

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CATHERINE ZOTKOVICH,

Plaintiff-Appellee,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellant.

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UNPUBLISHED

December 18, 1998

No. 199893

Wayne Circuit Court

LC No. 95-508210 NO

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CATHERINE ZOTKOVICH,

Plaintiff-Appellant,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

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No. 200880

Wayne Circuit Court

LC No. 95-508210 NO

Before: Murphy, P.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

In Docket No. 200880, plaintiff appeals by leave granted the order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10) in this action in which plaintiff, an employee of defendant, alleged that defendant discriminated against her on the basis of her gender and age. In Docket No. 199893, defendant appeals by leave granted the order denying defendant's motion for mediation sanctions. We affirm in part, reverse in part, and remand.

Plaintiff contends on appeal that the trial court erred in summarily dismissing her gender discrimination claim. This Court reviews de novo an order granting summary disposition under MCR 2.116(C)(10). The pleadings, affidavits, depositions, admissions, and any other documentary evidence

are viewed in favor of the nonmoving party to determine whether a genuine issue of material fact exists. *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 202; 544 NW2d 727 (1996).

To avoid summary disposition of a gender discrimination claim, a plaintiff must demonstrate a genuine issue of material fact with respect to the existence of a prima facie case of discrimination. *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 651; 513 NW2d 441 (1994). A prima facie case of discrimination can be made by proving either intentional discrimination or disparate treatment. *Id.* In order to establish a prima facie case of intentional sex discrimination, a plaintiff must show that she was a member of a protected class, that she was discharged or otherwise discriminated against with respect to employment, that the defendant was predisposed to discriminate against persons in the class, and that the defendant acted upon that predisposition when the employment decision was made. *Id.* In order to establish a prima facie case of sex discrimination under the disparate treatment theory, a plaintiff must show that she was a member of a protected class, and that, for the same conduct or performance, she was treated differently than a man. *Id.* Where, in response to a prima facie case of discrimination, a defendant puts forth a legitimate, nondiscriminatory reason for its actions, the plaintiff has the burden of showing that the proffered reason was merely a pretext. *Id.*

Here, plaintiff and seven other level six supervisors were given lateral job transfers from defendant's Cadillac Clark Street plant to defendant's Detroit Hamtramck plant. Upon arriving at her assigned location in the body shop of defendant's Detroit-Hamtramck plant, the manager of the body shop allegedly stated that he "was not supposed to get a woman." The gist of plaintiff's gender discrimination claim is that this comment demonstrates that defendant discriminated against her on the basis of her gender in failing to place her in a different level six supervisory position at the Hamtramck plant and instead sending her back to the Clark Street plant.

Here, the body shop manager's isolated statement that he "was not supposed to get a woman" does not establish that the body shop manager did not *want* a woman to be assigned to his department. Plaintiff had already been assigned to the body shop at the time the alleged statement was made. There is no evidence that plaintiff was returned to the Clark Street Plant as a result of defendant's predisposition to discriminate. Rather, defendant indicated that plaintiff was returned to the Clark Street Plant because she misrepresented her qualifications for a materials department supervisory position, and no other suitable supervisory positions were available at the Hamtramck plant. Plaintiff failed to meet her burden of showing that this reason was merely a pretext. Hence, plaintiff failed to establish a material factual dispute regarding intentional discrimination.

With regard to the theory of disparate treatment, plaintiff has not shown that she was treated differently than a man for the same conduct or performance. *Coleman-Nichols, supra* at 651. Like her male counterparts, plaintiff was indeed placed in a level six supervisory position at the Hamtramck plant. When plaintiff expressed dissatisfaction with her assignment, she sought a reassignment to the materials department. However, plaintiff allegedly misrepresented her experience and qualifications for such an assignment and defendant declined to assign her to a supervisory positions in the materials department. Plaintiff has adduced no evidence of pretext in defendant's decision. Hence, plaintiff's claims under a disparate treatment theory was properly dismissed.

Defendant contends that the trial court erred in denying its motion for mediation sanctions. We agree. Both plaintiff and defendant rejected the mediation evaluation. Because the verdict<sup>1</sup> was more favorable to defendant than the mediation evaluation, and the evaluation was more favorable to plaintiff than the verdict, defendant was entitled to recover its actual costs. MCR 2.403(O)(1) and (O)(2); *Broadway Coney Island, Inc v Commercial Union Ins Cos (Amended Opinion)*, 217 Mich App 109, 114; 550 NW2d 838 (1996); *Johnson v State Farm Mutual Automobile Ins Co*, 183 Mich App 752, 768; 455 NW2d 420 (1990). Contrary to the trial court's determination, defendant's delay in filing its motion for summary disposition did not preclude defendant from recovering mediation sanctions.<sup>2</sup> Hence, on remand, the trial court shall determine and award defendant its actual costs.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ William B. Murphy  
/s/ E. Thomas Fitzgerald  
/s/ Hilda R. Gage

<sup>1</sup> A verdict includes a judgment entered as the result of a ruling on a motion filed after mediation. MCR 2.403(O)(2)(c).

<sup>2</sup> MCR 2.403 only provides three narrow circumstances in which the court may decline to award sanctions. *Great Lakes Gas Transmission Ltd Partnership v Markel*, 226 Mich App 127; 573 NW2d 61 (1997). The first two situations involve equitable claims and dramshop actions, neither of which is involved here. The third circumstance in which the court is not required to award sanctions is provided for in MCR 2.403(O)(11), which provides that "the court may, in the interest of justice, refuse to award costs in cases where the 'verdict' is a judgment entered as a result of a ruling on a motion after the party rejected the mediation evaluation." However, this exception did not take effect until October 1, 1997. Because the order denying sanctions was entered on October 30, 1996, this exception was not available at the time the trial court decided this issue.