[Cite as *Simpson v. Ohio Reformatory for Women*, 2002-Ohio-3224.]

IN THE COURT OF CLAIMS OF OHIO

SUSAN SIMPSON	:	
Plaintiff	:	CASE NO. 2000-02097
v.	:	DECISION
OHIO REFORMATORY FOR WOMEN	:	Judge J. Warren Bettis
Defendant	:	

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{¶1} Plaintiff brings this action against defendant alleging intentional infliction of emotional distress, negligent supervision, retaliation and constructive discharge.[1] The case was tried to the court on the issue of liability and on the question of whether defendant's employee, Mary Miller, is entitled to personal immunity pursuant to R.C. 2743.02(F) and 9.86.

{¶2} Plaintiff alleges that she suffered severe emotional distress as a result of treatment that she received while working under the supervision of Miller. Plaintiff began her employment with defendant in August 1996, working as an office assistant in the medical records department where she was supervised by Miller. In October 1998, plaintiff was transferred to another department to work as a unit secretary. However, on March 3, 1999, plaintiff was transferred back to the medical records department where she was

[1] Although plaintiff's complaint contains numerous causes of action, during closing argument, the court was informed that plaintiff was pursuing only the four claims listed above.

again supervised by Miller. On August 9, 1999, plaintiff began disability leave as a result of stress-related symptoms.

{¶3} Plaintiff testified about many instances of conduct by her co-workers that caused her emotional distress. Most of the incidents were committed by unknown persons and involved tampering with files, office equipment or supplies in plaintiff's work area. For example, plaintiff recalled incidents when she found her desk soiled by items such as coffee, pretzel crumbs and "paper dots" from a hole punch. Plaintiff also related incidents when either office supplies or documents she had worked on would be missing when she returned to her desk. Plaintiff testified that on many occasions items she used in her work were discovered in department trash cans, including books, office memoranda and mail. Plaintiff also testified that her computer, computer diskettes and office chair were occasionally tampered with.

{¶4} Additionally, plaintiff described other incidents where, in her opinion, offensive and inappropriate comments were made about her. She occasionally received copies of jokes that she considered offensive. In one instance, she received a cartoon that had been altered by labeling the characters with the names of defendant's employees including plaintiff and Miller. Plaintiff complained about the cartoon to Miller, who had also received a copy. As a result of an investigation, Dr. Harper, a physician who worked at the institution, admitted distributing the cartoon. There was also testimony that Dr. Harper had on at least one occasion referred to plaintiff as "it" when speaking to another employee. On May 20, 1999, plaintiff reported that someone had written the words "nasty bitch" across the bottom of her work papers.

{¶5} Plaintiff frequently spoke to Miller about what she perceived to be harassment by her co-workers. Plaintiff also expressed dissatisfaction with certain job assignments and complained that she was required to perform tasks that were not in her job description. Plaintiff filed several grievance reports documenting specific instances that she believed warranted investigation. Additionally, plaintiff filed a grievance with her union asserting that she had been harassed and intimidated by Miller. Following a hearing, the grievance was denied and the union's request to arbitrate was subsequently withdrawn.

{¶6} On August 26, 1999, plaintiff filed a claim for stress-related disability leave based upon panic attacks which, according to her physician, caused other health problems. Plaintiff resigned from her position effective November 3, 1999.

{¶7} Defendant asserts that Miller's conduct falls within the course and scope of her employment and does not rise to the level of an intentional tort. In addition, Miller testified that she took all of plaintiff's complaints seriously but did not believe that plaintiff was being harassed.

{¶8} The first issue to be determined is whether Miller is entitled to personal immunity pursuant to R.C. 2743.02 and 9.86.

{¶9} R.C. 2743.02(F) reads, in part:

{¶10} "A civil action against an officer or employee, as defined in section 109.36 of the Revised Code, that alleges that the officer's or employee's conduct was manifestly outside the scope of his employment or official responsibilities, or that the officer, or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner shall first be filed against the state in the court of claims, which has exclusive, original

jurisdiction to determine initially, whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code and whether the courts of common pleas have jurisdiction over the civil action. ***"

{¶11} R.C. 9.86 states, in part:

{¶12} "*** [n]o officer or employee [of the state] shall be liable in any civil action that arises under the law of this state for damages or injury caused in the performance of his duties, unless the officer's or employee's actions were *manifestly outside the scope of his employment or official responsibilities or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.* ***"(Emphasis added.)

{¶13} Based upon the testimony and evidence, the court finds that all of Miller's actions toward plaintiff were made within the course and scope of her employment. All of plaintiff's claims arise from statements made or actions taken by Miller while she was on the job. The complaints involve instances where Miller allegedly failed to investigate plaintiff's claims of harassment, improperly assigned work to her, or failed to take action against other employees. The court finds that Miller did not act with malicious purpose, in bad faith, or in a wanton or reckless manner. Therefore, the court finds that Mary Miller is entitled to personal immunity pursuant to R.C. 2743.02(F) and 9.86.

{¶14} Turning to the claim for intentional infliction of emotional distress, plaintiff must prove that:

{¶15} "(a) *** the actor either intended to cause emotional distress or knew or should have known that actions taken would result in emotional distress to the plaintiff;

{¶16} "(b) *** the actor's conduct was extreme and outrageous, that it went beyond all possible bounds of decency and that it can be considered as utterly intolerable in a civilized community;

{¶17} "(c) *** the actor's actions were the proximate cause of the plaintiff's psychic injury; and

{¶18} "(d) *** the mental anguish suffered by plaintiff is serious and of a nature that no reasonable person could be expected to endure it." *Pyle v. Pyle* (1983), 11 Ohio App.3d 31.

{¶19} The Supreme Court of Ohio, in *Yeager v. Local Union 20* (1983), 6 Ohio St.3d 369, 374-375, described what constitutes extreme and outrageous conduct:

{¶20} "It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. *** Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!' *** The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities."

{¶21} A claim for intentional infliction of emotional distress may be brought in an employment setting. *Russ v. TRW* (1991), 59 Ohio St.3d 42.

{¶22} Trial testimony established that defendant's medical records department was one of the busiest areas in the institution. The office was open to staff members at all

times and employees typically shared files, desks and office supplies. Miller testified that medical records were circulated throughout the institution and that it was not unusual for paperwork or mail to become misplaced. Miller also testified that she addressed plaintiff's complaints at staff meetings and in conversations with staff members. Both Miller and James Hoffman, defendant's investigator, concluded that most of the incidents that plaintiff perceived to be harassment were likely to have been accidents or isolated incidents which were not intended to cause emotional distress. Although plaintiff developed health problems as a result of stress that she incurred at the workplace, she has not proven by a preponderance of the evidence that Miller's conduct, or the conduct of any of her co-workers, was "extreme and outrageous."

{¶23} Even if the court were to accept as true plaintiff's allegations that Miller failed to act on her complaints, plaintiff did not prove that such conduct was intended to cause her harm. The court concludes that plaintiff's allegations regarding her co-workers' conduct and Miller's job performance are insufficient to support a claim for intentional infliction of emotional distress.

{¶24} Plaintiff's next claim for relief is for negligent supervision. Plaintiff's injuries in this case are emotional in nature. Having determined that the conduct plaintiff perceived to be harassment did not amount to an intentional tort, it stands to reason that defendant may not be held liable for purely emotional injuries based upon a claim of negligent supervision. See *Paugh v. Hanks* (1983), 6 Ohio St.3d 72. Moreover, even if the law would support a claim for negligent supervision under these circumstances, plaintiff failed to prove that either defendant or Miller was negligent in supervising employees. As noted above, Miller

addressed plaintiff's complaints at staff meetings, individual meetings and through office memoranda. Following an internal investigation of her complaint about the altered cartoon, Dr. Harper apologized to plaintiff for the incident. In short, the evidence does not support a finding that defendant breached its duty to supervise Miller or any other employee.

{¶25} Plaintiff next asserts that she was discharged in retaliation for her complaints against defendant's employees. However, plaintiff has the burden of proving a prima facie case of retaliatory discharge before defendant is required to present any evidence that the adverse action against plaintiff was taken for a legitimate, nondiscriminatory reason. See, *e.g.*, *Neal v. Hamilton County* (1993), 87 Ohio App.3d 670, 622 N.E.2d 1130; *Briner v. National City Bank* (Feb. 17, 1994), Cuyahoga App. No. 64610, unreported. Federal law provides the applicable analysis for reviewing claims of retaliation. *Chandler v. Empire Chem., Inc.* (1994), 99 Ohio App.3d 396, 402, 650 N.E.2d 950. In order for plaintiff to support her claim for retaliatory discharge, she must prove that: 1) she engaged in a protected activity under federal or Ohio law; 2) she was the subject of adverse employment action; and, 3) there was a causal link between her protected activity and the adverse action of her employer. *Cooper v. City of North Olmsted* (C.A.6, 1986), 795 F.2d 1265, 1272.

{¶26} The court finds that plaintiff has not satisfied her burden of proving that she engaged in a protected activity under either Ohio or federal law. Furthermore, plaintiff has failed to set forth sufficient facts to establish that defendant took adverse employment action against her. Therefore, plaintiff is unable to prove a prima facie case of retaliatory discharge.

{¶27} Plaintiff also claims that she was constructively discharged. However, because plaintiff voluntarily resigned her position, she must establish that defendant's "actions made working conditions so intolerable that a reasonable person under the circumstances would have felt compelled to resign. *** In applying this test, courts seek to determine whether the cumulative effect of the employer's actions would make a reasonable person believe that termination was imminent." *Mauzy v. Kelly Services, Inc.* (1996), 75 Ohio St.3d 578, 589. Plaintiff's belief that she was forced to resign must be evaluated "without consideration of her undue sensitivities." *Risch v. Friendly's Ice Cream Corp.* (1999), 136 Ohio App.3d 109, quoting *Wilson v. Firestone Tire & Rubber Co.* (C.A.6, 1991), 932 F.2d 510, 515.

{¶28} Plaintiff claims that her decision to resign was based on the cumulative effect of the behaviors of her co-workers, including Miller. While certain incidents may have been subjectively threatening to her, the court finds that the incidents described by plaintiff were not objectively threatening or so egregious or pervasive as to render the working conditions intolerable. Furthermore, the incidents described by plaintiff did not objectively suggest that her termination was imminent or that any adverse employment decision would be made. The court concludes that plaintiff voluntarily resigned her position and that she has therefore failed to establish a claim for constructive discharge.

{¶29} For the foregoing reasons, judgment shall be rendered in favor of defendant.

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J. WARREN BETTIS
Judge

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