

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Bonita Walker

Court of Appeals No. L-11-1201

Appellant

Trial Court No. CI0200907304

v.

Economic Opportunity Planning
Association of Greater Toledo, et al.

DECISION AND JUDGMENT

Appellees

Decided: July 6, 2012

* * * * *

Patricia Horner, for appellant.

Laurie J. Avery, for appellees.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a July 13, 2011 judgment of the Lucas County Court of Common Pleas which granted summary judgment to appellees. The trial court granted summary judgment against appellant on her gender-based hostile work environment claim. For the reasons set forth below this court affirms the judgment of the trial court.

{¶ 2} Appellant sets forth the following assignments of error:

1. The Trial Court Improperly Applied Civ. R. 56 Requirements to the Non-Moving Party.

2. The Trial Court erred in Granting Defendant's Summary Judgment Motion on Plaintiff's Sexual Harassment Claim.

{¶ 3} On July 18, 2008, appellant was allegedly wrongfully terminated from her employment with the Economic Opportunity Planning Association of Greater Toledo ("EOPA"). Appellant began her employment with EOPA in October 1998 as an intake/outreach worker in the Heat Energy Assistance Program ("HEAP"). Appellant was a seasonal employee. Appellant would typically work between the months of October and March. Throughout appellant's employment with EOPA, she was supervised by appellee Hollman.

{¶ 4} Appellant's daughter was likewise a seasonal employee with EOPA's HEAP Department. Hollman also supervised appellant's daughter. While appellant's daughter perceived Hollman as demanding, she testified that she never heard him make any statements about age, race, or gender. Another HEAP employee similarly testified that although Hollman could be temperamental and difficult to work with, he treated all employees in the same fashion, including HEAP's only male employee. Hollman did not treat female employees differently than male employees.

{¶ 5} When appellant first obtained employment with EOPA she signed an agreement to abide by EOPA's policies. Of relevance to this case, one policy established

that, “any employee found to be collecting unemployment compensation while employed will be terminated.” A copy of the policy was attached to appellees’ motion for summary judgment.

{¶ 6} On July 18, 2008, appellant was terminated by the EOPA’s human resources director for collecting unemployment benefits while being employed with EOPA in direct violation of EOPA policy. This constitutes cause for termination pursuant to the express language of the EOPA policy. Nevertheless, appellant filed a claim of discrimination with the Ohio Civil Rights Commission. After an investigation on appellant’s behalf, the commission found that no probable cause existed that appellees engaged in any unlawful discrimination pursuant to R.C. Chapter 4112. Appellant’s claims were dismissed.

{¶ 7} On October 9, 2009, appellant filed a complaint in the Lucas County Court of Common Pleas. Appellant’s initial claims included allegations of age discrimination, hostile work environment, and retaliation in violation of R.C. 4113.51, Ohio’s whistleblower protection statute. Appellant amended her complaint on two different occasions. Appellant’s third amended complaint asserted claims against EOPA, her EOPA supervisor, EOPA’s human resource manager, and EOPA’s board president.

{¶ 8} Appellees filed a motion for summary judgment on February 28, 2011, appellant filed her memorandum contra on April 28, 2011. Prior to the court’s ruling on the motion for summary judgment appellant voluntarily dismissed her whistleblower claim and age discrimination claim. Appellant’s sole remaining claim was a claim of a gender-based hostile work environment. On July 13, 2011, the trial court granted

appellees' motion for summary judgment. Appellant timely filed her notice of appeal on August 11, 2011.

{¶ 9} The standard of review for this appeal is de novo, applying the same standard used by the trial court. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). The standard for summary judgment is set forth in Civ.R. 56(C). Granting summary judgment is appropriate where there is no genuine issue of material fact, the moving party is entitled to judgment as a matter of law and, when construing the evidence in favor of the nonmoving party, reasonable minds cannot differ as to the decision for the movant. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64.66, 375 N.E.2d 46 (1978).

{¶ 10} Appellant argues that the trial court erred in applying Civ.R. 56(C). Appellant argues that the trial court did not view all facts and evidence in a light most favorable to appellant, the non-moving party. Appellant argues that appellees sexually harassed her during her employment with EOPA. We have carefully reviewed the record of evidence and find that this is not the case.

{¶ 11} The two assignments of error are rooted in a common legal premise. As such, we will address these assignments of error simultaneously. The Ohio Supreme Court held that:

In order to establish a claim of hostile-environment sexual harassment, the plaintiff must show (1) that the harassment was unwelcome, (2) that the harassment was based on sex, (3) that the harassing

conduct was sufficiently severe or pervasive to affect the “terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment,” and (4) that either (a) the harassment was committed by a supervisor, or (b) the employer, through its agents or supervisory personnel, knew or should have known of the harassment and failed to take immediate and appropriate corrective action. *Hampel v. Food Ingredients Specialties, Inc.*, 89 Ohio St. 3d 169, 170, 2000-Ohio-128, 729 N.E.2d 726.

{¶ 12} The issue is “whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed.” *Godsey-Marshall v. Phillipsburg*, 2d Dist. No. 23687, 2010-Ohio-2266 (2010). The harassment must involve differential treatment of male and female employees. *Id.* To establish this element the appellant must present evidence of unequal treatment that would not have occurred but for the appellant’s sex. *Hampel v. Food Ingredients Specialties, Inc.*, 89 Ohio St. 3d 169, 2000-Ohio-128, 179, 729 N.E.2d 726, 734. This treatment must have been directed at the appellant because of her sex. *Id.*

{¶ 13} Notably in this case, we find no evidence which indicates appellee treated appellant differently than any other employees, regardless of gender. Specifically, a male employee of EOPA, was treated in the same manner as appellant by appellees. Appellant’s coworkers testified that they never witnessed appellees make any discriminating comment or conduct based on gender. Appellant’s own daughter similarly

testified. Coworkers testified that all employees, male employees included, were all treated in the same manner. There is no evidence that appellees treated appellant any different than any other employee based on gender.

{¶ 14} The record reflects that appellant was legitimately terminated for violating EOPA policy prohibiting working while also collecting unemployment. Appellant has failed to set forth any evidence demonstrating that she suffered disparate treatment because of her gender. Reasonable minds can only conclude that the appellant did not suffer any disparate treatment based on her gender. We find appellant's assignments of error not well-taken.

{¶ 15} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
