STATE OF MICHIGAN

COURT OF APPEALS

SCOTT WOHL,

Plaintiff-Appellant,

v

DUNHAMS ATHLEISURE CORPORATION,

Defendant-Appellee.

UNPUBLISHED
December 29, 1998

No. 203954
Oakland Circuit Court
LC No. 96-521428 CL

Before: Markman, P.J., and Bandstra and J.F. Kowalski*, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the summary dismissal of his religious discrimination claim brought pursuant to the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq*. MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

The elements necessary to establish a prima facie case of discrimination based on hostile work environment are: (1) the employee belonged to a protected group; (2) the employee was subjected to communication or conduct on the basis of the protected status; (3) the employee was subjected to unwelcome conduct or communication on the basis of the protected status; (4) the unwelcome conduct or communication was intended to, or in fact did, interfere substantially 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); *Radtke v Everett*, 442 Mich 368, 382-383; 501 NW2d 155 (1993); *Downey v Charlevoix Co Bd of Co Road Comm'rs*, 227 Mich App 621, 629; 576 NW2d 712 (1998). The first three elements are not in dispute. With regard to plaintiff's assertions that the fourth and fifth elements have been satisfied, we conclude that the evidence is insufficient to establish the fourth and fifth elements of a hostile work environment.

With respect to the fourth element, viewing the record documentation in a light favorable to plaintiff and granting plaintiff the benefit of every reasonable doubt, *Horn v Dep't of Corrections*, 216 Mich App 58, 66; 548 NW2d 660 (1996), plaintiff failed to demonstrate the existence of a genuine

* Circuit judge, sitting on the Court of Appeals by assignment.

issue of material fact with regard to whether he gave his employer adequate notice of the harassment and an opportunity to rectify the situation, *Quinto, supra* at 362-363, 371; *Radtke, supra* at 372, 395. Plaintiff only informed defendant's assistant store manager of the harassment at the time of his resignation from his employment. There was no opportunity to rectify the problem.

In light of our disposition regarding element four, we need not address element five. However, we also conclude, with regard to this element, that the trial court properly found that complaints by plaintiff to Alex Macioce were insufficient on the respondeat superior issue because Macioce was not a manager of plaintiff's department and had no authority over personnel decisions affecting plaintiff. *Champion v Nationwide Security, Inc*, 205 Mich App 263, 267; 517 NW2d 777 (1994), rev'd on other grounds 450 Mich 702; 545 NW2d 596 (1996).

We affirm.

/s/ Stephen J. Markman
/s/ Richard A. Bandstra
/s/ John F. Kowalski