

STATE OF MICHIGAN
COURT OF APPEALS

TONYA WARD, LISA GREGORY, and
EDWARD WOLFE, JR.,

UNPUBLISHED
February 10, 2005

Plaintiffs-Appellants,

v

LOWE'S HOME CENTERS, INC., and JIM
WHITE,

No. 250367
Genesee Circuit Court
LC No. 02-074129-CL

Defendants-Appellees.

Before: Markey, P.J., and Murphy and O'Connell, JJ.

PER CURIAM.

In this case for retaliatory discharge under Michigan's Civil Rights Act (CRA), MCL 37.2101, *et seq.*, plaintiffs appeal as of right from the order of the Genesee Circuit Court granting defendants' motion for summary disposition and dismissing plaintiffs' complaint. We affirm.

Plaintiffs are all former employees of defendant Lowe's. On January 28, 2001, Wolfe called Gregory, to whom he was engaged, and told her that he heard a rumor that an assistant store manager caught two employees in a back office engaged in sexual activity. Gregory told Ward the rumor who later that day told other employees, including an unrelated department manager. Gregory confronted the assistant store manager to ask him if the rumor was true. The assistant told Ward that the rumor was not true, and informed the store manager that rumors were being spread around the store. After discussions between the store managers, the human resources manager, assistant managers, and defendant White, who was the district manager, it was decided that plaintiffs were spreading unfounded and destructive rumors and creating a hostile work environment, so they were discharged.

Plaintiffs then instituted this suit solely claiming retaliatory discharge in violation of MCL 37.2701. That statute prohibits retaliation "against a person because the person has opposed a violation of this act, or because the person has made a charge [or] filed a complaint . . . under this act." Defendants moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiffs failed to show that they were engaged in protected behavior under the act. The trial court agreed, finding that plaintiffs failed to proffer any evidence that they were charging or opposing a violation of the CRA. Accordingly, the court dismissed plaintiffs' complaint.

Plaintiffs argue that the court erred in holding that there was no genuine issue of material fact regarding whether plaintiffs were engaged in protected behavior under the CRA. We disagree. We review de novo a trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). To establish a prima facie case of retaliation under the Civil Rights Act, a plaintiff must show that the plaintiff engaged in a protected activity that became the basis for adverse employment action. *DeFlaviis v Lord & Taylor, Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997). In *Barrett v Kirtland Comm Coll*, 245 Mich App 306, 318-319; 628 NW2d 63 (2001), we explained that to receive protection under the act, an "employee's charge must clearly convey to an objective employer that the employee is raising the specter of a claim of unlawful discrimination pursuant to the CRA."

As an initial matter, plaintiffs do not pretend that a violation of the act occurred, only that they sought to intervene in a situation that could potentially create a hostile environment. Moreover, the rumor was later proven unsubstantiated. Therefore, plaintiffs were not opposing a *violation* of the act. Furthermore, the evidence in this case shows that none of the "complaints" asserted here would have conveyed to an objective employer that plaintiffs were raising a claim of unlawful discrimination pursuant to the CRA. Wolfe only told Gregory, who was not in any position to correct the situation and was not above Wolfe in defendant Lowe's chain of command. Nevertheless, Gregory then repeated the story to Ward, a fellow flooring employee, who likewise did not act as Gregory's supervisor and could not have remedied the issue. Ward then told a manager from the lumber department and an unrelated sales coordinator at lunch. While Ward attempted to justify her communication to the manager as making a legitimate charge, that justification could never extend to the third employee present during the conversation. Furthermore, while Gregory eventually went to the assistant manager who could verify or discount the rumor, she had already spread it to Ward, an unrelated and irrelevant coworker.

To qualify as protected behavior, the charge or complaint must be reasonably directed at curing or preempting a violation of someone's civil rights, so the act of indiscriminately spreading allegations and innuendo of sexual wrongdoing around an employer's organization is not protected. Because defendants undisputedly discharged plaintiffs because they spread sexually charged rumors to employees who had no conceivable ability to rectify plaintiffs' alleged concerns, plaintiffs failed to show that they were discharged for engaging in protected activity. Therefore, the trial court correctly granted defendants' motion for summary disposition. *Barrett, supra*. Because our resolution of this issue is dispositive of plaintiffs' entire claim, we do not address the balance of plaintiffs' issues on appeal.

Affirmed.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Peter D. O'Connell