

STATE OF MICHIGAN
COURT OF APPEALS

CARLA CHILA and MIKE CHILA,

Plaintiffs-Appellants,

UNPUBLISHED
April 27, 2001

v

BRONSON METHODIST HOSPITAL,

Defendant-Appellee.

No. 222731
Kalamazoo Circuit Court
LC No. 98-000808-CZ

Before: Saad, P.J., and Fitzgerald and O'Connell, JJ.

PER CURIAM.

Plaintiffs appeal as of right the order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendant in this action in which plaintiff Carla Chila sued defendant for retaliatory discharge under the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*, and her husband, plaintiff Mike Chila, sued for loss of consortium. We affirm.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4). *Quinto v Cross & Peters Co*, 451 Mich 358; 547 NW2d 314 (1996).

Plaintiff contends that genuine issues of material fact exist that preclude summary disposition of her claim of illegal retaliation under the Civil Rights Act, MCL 37.2701(a); MSA 3.548(701)(a), which provides that two or more persons shall not conspire to, or a person shall not:

Retaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act.

In construing this provision, this Court stated in *DeFlaviis v Lord & Taylor, Inc*, 223 Mich App. 432, 436; 566 NW2d 661 (1997):

To establish a prima facie case of unlawful retaliation under the Civil Rights Act, a plaintiff must show (1) that he engaged in a protected activity; (2) that this was known by the defendant; (3) that the defendant took an employment action adverse to the plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action.

In discussing the antiretaliation provision of the Civil Rights Act, this Court stated in *McLemore v Detroit Receiving Hosp & Univ Medical Ctr*, 196 Mich App 391, 396; 493 NW2d 441 (1992), that

[r]egardless of the vagueness of the charge or the lack of formal invocation of the protection of the [Civil Rights Act], if an employer's decision to terminate or otherwise adversely effect [sic] an employee is a result of that employee raising the spectre of a discrimination complaint, retaliation prohibited by the act occurs.

Here, the evidence showed that plaintiff suggested to her supervisor that her unit hire a male nurse and, when the supervisor expressed reservations, again made the suggestion at a staff meeting of department managers. Plaintiff's suggestion was defeated, with the sentiment that a male nurse in the unit might create an uncomfortable situation. Plaintiff expressed disappointment with the decision, and offered her opinion that it might be discriminatory to refuse to hire a male nurse based only on his gender. Admittedly, plaintiff never indicated that she intended or needed to take additional steps regarding the decision.¹

Although plaintiff expressed an opinion that it might be discriminatory to refuse to hire a male nurse in the labor and delivery unit, plaintiff did not state, imply, or raise the specter that plaintiff either opposed a violation of the HCRA or "made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing" under the act. The evidence presented does not establish that plaintiff participated in a protected activity.

Plaintiff having failed to make out a prima facie case of retaliatory discharge under the Civil Rights Act, the trial court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Henry William Saad
/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell

¹ Nonetheless, the minutes of the group's next meeting in December 1992 reflect that the group was mindful of the issue, and intended to follow up on creating a policy. The minutes of the February 1993 meeting reveal that the issue was resolved and that "if qualified males apply, they will be seriously considered for positions in OB."