[Cite as *Egli v. Congress Lake Club*, 2010-Ohio-2444.]

INTHE COURT OF APPEALS

FIFTH APPELLATE DISTRICT

STARK COUNTY, OHIO

FAITH EGLI,	:	**O P I N I O N**
Plaintiff-Appellant,	:	**CASE NO. 2009CA00216**
- vs -	:	
CONGRESS LAKE CLUB, et al.,	:	
Defendant-Appellee.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2008-CV-03491.

Judgment: Reversed and remanded.

FILED: June 1, 2010

Darrell N. Markijohn, Darrell N. Markijohn, Esq., LLC, 4100 Holiday Street, N.W., Ste. 101, Canton, OH 44718-2532 and *Homer R.* Richards, Homer R. Richards Co., LPA, 4100 Holiday Street, N.W., Ste. 101, Canton, OH 44718-2532 (For Plaintiff-Appellant).

John W. McKenzie and *Thomas Evan Green*, 3480 West Market Street, Suite 300, Akron, OH 44333 (For Plaintiff-Appellee).

COLLEEN MARY O'TOOLE, J., Eleventh Appellate District, sitting by assignment.

{¶1} Faith Egli appeals from the grant of summary judgment by the Stark County Court of Common Pleas to the Congress Lake Golf Club in her sex discrimination case. We reverse and remand this matter for further proceedings.

{¶2} Ms. Egli has a formidable golfing background. A graduate of Michigan State University (where she was named a finalist for Athlete of the Decade for the 1980s), she is the winner of nine professional golf tournaments. She is a member of the

PGA, successfully competing against male professionals in the Northern Ohio PGA. She is a member of the LPGA, once finishing eighth at its national championship.

{¶3} From 1988 through 1990, Ms. Egli was an assistant and head golf professional in Michigan. In 1991, she was hired as first assistant golf professional at Beachmont Country Club in Cleveland, Ohio. In March 1996, she became an assistant to Don Miller, the head golf professional at Congress Lake. In 2000, Mr. Miller was given the title "director of golf," and Ms. Egli that of "head golf professional." When Mr. Miller retired in 2002, Congress Lake conducted a nationwide search for his replacement, finally choosing Ms. Egli to exercise full power as head golf professional.

{¶4} Congress Lake Country Club is a corporation, governed by a board of eight voting directors. There is also a president and secretary. The president only votes to break ties between the directors. The secretary does not vote. The board generally meets once a month. The board at the time Ms. Egli resigned from Congress Lake in October 2007 consisted of President Tom Lombardi, Vice President Dr. Dominic Bagnoli, M.D., Treasurer John Finnucan, Secretary Craig Pelini, Frank Provo, David Scaglione, Rob Stradley, Tom Tschantz, Tom Wichert, and Scott Smart.

{¶5} Congress Lake has a general manager who reports to the board, and directs the club's operations. For most of the period during which Ms. Egli served as head golf professional, the general manager was Joe DeWitt. Ms. Egli reported directly to him.

{¶6} Congress Lake also has various committees overseeing particular aspects of its operation. These included the golf committee, which oversaw the club's various golf programs. The chairman of this committee from 2005 through 2007 was club

member Bob Hendrickson. As head golf professional, Ms. Egli sat in on meetings of the golf committee, which met about once a month during the golfing season. She worked closely with Mr. Hendrickson, who supported her strongly.

{¶7} According to Ms. Egli, at the time she assumed responsibilities as head golf professional in 2002, the then-club president, Bill Allen, along with the general manager, Mr. DeWitt, and the head of the personnel committee, met with her, and told her that she could only hire male assistants, due to sex bias against her by certain club members.

{¶8} Frederick Crewes, a Congress Lake member, deposed that there was a group of members who openly opposed Ms. Egli's promotion on the basis of her sex, including Dr. Bagnioli, and Mr. Tschantz – both members of the board of directors who voted to request her resignation in 2007. Mr. Crewes asserted that derogatory comments regarding Ms. Egli were consistently made by these club members.

{¶9} Dr. Bagnioli deposed that, as a member of the board of directors in 2005, he was approached by various club members with complaints concerning Ms. Egli's appearance, management of club golf tournaments, accessibility to members, management of subordinates and new member orientation.[1] Dr. Bagnioli obtained letters from dissatisfied club members, including one from Mr. Pelini, later club secretary at the time of Ms. Egli's resignation, and one signed collectively by various members, including Mr. Tschantz. The board then instructed the general manager, Mr. DeWitt, to discuss these concerns with Ms. Egli. According to both Ms. Egli and Mr. Hendrickson, head of the golf committee, Mr. Dewitt felt the various complaints lacked substance; Mr.

1. Regarding her appearance, Ms. Egli was asked, and agreed, to wear long pants, rather than the shorts or skirts common in the LPGA.

Hendrickson attributed the complaints to sex bias. He further asserted that Mr. DeWitt indicated Ms. Egli would probably lose her position due to her sex.

{¶10} Various members of the board deposed asserted that complaints regarding Ms. Egli's handling of the various golf programs at Congress Lake, including tournaments and the junior golf program, continued to be lodged; and, that she continued to have difficulty with subordinates and relations with certain members. According to Ms. Egli, her direct supervisor, Mr. DeWitt, continued to support and praise her efforts until July 2007, when he left his position as general manager.

{¶11} September 18, 2007, Dr. Bagnoli moved the board of directors to replace Ms. Egli as head golf professional. The minutes of the meeting indicate that Mr. Scaglione seconded the motion, which failed five votes to four. Dr. Baglione deposed that no formal vote was taken, only a straw vote. Several board members deposed they wished to obtain legal counsel. Evidently, another meeting was held at which counsel was present.

{¶12} October 2, 2007, the board met again. A vote was taken to request Ms. Egli's resignation. Of the seven voting board members present, five were in favor of the motion; one, Mr. Provo, voted against it; and one, Mr. Smart, abstained. Mr. Smart later attempted to alter his vote to a "no." Mr. Finnucan, who did not attend the meeting, was opposed to the motion.

{¶13} October 4, 2007, Mr. Lombardi, the club's president, and Mr. Pelini, the secretary, met with Ms. Egli to inform her that the board requested her resignation. The club offered to pay her salary through December 31, 2007, and to continue to sell her merchandise at the pro shop through the same date, and to purchase the remaining

inventory thereafter. Certain emails were exchanged between Ms. Egli and Mr. Lombardi, in which it appears he agreed to have the board consider her request to get paid through the end of February 2008, so long as the board received her resignation previously. Ms. Egli resigned in emails addressed to Mr. Lombardi and the board on or about October 5, 2007.

{¶14} Ms. Egli thereafter attempted to rescind her resignation through her attorney, which attempt Congress Lake refused. On or about October 20, 2007, she was ordered off the club's premises; on or about November 20, 2007, she was given three days' notice to remove her inventory from the club's pro shop. She was paid through the end of the year.

{¶15} Considerable uproar ensued at Congress Lake. Some ninety-five members signed a petition critical of the board's treatment of Ms. Egli. Dissatisfied stockholders in the club forced a special meeting November 7, 2007, where the board, however, refused to answer any questions regarding Ms. Egli's employment.

{¶16} A man, Bill Welch, was eventually hired to replace Ms. Egli.

{¶17} On or about August 11, 2008, Ms. Egli filed her complaint with the trial court, alleging violations of R.C. 4112.02(A), prohibiting employment discrimination based on sex, and R.C. 4112.99. Congress Lake answered September 10, 2008. Motion practice and discovery ensued. Congress Lake filed for summary judgment, which Ms. Egli opposed. The trial judge recused himself due to a possible conflict of interest; the Supreme Court of Ohio appointed a visiting judge to hear the matter. August 18, 2009, the trial court granted Congress Lake's motion for summary judgment.

{¶18} August 21, 2009, Ms. Egli noticed this appeal, assigning a single error:

{¶19} "The Trial Court erred in granting Appellee's Motion for Summary Judgment."

{¶20} "'Pursuant to Civ.R. 56(C), summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.' *Holik v. Richards*, 11th Dist. No. 2005-A-0006, 2006-Ohio-2644, ¶12, citing *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293, ***. 'In addition, it must appear from the evidence and stipulations that reasonable minds can come to only one conclusion, which is adverse to the nonmoving party.' Id. citing Civ.R. 56(C). Further, the standard in which we review the granting of a motion for summary judgment is de novo. Id. citing *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105, ***.

{¶21} "Accordingly, '(s)ummary judgment may not be granted until the moving party sufficiently demonstrates the absence of a genuine issue of material fact. The moving party bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim.' *Brunstetter v. Keating*, 11th Dist. No. 2002-T-0057, 2003-Ohio-3270, ¶12, citing *Dresher* at 292. 'Once the moving party meets the initial burden, the nonmoving party must then set forth specific facts demonstrating that a genuine issue of material fact does exist that must be preserved for trial, and if the nonmoving party does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party.' Id., citing *Dresher* at 293.

{¶22} "***

{¶23} "***

{¶24} "Since summary judgment denies the party his or her 'day in court' it is not to be viewed lightly as docket control or as a 'little trial.' The jurisprudence of summary judgment standards has placed burdens on both the moving and the nonmoving party. In *Dresher v. Burt*, the Supreme Court of Ohio held that the moving party seeking summary judgment bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record before the trial court that demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim. The evidence must be in the record or the motion cannot succeed. The moving party cannot discharge its initial burden under Civ.R. 56 simply by making a conclusory assertion that the nonmoving party has no evidence to prove its case but must be able to specifically point to some evidence of the type listed in Civ.R. 56(C) that affirmatively demonstrates that the nonmoving party has no evidence to support the nonmoving party's claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. If the moving party has satisfied its initial burden, the nonmoving party has a reciprocal burden outlined in the last sentence of Civ.R. 56(E) to set forth specific facts showing there is a genuine issue for trial. If the nonmoving party fails to do so, summary judgment, if appropriate shall be entered against the nonmoving party based on the principles that have been firmly established in Ohio for quite some time in *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112, ***.

{¶25} "The court in *Dresher* went on to say that paragraph three of the syllabus in *Wing v. Anchor Media, Ltd. of Texas* (1991), 59 Ohio St.3d 108, ***, is too broad and fails to account for the burden Civ.R. 56 places upon a *moving* party. The court,

therefore, limited paragraph three of the syllabus in *Wing* to bring it into conformity with *Mitseff*. (Emphasis added.)

{¶26} "The Supreme Court in *Dresher* went on to hold that when *neither* the moving nor nonmoving party provides evidentiary materials demonstrating that there are no material facts in dispute, the moving party is not entitled to a judgment as a matter of law as the moving party bears the initial responsibility of informing the trial court of the basis for the motion, 'and identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim.' Id. at 276. (Emphasis added.)" *Welch v. Ziccarelli*, 11th Dist. No. 2006-L-229, 2007-Ohio-4374, at ¶36-37, 40-42. (Parallel citations omitted.)

{¶27} Under her assignment of error, Ms. Egli advances two issues:

{¶28} "[1.] Whether Appellant presented direct evidence of gender discrimination sufficient to preclude summary judgment as a matter of law.

{¶29} "[2.] Whether Appellant presented indirect evidence of gender discrimination sufficient to create genuine questions of material fact over whether Appellee's reasons for discharge were pretextual."

{¶30} R.C. 4112.02(A) prohibits sex discrimination in all matters related to employment. *Birch v. Cuyahoga Cty. Probate Court*, 173 Ohio App.3d 696, 2007-Ohio-6189, at ¶20. "Ohio courts apply federal case law interpreting Title VII of the Civil Rights Act of 1964 to claims arising under R.C. Chapter 4112 to the extent that the terms of the statutes are consistent." Id., citing *Genaro v. Cent Transport, Inc.* (1999), 84 Ohio St.3d 293, 298, citing *Plumbers & Steamfitters Joint Apprenticeship Commt. v. Ohio Civil Rights Comm.* (1981), 66 Ohio St.2d 192, 196.

{¶31} Sex discrimination in employment may be proved either by "direct" evidence, or by "indirect" evidence and application of the burden-shifting test set forth in *McDonnell Douglas Corp. v. Green* (1973), 411 U.S. 792. *Klaus v. Kilb, Rogal & Hamilton Co. of Ohio* (S.D.Ohio 2006), 437 F.Supp.2d 706, 725-726; *Birch*, supra, at ¶21-23.

{¶32} "In employment discrimination claims, 'direct evidence is that evidence which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the employer's actions.' *Laderach v. U-Haul* [*of Northwestern Ohio* (C.A.6, 2000)], 207 F.3d [825,] *** 829. Direct evidence proves the existence of a fact without any inferences or presumptions. Id. To establish 'direct evidence' of discrimination through a supervisor's comments made in the workplace, the remarks must be 'clear, pertinent, and directly related to decision-making personnel or processes.' *Dobbs-Weinstein v. Vanderbilt University*, 1 F.Supp.2d 783, 798 (M.D. Tenn. 1998), aff'd, 185 F.3d 542 (6th Cir. 1999) (quoting *Wilson v. Wells Aluminum Corp.*, 1997 U.S. App. LEXIS 2331, No. 95-2003, *** (6th Cir. Feb. 7, 1997) (unpublished))." *Klaus*, supra, at 725.

{¶33} Under her first issue, Ms. Egli contends she introduced sufficient direct evidence of discrimination to survive summary judgment, in the form of evidence that Congress Lake board members Dr. Bagnioli, Mr. Tschantz, and Mr. Pelini stated they did not want a woman as head golf professional. The trial court found these alleged statements insufficient to create a genuine issue of material fact under a direct evidence analysis, since a "chain of inferences" was required "to reach the possible conclusion that [Ms. Egli] was terminated from her employment because of sex." We disagree.

{¶34} The Congress Lake board of directors holds the sole power to terminate. When a multi-member board makes employment decisions, the test for whether the decision was discriminatory is whether "improperly motivated members supply the deciding margin [in the vote]," *Scarbrough v. Morgan Cty. Bd. of Educ.* (C.A.6, 2006), 470 F.3d 250, 262; or, "whether the votes against [the employee] were 'tainted (by) whatever retaliatory motives (other board members) may have had.'" *Kendall v. Urban League of Flint* (E.D.Mich. 2009), 612 F.Supp.2d 871, 881, quoting *Jeffries v. Harleston* (C.A.2, 1995), 52 F.3d 9, 14.

{¶35} In this case, only two of the board members cited by Ms. Egli as being improperly motivated – Dr. Bagnioli, and Mr. Tschantz – possessed votes (and voted to request her resignation). Mr. Pelini, as secretary, did not. The vote against her was five to one, with an abstention by Mr. Smart, or five to two, if his later attempt to change his vote to favor Ms. Egli is considered valid. Thus, to conclude that any improper motivation on the parts of the board members cited by Ms. Egli provided the decisive margin against her, or tainted the votes of the other board members, requires evidence that these three board members exercised such influence over their fellows. Ms. Egli points to the deposition testimony of Dr. Bagnioli, as well as an email he sent to club members when he learned he was to be voted off of the board, in which he claimed he did, in fact, exercise such influence. Combining this with the evidence she presented from Mr. Crewes and Mr. Hendrickson regarding sex bias against her, leads to the conclusion that Ms. Egli presented direct evidence that unlawful bias played at least some part in her termination. Cf. *Klaus*, supra, at 725.

{¶36} The first issue has merit.

{¶37} Under her second issue, Ms. Egli contends she presented sufficient evidence to withstand summary judgment regarding whether the reasons advanced by the board for requesting her resignation were pretextual. This issue relates to whether she made a prima facie case using an indirect evidence analysis of her employment discrimination claim. The trial court concluded she did so, but that she failed to show the complaints regarding her performance as head golf professional were mere pretext for requesting her resignation.

{¶38} Indirect evidence employment discrimination cases are analyzed under a burden-shifting test established by the United States Supreme Court in *McDonnell Douglas*, supra.

{¶39} "First, the plaintiff must establish a prima facie case of discrimination. See *McDonald v. Union Camp Corp.*, 898 F.2d 1155, 1159 (6th Cir. 1990). To do so, the plantiff must show that: (1) she is a member of a protected class; (2) she was discharged from her employment; (3) she was qualified for the position; and (4) she was replaced by a person outside of the class. *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 582 (6th Cir. 1992). *** Once the plaintiff establishes a *prima facie* case, an inference of discrimination arises. The burden of proof then shifts to the employer to articulate a legitimate, nondiscriminatory reason for the plaintiff's discharge. Id. [at 583.] Once established, the burden shifts back to the plaintiff to prove that the employer's articulated nondiscriminatory reason for its action was merely pretext for unlawful discrimination. *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 252-253, *** (1981). To that end, the plaintiff must prove 'that the (employer's) asserted reasons have no basis in fact, that the reasons did not in fact motivate the discharge, or, if they

were factors in the (employer's) decision, that they were jointly insufficient to motivate the discharge.' *Burns v. City of Columbus*, 91 F.3d 836, 844 (6th Cir. 1996) (citations omitted)." *Klaus*, supra, at 725. (Emphasis sic.)

{¶40} .

{¶41} Congress Lake argues that Ms. Egli cannot meet the second prong of the *McDonnell Douglas* test: i.e., that she was discharged. Congress Lake notes that she resigned. The Sixth Circuit has spoken to the issue of when a resignation may be considered involuntary, or a constructive discharge:

{¶42} "In general, employee resignations are presumed to be voluntary. *Leheny* [*v. City of Pittsburgh*], 183 F.3d [220,] *** 227 [3d Cir. 1999)]. An employee may rebut this presumption by producing evidence indicating that the resignation was involuntarily procured. Id. Whether an employee's resignation was involuntary depends upon whether an objectively reasonable person would, under the totality of the circumstances, feel compelled to resign if he were in the employee's position. *Yearous* [*v. Niobrara County Mem. Hosp.*], 128 F.3d [1351,] ***1356. Relevant to this inquiry are '(1) whether the employee was given an alternative to resignation, (2) whether the employee understood the nature of the choice (she) was given, (3) whether the employee was given a reasonable time in which to choose, and (4) whether the employee could select the effective date of resignation.' *Lenz v. Dewey*, 64 F.3d 547, 552 (10th Cir. 1995). The mere fact that an employee is forced to choose between resignation and termination does not alone establish that a subsequent choice to resign is involuntary, provided that the employer had good cause to believe there were

grounds for termination." *Rhoads v. Bd. of Edn. Of Mad River Local School Dist.* (C.A.6, July 8, 2004), 103 Fed.Appx. 888, 895.

{¶43} However, when conducting an analysis regarding whether an employee's resignation was involuntary, amounting to constructive discharge, we are bound by the cautionary statement made by the Supreme Court of Ohio in *Mauzy v. Kelly Services, Inc.* (1996), 75 Ohio St.3d 578, 589: "***courts seek to determine whether the cumulative effect of the employer's actions would make a reasonable person believe that termination was imminent. They recognize that there is no sound reason to compel an employee to struggle with the inevitable simply to attain the 'discharge' label."

{¶44} In this case, the club's president, Mr. Lombardi, deposed that, if Ms. Egli had not resigned once he and Mr. Pelini requested her to do so, then he had authority to terminate her, and would have done so. He further deposed that she understood this. Consequently, we must conclude that Ms. Egli presented sufficient evidence of constructive discharge for summary judgment purposes. She was not required "to struggle with the inevitable simply to attain the 'discharge' label." *Mauzy* at 589. And thus, like the trial court, we conclude that Ms. Egli set forth a prima facie case of employment discrimination via indirect evidence.

{¶45} Of course, Congress Lake set forth legitimate, nondiscriminatory reasons for its actions: that Ms. Egli's handling of the club's golf programs, and of subordinates, was sub-par. Under the *McDonnell Douglas* test, the burden shifted back to Ms. Egli to establish that these reasons were pretextual. The trial court concluded that she presented no such evidence. We respectfully disagree.

{¶46} Ms. Egli presented the testimony of Mr. Crewes, that various of the board members had stated they wished to get rid of her due to her sex. She presented the testimony of Mr. Hendrickson that the allegations regarding her unfitness were pretextual; through Mr. Hendrickson, she presented evidence that Mr. DeWitt, the longtime general manager of Congress Lake, felt the same. Included in the record is the affidavit of Donald Burke, one of her assistant pros, in which he directly disputes the contentions that she mishandled the club's golf programs or her subordinates.[2] Congress Lake argues that evidence presented by those uninvolved in the process of deciding to terminate an employee may not be used to establish "pretext" when conducting the *McDonnell Douglas* burden shifting test, and thus, that only comments made by Congress Lake board members are significant herein. Formerly, this may have been a good statement of the law. Cf. *Klaus*, supra, at 725.

{¶47} However, the Sixth Circuit has recognized that comments by nondecisionmakers may be used to establish pretext under *McDonnell Douglas*, by showing a discriminatory atmosphere in the place of employment. *Risch v. Royal Oak Police Dept.* (C.A.6, 2009), 581 F.3d 383, 393-394. "Furthermore, 'evidence of a (***) discriminatory atmosphere is not rendered irrelevant by its failure to coincide precisely with the particular actors or timeframe involved in the specific events that generated a claim of discriminatory treatment.' *** (internal quotation marks omitted)." Id. at 393, quoting *Ercegovich v. Goodyear Tire & Rubber Co.* (C.A.6, 1998), 154 F.3d 344, 356.

{¶48} "In evaluating such statements, 'courts must carefully evaluate factors affecting the statement's probative value, such as the declarant's position in the

2. Also included in the record is the affidavit of another assistant pro, Michael Dessecker, making the same assertions as Mr. Burke. We respectfully note the affidavit is unexecuted. Consequently, we have

(employer's) hierarchy, the purpose and content of the statement, and the temporal connection between the statement and the challenged employment action, as well as whether the statement buttresses other evidence of pretext.' *** (internal quotation marks and citation omitted)." *Risch* at 393, quoting *Ercegovich* at 357.

{¶49} Further, the United States Court of Appeals for the Seventh Circuit, in considering the termination of a female athletic coach under the *McDonnell Douglas* test, specifically considered the testimony of student athletes and fellow coaches in finding pretextual the alleged nondiscriminatory reasons for termination presented by appellee athletic department, university, and university trustees. *Peirick v. Indiana Univ.-Purdue Univ. Indianapolis Athletics Dept.* (C.A.7, 2007), 510 F.3d 681, 691-694. Significantly, the Seventh Circuit commented: "Although the opinions of nondecisionmakers as to [appellant's] performance cannot carry the day, ***, their responses to the termination decision provide some indication of the type of conduct historically considered termination worthy." Id. at 693.

{¶50} Application of the reasoning in *Risch* and *Peirick* leads to the conclusion that Ms. Egli presented sufficient evidence that the reasons for termination advanced by Congress Lake were pretextual under *McDonnell Douglas*. First, there is the testimony of club member Frederick Crewes that Dr. Bagnioli and Mr. Tschantz – two of the board members voting to demand Ms. Egli's resignation – were consistently hostile to her employment of the basis of sex. This testimony is different in kind than that merely showing an atmosphere of discrimination, as in *Risch*. Rather, as noted previously, it tends toward direct evidence that these two board members were, at least in part, improperly motivated.

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not considered it.

{¶51} The testimony of Mr. Hendrickson, and Mr. Burke, though, is the type of evidence found by the *Risch* and *Peirick* courts to be sufficient to establish pretext in summary judgment proceedings under the *McDonnell Douglas* test. Mr. Hendrickson was not a decisionmaker. However, as head of the club's golf committee, he worked closely with Ms. Egli, and the board, on many of the issues the Congress Lake cites as supporting her termination. He testified that the reasons advanced by the board were untrue, and were pretextual. He reported that the general manager, Mr. DeWitt, believed the same. Mr. Burke, Ms. Egli's assistant, testified via affidavit that the criticisms of her handling of the club's golf programs and her subordinates, were untrue. Given the position these men occupied at Congress Lake, their testimony buttresses the other evidence previously cited that Ms. Egli was terminated, not for the reasons advanced by the club, but due to her sex.

{¶52} The second issue has merit.

{¶53} The judgment of the Stark County Court of Common Pleas is reversed, and this matter is remanded for further proceedings consistent with this opinion. It is the further order of this court that appellees are taxed costs herein assessed.

{¶54} The court finds there were reasonable grounds for this appeal.

DIANE V. GRENDELL, J.,
Eleventh Appellate District,
sitting by assignment,

TIMOTHY P. CANNON, J.,
Eleventh Appellate District,
sitting by assignment,

concur.

STATE OF OHIO	**)**	**IN THE COURT OF APPEALS**
	)SS.	
COUNTY OF STARK	**)**	**FIFTH DISTRICT**

FAITH EGLI,

Plaintiff-Appellant,

- vs -

CONGRESS LAKE CLUB, et al.,

Defendant-Appellee.

JUDGMENT ENTRY

CASE NO. 2009CA00216

For the reasons stated in the opinion of this court, it is the judgment and order of this court that the judgment of the Stark County Court of Common Pleas is reversed, and this matter is remanded for further proceedings consistent with this opinion.

Is it the further order of this court that appellees are taxed costs herein assessed. The court finds there were reasonable grounds for this appeal.

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JUDGE COLLEEN MARY O'TOOLE
ELEVENTH APPELLATE DISTRICT
sitting by assignment.

DIANE V. GRENDELL, J.,
ELEVENTH APPELLATE DISTRICT
sitting by assignment.

TIMOTHY P. CANNON, J.,
ELEVENTH APPELLATE DISTRICT
sitting by assignment.