IN THE COURT OF APPEALS OF IOWA

No. 8-695 / 97-1812
Filed July 23, 1999

SUSAN HILL,

Plaintiff-Appellant,

vs.

THE TRIPLETT COMPANY F/K/A TRIPLETT OFFICE ESSENTIALS, INC.,

Defendant-Appellee.

FILED
JUL 23 1999
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge.

Plaintiff appeals a summary judgment ruling for defendant on her sexual harassment claim. **REVERSED AND REMANDED.**

Roger J. Kuhle and John O. Haraldson of the Law Office of Roger J. Kuhle, P.C., West Des Moines, for appellant.

Bruce H. Stoltze of Brick, Gentry, Bowers, Swartz, Stoltze, Schuling & Levis, P.C., Des Moines, for appellee.

Considered by Sackett, C.J., Streit, J., and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code §602.9206 (1999).

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PER CURIAM

Susan Hill appeals the decision of the district court granting summary judgment to The Triplett Company (Triplett) on her sexual harassment claim. We reverse the grant of summary judgment and remand for further proceedings.

Hill was employed by Triplett to be a salesperson. The company is owned by Richard and Sue Triplett. It sells office supplies and furniture. Hill was initially trained as a receptionist, then a customer service representative. She was eventually promoted to the position of outside sales representative. Initially, Richard was her supervisor. Later, Lisa Sueppel became her supervisor.

Hill sold a large volume of chairs to Kirke Van Orsdel (KVI). Triplett claims the purchasing manager of KVI complained about Hill's conduct. On March 23, 1994, Richard and Sueppel decided to accompany Hill on a sales call to KVI. They asked Hill to ride with them to the meeting so they could discuss strategy. Hill decided to go in her own car. She left the meeting before Richard and Sueppel and did not immediately return to the office. Richard, Sue, and Sueppel had a meeting and decided to terminate Hill.

Hill filed a sexual harassment claim against Triplett pursuant to 42 United States Code section 2000e (Title VII) and Iowa Code chapter 216 (Iowa Civil Rights Act), alleging she was discharged from her employment based on her gender. She claimed she was subjected to a sexually hostile work environment, which was

exemplified by (1) a calendar containing bikini-clad women which was posted in the company warehouse with Richard's knowledge; (2) an incident where Richard put his hand on her leg and winked suggestively at her; (3) another incident where Richard gave her a lewd poem about a penis; and (4) Richard's ribald remarks, including:

(a) referring to women as "broads" and "bitches;"
(b) stating, "I only married my wife for sex;"
(c) telling others of a dream of a sexual nature he had about her and another salesperson;
(d) implying she should perform sexual favors for clients by encouraging her to "take care of her clients;"
(e) stating "God put women on earth to serve men;"
(f) commenting men had to make more money than women to support a family; and
(g) telling her he assigned her to a particular client because the client was a "leg and skirt" person.

Also, a co-employee told her there would be no need for women "if only sheep could talk." Hill complained about this statement to Richard and Sue, but no action was taken. Hill alleged Richard would give sales leads to male salespersons instead of to her.

The district court granted Triplett's motion for summary judgment. The court determined even if Hill's allegations were true, the evidence did not show severe and pervasive behavior by Triplett to create an objectively hostile or abusive work environment. The court concluded Hill did not show any conduct which could reasonably be deemed sexual harassment. Hill appealed.

We review a summary judgment ruling for correction of errors of law. *Howell v. Merritt Co.*, 585 N.W.2d 278, 280 (Iowa 1998). Under Iowa Rule of Civil Procedure 237, summary judgment is appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Id.* We will review the record before the district court to determine whether an issue of material fact exists, and if not, whether the district court properly applied the law. *Shriver v. City of Okoboji*, 567 N.W.2d 397, 400 (Iowa 1997). The facts are reviewed in the light most favorable to the nonmoving party. *Id.*

Hill contends summary judgment was inappropriate in this case. She asserts there are genuine issues of material fact concerning whether she was subjected to a sexually hostile work environment. She believes she has presented sufficient evidence to create a prima facie case of sexual harassment.

The analysis of discrimination claims under the Iowa Civil Rights Act and Title VII are the same. *Falczynski v. Amoco Oil Co.*, 533 N.W.2d 226, 230 n.2 (Iowa 1995). The maintenance of a sexually hostile work environment through sexual harassment is a form of illegal discrimination under the Iowa Civil Rights Act. *Edmunds v. Mercy Hosp.*, 503 N.W.2d 877, 879 (Iowa App. 1993). In order to establish a valid claim of maintenance of a sexually hostile work environment through sexual harassment, a plaintiff must show:

(1) the plaintiff belongs to a protected class;
(2) the plaintiff was subject to unwelcome sexual harassment;

(3) the harassment was based upon sex;
(4) the harassment affected a term, condition or privilege of employment; and
(5) the employer knew or should have known of the harassment and failed to take prompt and appropriate remedial action.

Greenland v. Fairtron Corp., 500 N.W.2d 36, 38 (Iowa 1993).

Where sexual harassment in the workplace is so pervasive and severe it creates a hostile or abusive work environment, so the plaintiff must endure an unreasonably offensive environment or quit working, the sexual harassment affects a condition of employment. *Lynch v. City of Des Moines,* 454 N.W.2d 827, 834 (Iowa 1990). The existence of a hostile or abusive working environment must be established by the totality of the circumstances. *Vaughn v. Ag Processing, Inc.*, 459 N.W.2d 627, 633 (Iowa 1990). Whether conditions are continuous, severe and pervasive enough to rise to a violation of the Iowa Civil Rights Act is a question of fact. *Id.*

Triplett claims even if Hill's allegations are assumed to be true, they do not rise to the level to show she was subjected to unwelcome sexual harassment. If true, Hill's allegations show she was subjected to licentious literature and salacious comments which could be considered offensive. She was also subjected to a lascivious act when Richard put his hand on her leg. She alleged she made at least some of her complaints known to Richard and Sue and they did nothing about it. Whether these conditions were continuous, severe, and pervasive enough to rise to a violation of the Iowa Civil Rights Act is a question of fact.

We conclude Hill has alleged sufficient facts to create a claim of sexual harassment. Although a fact finder may conclude Hill's allegations are meritless, the interpretation of this constellation of events should be left to the finder of fact. Summary judgment is inappropriate where there was a genuine issue of material fact concerning whether an employee was discharged based upon a perceived disability. *Howell*, 585 N.W.2d at 281. Summary judgment is inappropriate where an employee alleges sufficient facts to show retaliatory discharge. *Walters v. U.S. Gypsum Co.*, 537 N.W.2d 708, 712 (Iowa 1995). We determine disposition by summary judgment was inappropriate in this case.

We reverse the decision of the district court granting summary judgment to defendant and remand for further proceedings. We do not retain jurisdiction. Costs of this appeal are assessed to defendant.

REVERSED AND REMANDED.