

STATE OF MICHIGAN  
COURT OF APPEALS

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JAMES MARTINEZ,

Plaintiff-Appellant,

v

CITY OF PONTIAC, PONTIAC POLICE  
DEPARTMENT, RONALD GRACEY, and  
TREVOR HAMPTON,

Defendants-Appellees.

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UNPUBLISHED

December 26, 2000

No. 215571

Oakland Circuit Court

LC No. 97-000106-CZ

Before: Sawyer, P.J., and Jansen and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition in this employment discrimination action. We affirm.

Plaintiff, an Hispanic-American, contends that the trial court erred by granting summary disposition to defendants because genuine issues of material fact existed regarding whether he received disparate treatment as compared to similarly situated officers, and whether the reasons given for the disparate treatment were pretextual. We review a trial court's grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties in the light most favorable to the nonmoving party. *Morales v Auto-Owners Ins.*, 458 Mich 288, 294; 582 NW2d 776, (1998). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if there is no genuine issue of material fact, entitling the moving party to judgment as a matter of law. *Id.*

A claim of disparate treatment in violation of the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*, may be proven by either direct or indirect evidence. *Harrison v Olde Financial Corp.*, 225 Mich App 601, 606; 572 NW2d 679 (1997). Under the indirect evidence method of proving discrimination, otherwise known as the *McDonnell Douglas*<sup>1</sup> method, a plaintiff must first state a prima facie case of discrimination. *Id.* at 607;

<sup>1</sup> *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973).

*Meagher v Wayne State Univ*, 222 Mich App 700, 710-711; 565 NW2d 401 (1997). To establish a prima facie case, a plaintiff must prove that (1) he was a member of a protected class, (2) he suffered an adverse employment action, (3) he was qualified for the position, and (4) the circumstances gave rise to an inference of unlawful discrimination. *Lytle v Malady*, 458 Mich 153, 172-173; 579 NW2d 906 (1998). If the court finds that the plaintiff has established a prima facie case of discrimination, the burden of production shifts to the defendant, and the defendant must articulate a legitimate, nondiscriminatory reason for its actions. *Harrison, supra* at 608; *Meagher, supra* at 711. The plaintiff must then show by a preponderance of the evidence that the legitimate reason proffered by the defendant was not the true reason, but was a mere pretext for discrimination. *Harrison, supra* at 608; *Meagher, supra* at 711. The evidence must be sufficient to permit a reasonable trier of fact to conclude that discrimination was a motivating factor for the adverse action taken against the plaintiff. *Lytle, supra* at 176.

Regarding his suspension from the police department and his re-suspension, plaintiff established a prima facie case of discrimination. It is not disputed that plaintiff is a member of a protected class, that the suspensions constituted adverse employment actions, and that plaintiff was qualified for his position. *Id.* In addition, plaintiff alleged that he received harsher discipline than two Caucasian police officers for having committed less egregious conduct and that the EEOC determined that defendants' treatment of him was unfair. Therefore, plaintiff produced sufficient evidence to create a rebuttable presumption of discrimination. *Harrison, supra* at 607-608; *Meagher, supra* at 710-711. The burden of production then shifted to defendants to articulate legitimate, non-discriminatory reasons for their actions. *Harrison, supra* at 608; *Meagher, supra* at 711. Defendants argued that plaintiff was charged with significantly different misconduct than were Officers Robert Miller and Todd Hunt and that plaintiff's conduct was excessive when no excessive force was necessary in the booking process. Defendants also contended that plaintiff's conduct was more egregious than that of Miller and Hunt because plaintiff falsified the sick slip. Therefore, defendants presented sufficient evidence to raise a genuine issue of material fact as to whether they discriminated against plaintiff, thereby rebutting the presumption of discrimination. *Lytle, supra* at 173-174.

The burden then shifted back to plaintiff to show that the legitimate reasons offered by defendants constituted a mere pretext for discrimination. *Id.* at 174. In making this showing, plaintiff was required to prove that he was treated differently from similarly situated officers. *Id.* at 178; *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 369; 597 NW2d 250 (1999). Miller and Hunt were not similarly situated to plaintiff because they were charged with less misconduct than was plaintiff. Plaintiff was disciplined for the same conduct as were Hunt and Miller, as well as for falsifying the sick slip, using unnecessary force during the booking procedure, including picking up Ronnie Conley by his ears, and for not being entirely truthful in explaining his actions. Interim Police Chief Ronald Gracey's determination that no excessive force was necessary in the booking procedure was a primary factor in his determination of plaintiff's nine-month suspension. Furthermore, contrary to plaintiff's argument, Conley did not maintain that plaintiff was not a cause of his injuries. In fact, plaintiff was the only officer who Conley was able to specifically identify as having assaulted him. Therefore, plaintiff was not similarly situated to Hunt and Miller.

Moreover, we find that even if plaintiff was similarly situated to Hunt and Miller, plaintiff failed to produce any evidence of racial discrimination. He claims that Gracey's statement, "It's a racial thing," showed that Gracey's motivation for the disparate suspensions was based on racial discrimination. However, this statement was made in response to questioning about why some citizens of Pontiac were upset with Gracey's decision to allow plaintiff to return to work early and was not made to support Gracey's decision to impose a longer suspension in plaintiff's case. Therefore, plaintiff has produced no evidence which would allow a reasonable trier of fact to conclude that discrimination was a motivating factor for his disparate discipline. *Lytle, supra* at 176.

Plaintiff's complaint also created a rebuttable presumption of discrimination regarding his re-suspension by Police Chief Trevor Hampton. *Id.* at 173. Defendants, however, articulated legitimate, non-discriminatory reasons for plaintiff's re-suspension. *Harrison, supra* at 608; *Meagher, supra* at 711. They contended that, after contacting the FBI, Hampton discovered that plaintiff's conduct was still being investigated and would probably result in a grand jury review. As such, Hampton determined that Gracey's decision to reinstate plaintiff prematurely was based on inaccurate information. Hampton then determined that it would be inappropriate to allow plaintiff to return to work prematurely and that the completion of his suspension was necessary to protect the integrity of the department and the image of the city. Therefore, defendants presented sufficient evidence to raise a genuine issue of material fact as to whether they discriminated against plaintiff, thereby rebutting the presumption of discrimination. *Lytle, supra* at 173-174.

Plaintiff failed to produce any evidence showing that defendants' legitimate reasons offered for plaintiff's re-suspension were merely pretextual. *Id.* at 174. Plaintiff argues that Hunt and Miller were not similarly re-suspended. However, there is no evidence that either Hunt or Miller's suspension was terminated early, and both officers had completed their suspensions at the time that Hampton assumed the position of Chief of Police. As such, neither officer was similarly situated to plaintiff. *Id.* at 178; *Wilcoxon, supra* at 369. Furthermore, plaintiff has produced no evidence that racial discrimination was a reason for his re-suspension. Plaintiff claims that pressure from some citizens of Pontiac and from Mayor Charlie Harrison prompted Hampton to re-suspend him because of his race. However, Hampton stated that he alone was responsible for plaintiff's re-suspension and that he did obtain or solicit the input of others in making his decision. Therefore, plaintiff has produced no evidence which would allow a reasonable trier of fact to conclude that discrimination was a motivating factor for his re-suspension. *Lytle, supra* at 176.

Affirmed.

/s/ David H. Sawyer  
/s/ Kathleen Jansen  
/s/ Hilda R. Gage