

STATE OF MICHIGAN
COURT OF APPEALS

MADISON ANDERSON,

Plaintiff-Appellant,

v

FORD MOTOR COMPANY,

Defendant-Appellee.

UNPUBLISHED
December 5, 2000

No. 216651
Wayne Circuit Court
LC No. 98-812128-CZ

Before: Bandstra, C.J., and Fitzgerald and D. B. Leiber*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm.

Plaintiff, an African-American, 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.* He alleged that he was improperly denied overtime on two occasions and that a white employee with more accumulated overtime was allowed to work, that he was unfairly accused of being late for work and docked pay, that his supervisor harassed him by placing a sign that read "Shit-House Lawyers Throne" on his work station in retaliation for past litigation, and that defendant's agents harassed him by placing numerous write-ups in his file.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), asserting that overtime was assigned in accordance with the union agreement, that plaintiff in fact reported late to work on one occasion and was docked pay accordingly, that the derogatory sign had been displayed in a number of areas in the past and was not directed at plaintiff personally, and that plaintiff's personnel file contained no write-ups. Defendant supported its motion with affidavits and documentary evidence. Defendant noted that grievances relating to the overtime work and the docked pay had been resolved against plaintiff and in his favor, respectively. In response, plaintiff relied on what he described as conflicting documentary evidence regarding overtime in support of his contention that a genuine issue of fact existed. The trial court granted the motion, observing that plaintiff's complaints should be resolved through the union grievance process.

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

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).

The ELCRA prohibits discrimination on the basis of race. MCL 37.2202(1)(a); MSA 3.548(202)(1)(a). A prima facie case of racial discrimination can be made by showing either intentional discrimination or disparate treatment. To establish intentional discrimination, a plaintiff must show that he was a member of a protected class, that he experienced discrimination, and that the person who discriminated against him was predisposed to discriminate against persons of that protected class and in fact acted on that predisposition. To establish disparate treatment, a plaintiff must show that he was a member of a protected class, and that for the same conduct he was treated differently than was a similarly situated member of a nonprotected class. If the plaintiff makes out a prima facie case of racial discrimination, the burden shifts to the defendant to put forth legitimate, non-discriminatory reasons for its actions. If the defendant does so, the burden shifts back to the plaintiff to show that the proffered reasons were merely pretextual. *Reisman v Regents of Wayne State University*, 188 Mich App 526, 538-539; 470 NW2d 678 (1991).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. Plaintiff failed to offer evidence that any agent of defendant acted to intentionally discriminate against him based on race, or that he was subject to disparate treatment. Defendant submitted affidavits and documentary evidence to establish that overtime was scheduled in accordance with the union agreement, and that the employee who worked overtime had fewer accumulated overtime hours than did plaintiff. Plaintiff's alternative documentary evidence was either of unknown origin, or was irrelevant in that it pertained to dates not at issue. Plaintiff's assertion that he was the victim of disparate treatment in the assignment of overtime was based on speculation. A party opposing a motion for summary disposition must present more than conjecture to establish the existence of a genuine issue of material fact. *Libralter Plastics, Inc v Chubb Group*, 199 Mich App 482, 486; 502 NW2d 742 (1993). Defendant put forth legitimate, nondiscriminatory reasons for its decision to assign an employee other than plaintiff to work on the holidays in question. Plaintiff failed to demonstrate that a genuine issue of fact existed as to whether defendant's proffered reasons were pretextual. Summary disposition was proper. *Reisman, supra*.

Furthermore, we find plaintiff's assertion that his claim based on the derogatory sign was a hostile environment claim that should have survived summary disposition is without merit. To establish a prima facie case of hostile environment, a plaintiff must show: (1) that he belonged to a protected group; (2) that he was subjected to unwelcome communication or conduct based on and involving his protected status; (3) that the unwelcome communication or conduct was intended to or did substantially interfere with his employment or created a hostile, intimidating, or offensive work environment; and (4) respondeat superior. *Quinto v Cross & Peters Co*, 451 Mich 358, 368-369; 547 NW2d 314 (1996). Plaintiff failed to produce any evidence to create an

issue of fact as to whether the sign was placed in his work area due to his race. Summary disposition was proper. *Id.*

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Dennis B. Leiber