

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01 4170

HEATHER TRIMBLE

Appellant

v.

FLEETWOOD HOMES OF PENNSYLVANIA, INC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF PENNSYLVANIA

(Dist. Court No. 01-cv-00228)
Magistrate Judge: J. Andrew Smyser

Submitted Under Third Circuit LAR 34.1(a)
September 19, 2000

Before: SCIRICA, ALITO, and MCKEE, Circuit Judges.

(Opinion Filed: October 18, 2002)

OPINION OF THE COURT

PER CURIAM:

This appeal challenges a Magistrate Judge's Order granting summary judgment for the defendant in a case alleging constructive discharge and a sexually hostile work environment in violation of both Title VII of the Civil Rights Act of 1964 and the Pennsylvania Human Relations Act. After a thorough analysis of the summary judgment record, the Magistrate Judge concluded that, based on the undisputed facts, a reasonable jury could not decide in the plaintiff's favor on either the sexually hostile work environment or constructive discharge claim. Our review of the Magistrate Judge's grant of summary judgment is plenary. See *Olson v. General Elec. Astrospace*, 101 F.3d 947, 951 (3d Cir. 1996).

This Circuit has stated that a court may find that a hostile work environment existed where the plaintiff shows: (1) the employee suffered intentional discrimination

because of sex, (2) the discrimination was pervasive and regular, (3) the discrimination detrimentally affected the plaintiff, (4) the discrimination would detrimentally affect a reasonable person of the same sex in that position, and (5) there is a basis for respondeat superior liability. See *Kunin v. Sears Roebuck & Co.*, 175 F.3d 289, 293 (3d Cir. 1999). Based on the appropriate summary judgment standard, the Magistrate Judge determined that a jury could not find that the alleged discriminatory conditions of employment (1) were pervasive and regular and (2) would detrimentally affect a reasonable person of the same sex in that position. See *Id.* As these are essential elements of the plaintiff's prima facie case, the Magistrate Judge granted summary judgment for the defendant. Although the plaintiff contests this holding on appeal, we agree with the Magistrate Judge's conclusion and therefore affirm the Order of the Magistrate Judge for essentially the reasons given in the Magistrate Judge's Memorandum.

The Magistrate Judge likewise awarded summary judgment for the defendant on the plaintiff's constructive discharge claim. In order to establish a constructive discharge claim, a plaintiff must produce evidence sufficient to show that discriminatory conditions of employment were so intolerable that a reasonable person subject to them would have felt compelled to resign. *Konstantopoulos v. Westvaco, Corp.*, 112 F.3d 710, 718 (3d Cir. 1997). The Memorandum of the Magistrate Judge stated that in this instance there is not a reasonable inference to be drawn that the conditions of employment were of such a pervasive and severe character as to result in a constructive discharge of the plaintiff. We agree with this analysis and therefore affirm this aspect of the Magistrate Judge's Order for essentially the reasons set out in the Magistrate Judge's Memorandum.

Accordingly, we will affirm the Order of the Magistrate Judge substantially for the reasons set forth in the Magistrate Judge's Memorandum without further elaboration.