

STATE OF MICHIGAN
COURT OF APPEALS

DUNCAN KRETOVICH,

Plaintiff–Appellant,

v

UNIVERSITY OF MICHIGAN REGENTS,

Defendant–Appellee.

UNPUBLISHED

January 24, 1997

No. 184785

LC No. 94-027725

Before: Reilly, P.J., and White, and P.D. Schaefer,* JJ.

PER CURIAM.

In this employment discrimination case, defendant appeals as of right from the order of the circuit court granting summary disposition in favor of defendant. We affirm.

Plaintiff argues on appeal that the trial court erred in finding that there was no genuine issue of material fact that defendant retaliated against him for his opposition to a violation of the Civil Rights Act. The Civil Rights Act prohibits an employer from retaliating or discriminating against a person because he or she has opposed a violation of the act. MCL 37.2701(a); MSA 3.548(701)(a). This Court has held that, regardless of the vagueness of a charge of discrimination or the lack of formal invocation of the protection of the Civil Rights Act, if an employer’s decision to terminate or otherwise adversely effect an employee is a result of that employee raising the spectre of a discrimination complaint, retaliation prohibited by the act occurs. *McLemore v Detroit Receiving Hospital*, 196 Mich App 391, 395-396; 493 NW2d 441 (1992). In proving a claim of retaliation, the burden of proof is on the plaintiff to show that retaliation played a significant role in the adverse employment decision. If the defendant comes forward with a legitimate nondiscriminatory reason for the adverse employment action, then the plaintiff must come forward with evidence to indicate that defendant’s articulated reason was a sham or a pretext. *Id.* at 399.

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

Plaintiff was employed by the University of Michigan (hereinafter referred to as “defendant”) as an assistant professor in September of 1988. During his employment in 1992, plaintiff served on the School of Management Dean Search Committee. Plaintiff encouraged a former colleague, Johnson, to apply for the position of dean. Plaintiff believed that Johnson’s candidacy for the position was opposed by another committee member, Moon, and by a faculty member who was not on the committee, Lotfi, on the basis of Johnson’s race. Plaintiff complained about the racial discrimination to the committee chairman and others. In the end, Johnson’s name was one of three submitted by the committee to the Provost, who instead chose Hallam. According to plaintiff’s affidavit, after the “Johnson incident,” the attitudes of Moon, Lotfi and another faculty member, Marquardt, changed towards plaintiff and they became extremely cold to him. Plaintiff recalled Marquardt indicating that he was upset by plaintiff’s allegations of racial discrimination in the dean search.

In 1993, plaintiff learned that Lotfi, Moon, and Marquardt, as well as former dean Fortner, were on the Executive Committee that would make a recommendation on whether plaintiff would be given tenure. Plaintiff unsuccessfully sought appointment of a different Executive Committee. The committee unanimously recommended to Dean Hallam that plaintiff not be given tenure. Dean Hallam agreed. In January, 1994, plaintiff was denied tenure. In March, 1994, plaintiff filed this action alleging that the denial of tenure was based, in substantial part, on plaintiff’s opposition to racial discrimination against Johnson, and was therefore in violation of MCL 37.2701; MSA 3.548(701).

As in *McLemore*, the core issue in this case is defendant’s motivation for making an employment decision adversely affecting plaintiff. *Id.* at 396. In this case, the question is whether, when viewed in a light most favorable to plaintiff, the evidence was such that there was a genuine issue of material fact regarding defendant’s motivation for denying plaintiff tenure. *Id.*

Plaintiff admitted that Dean Hallam did not retaliate against him in denying him tenure. Hallam, the new dean of the School of Management, testified that the Executive Committee makes a recommendation as to whether to award tenure, but that it is the dean’s responsibility to make a separate, independent determination as to the merits of the case and to decide whether to recommend tenure to the Provost of the Flint Campus. Dean Hallam stated that he decided not to recommend plaintiff for tenure because of his poor research record.

Plaintiff also admitted that one member of the Executive Committee, former dean Fortner, did not discriminate or retaliate against him in 1993-94 when Fortner voted against plaintiff’s tenure. The 1993-94 evaluation was Fortner’s second opportunity to render an opinion on plaintiff’s candidacy for tenure. This first occurred in 1991-92 when Fortner was dean, and he reviewed plaintiff’s candidacy for tenure. Fortner’s affidavit states that although he had concerns about plaintiff’s publication record in 1991-92, he gave plaintiff “the benefit of the doubt” about work in progress and forwarded Executive Committee’s recommendation in favor of tenure to the Provost. In 1993-94, however, Fortner opposed giving plaintiff tenure. Fortner’s affidavit explains the basis for his decision:

Professor Kretoovich failed to publish several of his scholarly research projects that had been “in the pipeline” at the time of the 1991-92 tenure review. In short, his potential

for scholarship had not been fulfilled during the two-year period between tenure reviews. Furthermore, I believe that our institution needs to improve the research productivity of its faculty. . . .

I also had some concerns with the quality of Professor Kretovich's teaching based upon grading standards, student evaluations and student comments. However, it was my concern about Professor Kretovich's research, and his failure to carry through his scholarly potential, that was the main motivation for my decision in January 1994 to vote against granting tenure and promotion.

However, plaintiff argues that there was evidence that Moon, Lotfi, and Marquardt, who were on the Executive Committee with Fortner, retaliated and that their votes could have influenced Dean Hallam's decision. Moon served on the 1991-92 Executive Committee that reviewed plaintiff's first application for tenure. Moon voted at that time to deny plaintiff tenure because of his belief that plaintiff's publication record was inadequate. According to Moon's affidavit, when he reviewed plaintiff's record again in 1993-94, the only addition to plaintiff's research from the prior tenure review was a co-authored comment, that in Moon's opinion, was not an original piece of scholarship. Lotfi's affidavit similarly states that he opposed tenure for plaintiff because Lotfi did not think that plaintiff had published even one work of significant scholarly value. Thus, Lotfi and Moon voted to deny plaintiff tenure for essentially the same reason expressed by Hallam and Fortner, both of whom plaintiff concedes did not retaliate against him.

We agree with the trial court that defendant was entitled to summary disposition. First, as noted by the court, Dean Hallam was the decision-maker and he stated in his affidavit that he arrived at his decision through an independent analysis of plaintiff's record. Plaintiff concedes that Hallam did not retaliate or discriminate against him, and plaintiff has not shown that Dean Hallam's decision was influenced by the recommendation of the committee. Because plaintiff failed to come forward with evidence of a causal link between his opposition to alleged discrimination and the adverse employment decision, *Kocenda v Detroit Edison Co*, 139 Mich App 721, 726; 363 NW2d 20 (1984), summary disposition was properly granted. Second, even assuming that Dean Hallam's decision was influenced by the recommendation of the committee, plaintiff has failed to show that the reason given by three of four members for their votes was pretextual. Plaintiff has not suggested that Fortner and Hallam were lying when they stated they believed plaintiff's research record was inadequate for tenure. Plaintiff has not come forward with evidence demonstrating that when the same opinion was expressed by Moon and Lotfi, it was merely a pretext for discrimination and retaliation.

Finally, with respect to the final member of the Executive Committee, Marquardt, neither party has offered evidence indicating the basis for his vote. However, as noted by the trial court, even if Marquardt had been motivated to vote against tenure for plaintiff because of plaintiff's opposition to perceived discrimination, it would not have been sufficient to cause the adverse employment decision. Marquardt was only one out of four votes on the Executive Committee, and plaintiff did not present any evidence that Marquardt influenced any other vote. Thus, even if one vote on the committee was based on improper considerations, the causal link between that single vote and the adverse employment

decision made by Hallam is too attenuated to form the basis of a complaint under MCL 37.2701; MSA 3.548(701). Therefore, we agree with the trial court that the decision to deny plaintiff tenure could not have been the result of plaintiff raising the spectre of a discrimination complaint. *McLemore* at 395-396. We conclude that the trial court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Maureen Pulte Reilly

/s/ Philip D. Schaefer