

STATE OF MICHIGAN
COURT OF APPEALS

LAWANDA COX,

Plaintiff-Appellant,

v

UNIVERSITY OF DETROIT JESUIT HIGH
SCHOOL AND ACADEMY,

Defendant-Appellee.

UNPUBLISHED
September 5, 2000

No. 214339
Wayne Circuit Court
LC No. 97-737648-CK

Before: White, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition of plaintiff's claim for race discrimination under the Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.* We affirm.

We review the trial court's grant of summary disposition de novo to determine whether plaintiff established a genuine issue of material fact with respect to her discrimination claim. MCR 2.116(C)(10); *Spiek v Dep't of Transportation*, 456 Mich 331, 337-338; 572 NW2d 201 (1998); *Graham v Ford*, 237 Mich App 670, 672-673; 604 NW2d 713 (1999). We have limited our review of this issue to the evidence that the parties submitted to the trial court with respect to defendant's motion for summary disposition. See *Poffenbarger v Kaplan*, 224 Mich App 1, 4 n 2; 568 NW2d 131 (1997); *Amorello v Monsanto Corp*, 186 Mich App 324, 330; 463 NW2d 487 (1990).

Defendant hired plaintiff as a librarian under a one-year contract and plaintiff worked for defendant from August 28, 1994, to June 8, 1995. After defendant did not renew her contract, plaintiff brought suit alleging that defendant's decision was racially motivated, that she was the only African-American librarian that defendant employed, and that defendant replaced her with a white male who had qualifications no greater than her own. While plaintiff asserts that she was terminated from her employment, the record indicates that the adverse employment action on which plaintiff bases her cause of action actually involved defendant's failure to renew plaintiff's employment contract, not a termination under an existing contract. Although a plaintiff may establish unlawful discrimination in different ways,

Meagher v Wayne State Univ, 222 Mich App 700, 708; 565 NW2d 401 (1997), plaintiff here alleged disparate treatment.

Under the burden shifting framework *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973), a plaintiff must first establish a prima facie case, that is, enough evidence to create a rebuttable presumption of discrimination. *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 361 n 7; 597 NW2d 250 (1999); *Meagher, supra* at 710-711. A plaintiff may establish a prima facie case by showing:

“(1) she was a member of the protected class; (2) she suffered an adverse employment action . . . ; (3) she was qualified for the position; but (4) she [suffered the adverse employment action] under circumstances that give rise to an inference of unlawful discrimination.” *Lytle [v Malady (On Rehearing)]*, 458 Mich 153, 172-173; 579 NW2d 906 (1998)]. Circumstances give rise to an inference of discrimination when the plaintiff “was treated differently than persons of a different class for the same or similar conduct.” [*Wilcoxon, supra* at 361, quoting *Reisman v Wayne State Univ Regents*, 188 Mich App 526, 538; 470 NW2d 678 (1991).]

If the plaintiff establishes a prima facie case, the second prong of the pretext test requires the defendant to articulate a legitimate, nondiscriminatory reason for its employment action. *Hall v McRea Corp*, 238 Mich App 361, 370; 605 NW2d 354 (1999); *Meagher, supra* at 711. If the defendant meets this burden, the plaintiff must show by a preponderance of the evidence that the defendant’s legitimate reason was a mere pretext. *Meagher, supra* at 711. In this context, the test for avoiding summary disposition was described in *Lytle v Malady (On Rehearing)*, 458 Mich 153; 579 NW2d 906 (1998):

[D]isproof of an employer’s articulated reason for an adverse employment decision defeats summary disposition only if such disproof also raises a triable issue that discriminatory animus was a motivating factor underlying the employer’s adverse action. In other words, plaintiff must not merely raise a triable issue that the employer’s proffered reason was pretextual, but that it was a pretext for . . . discrimination. Therefore, we find that, in the context of summary disposition, a plaintiff must prove discrimination with admissible evidence, either 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 toward the plaintiff. [*Id.* at 175-176 (citation omitted).]

Plaintiff stated a prima facie case when she alleged that she was a member of a protected class, that she suffered an adverse employment action (defendant’s decision not to renew her contract), that she was qualified for the librarian position, and that defendant did not renew her contract under circumstances that gave rise to an inference of unlawful discrimination. *Lytle (On Rehearing), supra* at 172-173. Defendant then met its burden when it articulated that the reason for its decision not to renew

plaintiff's contract was plaintiff's poor work performance. *Id.* at 173-174. Defendant produced documentary evidence of numerous complaints against plaintiff from defendant's faculty, administration, and students. Defendant also produced evidence that it decided not to renew the contract of another teacher, a white male, for poor work performance.

After considering each of the ten items that plaintiff relies on, we are of the opinion that plaintiff failed to oppose defendant's motion with evidence establishing that defendant's proffered reason was a mere pretext for discrimination, and to present evidence "sufficient to permit a reasonable trier of fact to conclude that discrimination was a motivating factor" in defendant's decision not to renew her contract. *Id.* at 175-176. Although plaintiff presented evidence that the individuals in plaintiff's position before and after the one-year contract period were both outside of her protected class, plaintiff presented no evidence that defendant treated her differently than these individuals (e.g., that she was held to a different standard of performance). Plaintiff complains generally regarding defendant's judgment in deciding not to renew her contract. However, she produced no evidence that the complaints against her were a mere pretext. Therefore, plaintiff presented insufficient evidence to permit a reasonable trier of fact to conclude that race discrimination was a motivating factor in defendant's decision not to renew her contract. *Lytle, supra* at 176. Because she failed to do so, summary disposition was proper.

Affirmed. Defendant, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Helene N. White

/s/ Martin M. Doctoroff

/s/ Peter D. O'Connell