STATE OF MICHIGAN

COURT OF APPEALS

MARJANEH ROUHANI, M.D., and BEHAVIORAL HEALTH CARE, P.C.,	UNPUBLISHED July 15, 2014
Plaintiffs-Appellants,	
v	No. 315121 Kalamazoo Circuit Court
BRONSON BATTLE CREEK HOSPITAL, and THOMAS F. IGNACZAK, M.D.	LC No. 2012-0066-CD
Defendants-Appellees.	

Before: MURPHY, C.J., and SHAPIRO and RIORDAN, JJ.

PER CURIAM.

Plaintiffs, Marjaneh Rouhani, M.D. (Rouhani) and her medical practice Behavioral Health Care P.C. (Behavioral Health Care), appeal as of right the trial court order granting summary disposition to defendants, Bronson Battle Creek Hospital (the hospital) and Thomas F. Ignaczak, M.D. (Ignaczak), in this sexual harassment case. We affirm.

I. FACTUAL BACKGROUND

Plaintiff Rouhani is the sole owner of her medical practice, Behavioral Health Care. She is not an employee of the hospital, but participated in the "on call" schedule through which she was one of many doctors called when patients arrived at the hospital. Another participant was her ex-husband, Dr. Jahandar Saifollahi, who would bill Behavioral Health Care for his services without drawing a salary.[1] Defendant Ignaczak was the Vice President of Medical Affairs at the hospital, and reported to Denise Brooks-Williams.

[1] In March of 2011, Saifollahi entered into a contractual agreement with a hospital in Grand Rapids effective February 7, 2011, and Behavioral Health Care did not receive revenue from Saifollahi's work there.

In the summer of 2011, three substantiated recipient rights letters were issued to Rouhani, and several more were sent to other doctors including Saifollahi.[2] The letters were signed by Ignaczak, and Rouhani objected to the issuance of all three. Another issue developed regarding a patient that Rouhani declined to admit, but after another doctor examined the patient and found that admission was appropriate, peer review of Rouhani's actions was requested.

On August 31, 2011, Ignaczak met with Rouhani in her office, ostensibly to discuss the recipient rights letters, the peer review case, and the fact that the hospital was going to hire an employed psychiatrist. At this meeting, Rouhani claimed that Ignaczak made inappropriate remarks about her appearance, stated that she reminded him of a Persian cat soft and white, repeatedly asked her to go to dinner and drink gin, and alluded to escalating the discipline. He also stretched and opened his legs while saying that her office was relaxing, and "fondled" her palm with his middle finger in the context of the end of the meeting handshake. Ignaczak denied any inappropriate behavior.

On September 6, 2011, Rouhani reported Ignaczak's behavior to Brooks-Williams, and the next day met with Brooks-Williams and Heidi Saxon, the Director of Human Resources. On September 8th, Brooks-Williams and Saxon met with Ignaczak to inform him of the complaint, and to counsel him regarding behavior that could be perceived as inappropriate. Ignaczak sent a follow-up email the next day detailing his plan of action to avoid any such situations.

Rouhani filed a complaint with the Equal Employment Opportunity Commission on September 12th. Despite several additional conversations with Brooks-Williams and Saxon, Rouhani was not satisfied. Rouhani claimed that her referrals had dramatically decreased, and that while she was listed on the call schedule an equal number of times, she was not receiving calls. In an October 31st letter from Saxon, Rouhani was informed that because of Ignaczak's denials and the lack of witnesses, they were unable to determine whether any inappropriate conduct occurred. However, they counseled Ignaczak on appropriate conduct and assured Rouhani that she would never have to meet alone with Ignaczak.

Plaintiffs initiated this instant litigation on February 2, 2012, and eventually filed an amended complaint with the following counts: (I) violation of the Elliott-Larsen Civil Rights Act (CRA), MCL 37.2101, *et seq.*, through sexual harassment; (II) violation of the CRA based on retaliation; (III) tortious interference with a contract and contractual relations; (IV) tortious interference with advantageous business relationship or expectancy; and (V) civil conspiracy.

Defendants moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiffs had not established a genuine issue of material fact regarding their claims. The trial court ultimately agreed. Plaintiffs now appeal on several grounds.

II. SUMMARY DISPOSITION

[2] A recipient rights letter is generated when a patient or staff raises a concern regarding the quality of care a patient received at the hospital or with a specific doctor.

A. STANDARD OF REVIEW

A grant or denial of a motion for summary disposition under MCR 2.116(C)(10) is reviewed *de novo*. *MEEMIC Ins Co v DTE Energy Co*, 292 Mich App 278, 280; 807 NW2d 407 (2011). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). In reviewing a motion for summary disposition under MCR 2.116(C)(10), a court considers "affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion." *Greene v A P Prods, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006) (quotation marks and citations omitted).

B. *QUID PRO QUO* SEXUAL HARASSMENT

"Through the Civil Rights Act, Michigan law recognizes that, in employment, freedom from discrimination because of sex is a civil right. Employers are prohibited from violating this right, and discrimination because of sex includes sexual harassment[.]" *Chambers v Trettco, Inc*, 463 Mich 297, 309; 614 NW2d 910 (2000) (citations omitted). The CRA defines *quid pro quo* sexual harassment as follows:

> Discrimination because of sex includes sexual harassment. Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature under the following conditions:
>
> > (*i*) Submission to the conduct or communication is made a term or condition either explicitly or implicitly to obtain employment, public accommodations or public services, education, or housing.
> >
> > (*ii*) Submission to or rejection of the conduct or communication by an individual is used as a factor in decisions affecting the individual's employment, public accommodations or public services, education, or housing. [MCL 37.2103(i); *Chambers*, 463 Mich at 310.]

In order to establish a claim of *quid pro quo* sexual harassment, an employee must establish by a preponderance of the evidence: "(1) that she was subject to any of the types of unwelcome sexual conduct or communication described in the statute, and (2) that her employer or the employer's agent used her submission to or rejection of the proscribed conduct as a factor in a decision affecting her employment." *Chambers*, 463 Mich at 310 (quotation marks and citation omitted).

As the Michigan Supreme Court has explained, the word "sexual" can be understood as "of or pertaining to sex" or "occurring between or involving the sexes: sexual relations" and the term "nature" can be understood as a "native or inherent characteristic." *Corley v Detroit Bd of Ed*, 470 Mich 274, 279; 681 NW2d 342 (2004) (emphasis, quotation marks, and citations omitted). Thus, "actionable sexual harassment requires conduct or communication that *inherently* pertains to sex." *Id.* (Emphasis in original). "Verbal or physical conduct or communication that is not sexual in nature is not sexual harassment." *Id.* at 280.

Even assuming, *arguendo*, that plaintiffs produced evidence that Rouhani was subject to unwelcome sexual harassment, they have failed to demonstrate a genuine issue of material fact regarding the second requirement, namely, that her "rejection of the proscribed conduct" was used "as a factor in a decision affecting her employment." *Chambers*, 463 Mich at 310. On appeal, plaintiffs identify as the adverse employment action a "severe decline in patient referrals."[3] However, the hospital did not keep track of patient "referrals" and only recorded admissions and discharges. Rouhani conceded at the deposition that her admissions and discharges from February 2011 have actually *increased*.

Moreover, even assuming that there was an overall decrease in Behavioral Health Care's patient referrals or admissions and discharges, "[t]o show quid pro quo harassment, it is not enough to demonstrate harassment and a tangible employment action—there must be a causal relationship between the two." *Chambers*, 463 Mich at 322 n 8. Plaintiffs have produced no evidence of a causal connection. Although Rouhani believed Ignaczak was behind a perceived decrease in referrals, she conceded that no one informed her of this, nor did she have any documentary evidence to support that contention. When asked whether the decrease in her revenue from February 2011 was a result of intentional acts of retaliation, Rouhani repeatedly replied "I don't know."

Even more significant is that the alleged decrease in "referrals" began in February 2011, well before the alleged sexual harassment event in August 2011. The graphs plaintiffs attached show no identifiable trend or difference in "referrals" beginning at the August 2011 meeting. Rouhani herself identified the change as starting in February 2011, and merely opines that it was somehow part of a grand sexual harassment scheme. Yet, opinions and conclusionary denials do not satisfy MCR 2.116(C)(10). *Palazzola v Karmazin Prod Corp*, 223 Mich App 141, 155; 565 NW2d 868 (1997); see also *Karbel v Comerica Bank*, 247 Mich App 90, 97; 635 NW2d 69 (2001) (quotation marks and citation omitted) ("[P]arties opposing a motion for summary disposition must present more than conjecture and speculation to meet their burden of providing evidentiary proof establishing a genuine issue of material fact. . . .").

Plaintiffs were required to raise a genuine issue of material fact that "rejection of the proscribed conduct" was used "as a factor in a decision affecting her employment." *Chambers*,

[3] To the extent that plaintiffs refer, throughout their brief, to other alleged difficulties with patients for which they blame defendants for, those do not rise to the level of an adverse employment action. See *Pena v Ingham Co Rd Comm*, 255 Mich App 299, 312; 660 NW2d 351 (2003) (quotation marks and citation omitted) ("Although there is no exhaustive list of adverse employment actions, typically it takes the form of an ultimate employment decision, such as a termination in employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation."); see also *Chen v Wayne State Univ*, 284 Mich App 172, 207; 771 NW2d 820 (2009) ("evidence of ostracism or isolation, by itself, does not constitute evidence that there was a change in employment conditions sufficient to constitute an adverse employment action.").

463 Mich at 310. Because a genuine issue of material fact exists only "when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ," summary disposition is proper. *West*, 469 Mich at 183.[4]

C. RETALIATION

In order to prevail on a retaliation claim under the CRA, plaintiffs must prove the following prima facie elements: "(1) that the plaintiff 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." *Barrett v Kirtland Community College*, 245 Mich App 306, 315; 628 NW2d 63 (2001) (quotation marks and citation omitted)." "To establish causation, the plaintiff must show that [her] participation in activity protected by the CRA was a 'significant factor' in the employer's adverse employment action, not just that there was a causal link between the two." *Id.* Furthermore, "[s]omething more than a temporal connection between protected conduct and an adverse employment action is required to show causation where discrimination-based retaliation is claimed." *West*, 469 Mich at 186.

As discussed *supra*, the record is devoid of evidence establishing causation relating to the "referrals" that began decreasing well before the August 2011 meeting. Plaintiffs further contend that defendants "mishandled Dr. Rouhani's current patients, compromised her ability to provide adequate medical services and patient care, and marginalized her role as an attending staff physician at Bronson." Yet, plaintiffs produced no evidence that Rouhani's protected activity was a "significant factor" in any of these alleged retaliations. *Barrett*, 245 Mich App at 315; see also *Burlington N & Santa Fe Ry Co v White*, 548 US 53, 68; 126 S Ct 2405; 165 L Ed 2d 345 (2006) ("An employee's decision to report discriminatory behavior cannot immunize that employee from those petty slights or minor annoyances that often take place at work and that all employees experience.").

At most, plaintiffs can demonstrate that these incidents occurred after the August 2011 meeting. Yet, as the Michigan Supreme Court has cautioned, "[s]omething more than a temporal connection between protected conduct and an adverse employment action is required to show causation where discrimination-based retaliation is claimed." *West*, 469 Mich at 186. Thus, plaintiffs' retaliation claim was properly dismissed.[5]

---

[4] Because plaintiffs failed to produce any evidence of causation, we need not address their threshold argument regarding whether defendants controlled or affected a term, condition, or privilege of Rouhani's employment pursuant to *McClements v Ford Motor Co*, 473 Mich 373; 702 NW2d 166 (2005), opinion amended on rehearing 474 Mich 1201 (2005).

[5] To the extent that plaintiffs argue the hospital's failure to respond to Rouhani's claims of harassment was itself an adverse employment action, that argument is meritless. See *Meyer v City of Ctr Line*, 242 Mich App 560, 572; 619 NW2d 182 (2000). As discussed below, the hospital conducted a thorough investigation of Rouhani's complaints, and crafted a sufficient remedy.

D. TORTIOUS INTERFERENCE

Plaintiffs also claim error in the dismissal of their claim for tortious interference with a business relationship or expectancy. Plaintiffs identify the business relationship or expectation as the one they had with the hospital regarding patient referrals, and allege that defendants repeatedly interfered with Rouhani's patients and comprised her efficacy.

As this Court has articulated:

> The elements of tortious interference with a business relationship or expectancy are (1) the existence of a valid business relationship or expectancy that is not necessarily predicated on an enforceable contract, (2) knowledge of the relationship or expectancy on the part of the defendant interferer, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resulting damage to the party whose relationship or expectancy was disrupted. [*Health Call of Detroit v Atrium Home & Health Care Servs, Inc*, 268 Mich App 83, 90; 706 NW2d 843 (2005).]

As with plaintiffs' other claims, they fail to raise a genuine issue of material fact regarding causation. Plaintiffs merely speculate that defendants intentionally and improperly interfered with their referrals and caused minor problems with their patients, without providing any evidence to support such bald assertions. There was no evidence that anyone was instructed or ordered to avoid referring patients to Rouhani, or to interfere with her work in any way. Nor was there any evidence that this alleged interference was based on an impermissible ground. See *Dalley v Dykema Gossett*, 287 Mich App 296, 323; 788 NW2d 679 (2010) ("a plaintiff must demonstrate that the defendant acted both intentionally and either improperly or without justification."). The hospital did not track "referrals," and as noted above, the drop in plaintiffs' inpatient billing began well before the August 31st incident.

Essentially, plaintiffs speculate that there was some type of connection between the alleged decrease in their revenue or other difficulties with patients and the sexual harassment incident. But a party cannot survive a motion under MCR 2.116(C)(10) with mere opinions or conclusionary assertions. *Palazzola*, 223 Mich App at 155. Plaintiffs must produce evidence that raises a genuine issue of material fact regarding their claims. Because plaintiffs failed to do so, the trial court properly granted defendants' motion for summary disposition.

E. INVESTIGATION

Lastly, plaintiffs contend that the trial court erred in finding that the hospital conducted an adequate investigation. We disagree.

The elements necessary to establish a prima facie case of discrimination based on hostile work environment are as follows: (1) the employee belonged to a protected group; (2) the employee was subject to communication or conduct on the basis of her protected status; (3) the employee was subject to unwelcome conduct or communication involving her protected status; (4) the unwelcome 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); see also *Downey v Charlevoix Co Bd of Rd Comm'rs*, 227 Mich App 621, 629; 576 NW2d 712 (1998).

In regard to the fifth element, "[r]espondeat superior liability exists when an employer has adequate notice of the harassment and fails to take appropriate corrective action." *Elezovic v Bennett*, 274 Mich App 1, 7; 731 NW2d 452 (2007). In other words, "an employer may avoid liability if it adequately investigated and took prompt and appropriate action upon notice of the alleged hostile work environment." *Sheridan v Forest Hills Pub Sch*, 247 Mich App 611, 621; 637 NW2d 536 (2001) (quotation marks and citations omitted). "Thus, an employer must have actual or constructive notice of the alleged harassment before liability will attach to the employer." *Id.* "[T]he relevant inquiry concerning the adequacy of the employer's remedial action is whether the action reasonably served to prevent future harassment of the plaintiff." *Chambers*, 463 Mich at 319.

On appeal, plaintiffs cite to hostile work environment authority to support their argument. However, plaintiffs consider only the final element, namely, whether the hospital's investigation and remedial action were sufficient. Plaintiffs were required to establish a genuine issue regarding all elements of a hostile work environment claim, not merely this last element. They have failed to do so. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).[6]

Moreover, plaintiffs' claim regarding the investigation is meritless. After receiving Rouhani's complaint, Brooks-Williams and Saxon met with her and discussed in detail the events of August 31. They next met with Ignaczak to inform him of the complaint. They counseled him about ways to improve his behavior so that it could not be misunderstood as unprofessional or improper. Ignaczak sent a follow-up email detailing his plan of action and the ways in which he would change his behavior.

On September 20, 2011, Brooks-Williams informed Rouhani of the conversation with Ignaczak, and Rouhani again met with Saxon on September 27, 2011. At an October 19th meeting, Rouhani complained that she was being retaliated against because her patient referrals were down. However, Rouhani conceded that Brooks-Williams informed her of the following: that Rouhani and Ignaczak had limited interaction, that Rouhani was in private practice responsible for her own patient load, that it was unclear how Ignaczak had the ability to reduce Rouhani's patient numbers, and that Ignaczak only communicated the results of an independent recipient rights investigation. The nurse manager also followed up with the access center and they reassured her that they were utilizing Rouhani when she was on call.

Rouhani received a letter from Saxon dated October 31, 2011. In that letter, Saxon stated that because of Ignaczak's denials and the lack of witnesses, they were unable to determine whether any inappropriate conduct occurred, but that they counseled him on appropriate conduct.

---

[6] Furthermore, plaintiffs have not sufficiently addressed the fact that "a single incident of sexual harassment is generally insufficient to constitute a hostile work environment[.]" *Radtke v Everett*, 442 Mich 368, 372; 501 NW2d 155 (1993).

Saxon also stated that there was no direct reporting relationship with Ignaczak and that while Rouhani wanted the recipient rights letters removed, those letters were the result of an independent investigation by the recipient rights coordinator. Saxon stated that Bronson Battle Creek would not condone retaliation and was not aware of any such acts. Lastly, Saxon communicated that they would ensure another individual was present if Rouhani had to meet with Ignaczak again, and that the meeting environment would be to Rouhani's comfort.

In light of the foregoing, there is no genuine issue of material fact regarding whether the employer "adequately investigated and took prompt and appropriate action upon notice of the alleged hostile work environment." *Sheridan*, 247 Mich App at 621 (quotation marks and citation omitted). While Rouhani may have demanded more, the test is not whether the employer satisfied plaintiff's demands. Rather, "the relevant inquiry concerning the adequacy of the employer's remedial action is whether the action reasonably served to prevent future harassment of the plaintiff." *Chambers*, 463 Mich at 319. Rouhani admitted that she had little interaction with Ignaczak on a day-to-day basis, as she only encountered him twice from October 2011 until January 2012. And, as evident in the October 31st letter, defendants assured Rouhani that she would never have to meet alone with Ignaczak again, and that the meeting environment would be to Rouhani's comfort level. Such remedial action reasonably served to prevent any future harassment of plaintiff. *Chambers*, 463 Mich at 319.

III. CONCLUSION

Plaintiffs have failed to raise a genuine issue of material fact regarding their claims as they have not demonstrated a causal link between any protected activity or characteristic and any perceived employment action. We have reviewed all remaining claims in plaintiffs' briefs and find them to be without merit. We affirm.

/s/ William B. Murphy
/s/ Douglas B. Shapiro
/s/ Michael J. Riordan