STATE OF MICHIGAN

COURT OF APPEALS

GWEN EVANS,

Plaintiff-Appellant,

v

FORD MOTOR COMPANY,

Defendant,

and

UAW-FORD NATIONAL TRAINING CENTER,

Defendant-Appellee.

UNPUBLISHED
February 19, 1999

No. 204766
Wayne Circuit Court
LC No. 96-627301 CZ

Before: Smolenski, P.J., McDonald and Doctoroff, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition in this race discrimination and retaliation case. We affirm.

First, plaintiff argues the trial court erred in granting summary disposition in favor of defendant on her race discrimination claim. We review a trial court's determination regarding motions for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997). A motion for summary disposition brought pursuant to MCR 2.116(C)(10) tests the factual support for a claim. *Id.* The trial court must consider the pleadings, affidavits, depositions, and other documentary evidence, must give the benefit of any reasonable doubt to the nonmoving party, and must draw any reasonable inferences in favor of that party. *Id.*

Plaintiff contends the trial court erroneously concluded she had not established a prima facie case of race discrimination under the Elliott-Larsen Civil Rights Act, MCL 37.2202; MSA 3.548(202). Plaintiff also claims the trial court erred in finding she had not presented evidence that defendant's legitimate, nondiscriminatory reason for its decision was a pretext. Assuming, without deciding, that plaintiff established a prima facie case, see *Town v Michigan Bell Telephone Co*, 455 Mich 688, 699;

568 NW2d 64 (1997), we find the trial court properly granted summary disposition because plaintiff failed to meet her burden at the third stage of proof under the modified *McDonnell Douglas*[1] test adopted by the Michigan Supreme Court. To defeat summary disposition, the plaintiff must not only raise a triable issue that the employer's proffered reason was merely a pretext to discrimination, but the plaintiff must also prove discrimination with admissible evidence, direct or circumstantial, sufficient to permit a reasonable trier of fact to conclude that discrimination was a motivating factor for the adverse action taken by the employer. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 176 (Weaver, J.), 186 (Mallett, C.J., concurring in part and dissenting in part); 579 NW2d 906 (1998).

In this case, defendant presented evidence of its legitimate, nondiscriminatory reason for its denial of plaintiff's application for promotion, namely, that plaintiff was not minimally qualified for a professional position. In Schaffner's and Anderson's opinions, plaintiff did not meet the minimum qualifications and they did not recommend her for the promotion. Schaffner and Anderson reviewed plaintiff's prior job experience and did not think that plaintiff's clerical background and forty-five or forty-nine credits made up the equivalent of a bachelors degree.

According to the collective bargaining agreement applicable in this case, it is the duty of the employee seeking a promotion to "provide proof of and demonstrate necessary minimum qualifications." Plaintiff told Schaffner and Anderson that she had forty-five or forty-nine credits toward a bachelors degree, but she did not provide any proof thereof. Defendant also presented evidence that in November, 1991, plaintiff was promoted to Senior Office Clerk, but because she could not keep up with the work, she took a voluntary demotion back to her previous position as word processor three months later. Moreover, defendant presented evidence that plaintiff had been given the opportunity to assume the duties of a PA II, but she did not perform satisfactorily.

To establish that defendant's proffered reason was merely a pretext to discrimination, plaintiff argues she presented evidence that several white employees had been previously promoted from the position she held, Program Technician, to a PA I position even though they did not possess bachelors degrees and were not more qualified than plaintiff. However, all plaintiff offered as proof was a list of defendant's employees which designates the employees' race, sex, employment status, and seniority date. Plaintiff did not submit any other evidence from which the trial court could have evaluated whether those employees were similarly situated to plaintiff. Accordingly, the trial court properly granted summary disposition with regard to plaintiff's race discrimination claim because plaintiff did not present sufficient evidence to permit a reasonable trier of fact to conclude that discrimination was a motivating factor in defendant's decision not to promote plaintiff. *Lytle, supra* at 176 (Weaver, J.), 186 (Mallett, C.J., concurring in part and dissenting in part).

Finally, plaintiff argues the trial court erred in granting summary disposition of her retaliation claim. Plaintiff contends she presented evidence sufficient to infer a causal link between her previous grievance and defendant's denial of her application for promotion pursuant to job posting no. 96-03. We disagree.

To establish a prima facie case of unlawful retaliation under the Elliott-Larsen Civil Rights Act, a plaintiff must show (1) that she engaged in a protected activity; (2) that this was known by the

defendant; (3) that the defendant took an employment action adverse to the plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action. *Deflaviis v Lord & Taylor Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997).

Plaintiff did not show there was a causal connection between the protected activity and defendant's denial of her promotion. Plaintiff merely asserts that the person who received the promotion was not qualified and had less seniority than plaintiff. Plaintiff does not assert that she was qualified for the position. Assuming plaintiff is correct in her assertion that defendant promoted an unqualified candidate, we are not persuaded. The fact that defendant may have promoted an unqualified candidate only shows that defendant may have made an unwise decision, see *Town, supra* at 704, not that defendant was retaliating against plaintiff. Accordingly, plaintiff failed to produce any evidence of the requisite causal connection.

Affirmed.

/s/ Michael R. Smolenski
/s/ Gary R. McDonald
/s/ Martin M. Doctoroff

[1] The test was set forth by the United States Supreme Court in *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973).