassment claim and in so doing failed to consider the elements of such a claim, we reverse the judgment of the trial court and remand for reconsideration of plaintiff's claim under the proper legal standard.

Reversed and remanded. We do not retain jurisdiction.

/s/ Jeffrey G. Collins
/s/ Martin M. Doctoroff
/s/ Helene N. White