

STATE OF MICHIGAN
COURT OF APPEALS

MARIE A. MAJOR,

Plaintiff-Appellant,

v

MEIJER, INC.,

Defendant-Appellee.

UNPUBLISHED

September 10, 1999

No. 207408

Monroe Circuit Court

LC No. 96-005591 CZ

Before: Markman, P.J., and Saad and P.D. Houk,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, an African-American, works for defendant as a loss prevention officer. Plaintiff filed suit claiming that defendant engaged in racial discrimination in violation of the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.* She alleged that she was improperly transferred to the midnight shift based on an unsubstantiated allegation that she had broken a pair of eyeglasses belonging to a white employee. Plaintiff alleged that the transfer caused significant psychological damage in that it prevented her from caring for her terminally ill mother.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), and asserted that plaintiff had been transferred to the midnight shift due to her conflicts with other employees on the first shift, and because her part-time status offered greater scheduling flexibility. Defendant supported its motion with affidavits and plaintiff's deposition. The trial court granted the motion, finding that defendant had met its burden of setting forth legitimate, nondiscriminatory reasons for its actions.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

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

The ELCRA prohibits employment discrimination on the basis of race. MCL 37.2202(1)(a); MSA 3.548(202)(1)(a). In order to establish a prima facie case of racial discrimination/disparate treatment under the ELCRA, a plaintiff must show that she was a member of a protected class, and that for the same conduct she was treated differently than was a similarly situated member of a nonprotected class. If the plaintiff makes a prima facie case of racial discrimination, the burden shifts to the defendant to put forth legitimate, nondiscriminatory reasons for its actions. If the defendant does so, the burden shifts back to the plaintiff to show that the proffered reason was merely pretextual. See *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 651; 513 NW2d 441 (1994).

We affirm. Plaintiff failed to support her response to defendant's motion for summary disposition with affidavits or documentary evidence. She did not make those portions of her deposition to which she referred a part of the record. Plaintiff's reliance on the pleadings was insufficient to create a genuine issue of material fact. MCR 2.116(G)(4).

The trial court's finding that defendant met its burden of setting forth legitimate, nondiscriminatory reasons for its decision to transfer plaintiff to the midnight shift was not clearly erroneous. *Schellenberg v Rochester Elks*, 228 Mich App 20, 36; 577 NW2d 163 (1998). Defendant stated that plaintiff was transferred due to her inability to work harmoniously with various co-employees on the first shift, and because her part-time status offered greater scheduling flexibility. In order to avoid summary disposition, plaintiff was required to demonstrate that a genuine issue of fact existed as to whether defendant's proffered reasons for its actions were pretextual, and that discrimination on the basis of race was defendant's primary motive. *Id.*, 34-35. Plaintiff failed to do so, and offered only an unsubstantiated assumption that defendant's actions were motivated by race.

Affirmed.

/s/ Stephen J. Markman
/s/ Henry William Saad
/s/ Peter D. Houk