STATE OF MICHIGAN

COURT OF APPEALS

NATALIE McKNIGHT and ANDREW McKNIGHT, Plaintiffs-Appellants, v DON MASSEY CADILLAC, INC, and SCOTT SCHWARTZ, Defendants-Appellees.	UNPUBLISHED March 2, 2001 No. 218952 Wayne Circuit Court LC No. 98-811915-NZ

Before: Whitbeck, P.J., and Murphy and Cooper, JJ.

PER CURIAM.

Plaintiffs Natalie and Andrew McKnight sued defendants Don Massey Cadillac, Inc. and Scott Schwartz alleging that defendants violated the equal accommodations act,[1] the ethnic intimidation act,[2] § 302 of the civil rights act (CRA),[3] and §§ 32, 33, and 34 of the motor vehicle service and repair act.[4,5] The McKnights appeal as of right from an order granting defendants' motion for summary disposition. We affirm.

I. Basic Facts And Procedural History

The McKnights are an African American couple. In June 1997, they had their 1961 Bentley towed from their Detroit-area home to defendant Don Massey Cadillac, Inc.'s dealership in Plymouth so that dealership personnel could give them an estimate for repairs to the car's

[1] MCL 750.146; MSA 28.343 and MCL 750.147; MSA 28.344.

[2] MCL 750.147b; MSA 28.344(2).

[3] MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*

[4] MCL 257.1301 *et seq.*; MSA 9.1720(1) *et seq.*

[5] In the complaint, the McKnights claimed that defendants violated MCL 257.1302; MSA 9.1720(2), a definition section. However, they substantively alleged that the dealership failed to give them written estimates and invoices as prescribed by the sections we have identified.

braking system. The dealership charged them more than $300[6] to diagnose the problem with the brake systems, which the McKnights paid in advance of having the diagnosis performed.[7] Dealership personnel eventually estimated that the repairs would cost $3,272 before taxes and asked the McKnights to pay in advance for the needed parts. Evidently, the dealership wanted payment for parts because they would be shipped from abroad and the dealership would have to pay for them in advance. The McKnights paid $1,092.11 toward the purchase of parts in August 1997. That fall, the McKnights had their car towed back to their home while they were waiting for the parts.

According to the McKnights, they did not hear from the dealership regarding the repairs for the next several months. Finally, in February 1998, a dealership representative called to tell them that the new parts had arrived in December 1997, but that none of the personnel at the dealership were qualified to perform the repairs. The McKnights had the Bentley towed back to the dealership in March 1998 and, they claim, they were told that the repairs would take only about a week. During the next several days, they became dissatisfied with slow pace at which the repairs were progressing and their discovery that the car had been left outside in the snow. Finally, around March 24, 1998, a new dealership representative called the McKnights to inform them that the new parts had been used, but were inadequate; it would cost $11,000 to finish the repair work on the Bentley.

Apparently unhappy with the new estimate, on March 30, 1998, the McKnights went to the dealership to determine why the repair was going to cost $8,000 more than the original estimate. They met with Keith Hollis, the service manager. When the McKnights asked to speak with the owner, Don Massey, Hollis said that he was would be able to take care of the problem without involving Massey. The McKnights returned to the dealership the following day and again asked to speak with Massey. This time Schwartz, the dealership's service director, allegedly told the McKnights that Massey was too important and busy to talk to "you people" and that "you people" either had to pay $11,000 or take the car and leave the dealership. According to the complaint filed in this case, which the McKnights' deposition testimony supports, the situation escalated at this point:

> 25. **Plaintiffs** again asked to meet with **Don Massey**, this time not only about the outrageous cost to repair the Bentley but about the treatment they were receiving as well. **Schwartz's** response was to situate himself uncomfortably close to the face of **Mr. McKnight**, to yell into **Mr. McKnight's** face that Don Massey was too important to be bothered with something as minute as this; that

---

[6] This figure may have included the cost of towing.

[7] There is a dispute in the record concerning why the dealership would require advance payment for the diagnosis. At least two dealership employees suggested that that advance payment was not customary, but was only asked for if customers had been difficult to deal with in the past or if the cost of parts would exceed the value of the vehicle. One of these witnesses theorized, but could not confirm, that the McKnights may have been asked to make an advance payment because the cost of the parts for the Bentley exceeded its value.

> Massey Cadillac would return to Plaintiffs the money they paid; that ***you people*** are to get off **Massey Cadillac** property with the **Bentley** as fast as possible.
>
> 26. That Larry Burton, another **Massey Cadillac** service manager, attempted to intervene only to be ordered by **Schwartz** not to talk to **Plaintiffs. Schwartz** then threatened **Plaintiffs** with calling the Police to have **Plaintiffs** forcefully removed, along with their vehicle.
>
> 27. That **Schwartz**, now standing toe to toe with **Mr. McKnight**, yelled to both **Mr. McKnight, and Mrs. McKnight** who was standing nearby, ***"We don't want anything to do with you people, your business or your money, get off this property and don't come back!"***

The McKnights claimed that they left immediately because they knew "the intended meaning of ***you people***" and feared that Schwartz was going to hit Andrew McKnight.

The complaint did not allege that the McKnights were a member of a protected class based on their race, what their race is, and what they knew the term "you people" to mean. However, at her deposition, Natalie McKnight said that she interpreted the phrase "you people" as equivalent to an offensive term used to refer African Americans. In her opinion, Schwartz "was asking us to leave because we are blacks and he didn't want to have anything to do with us. Because my husband questioned the capability of him and questioned his character as a manager and he [Andrew McKnight] really didn't feel, and I didn't feel, that he [Schwartz] knew what he was doing or anybody else there either."

Defendants moved for summary disposition and, at the hearing on the motion, argued that the McKnights received an initial estimate for repairs that included only the items that obviously needed replacing at the time the dealership personnel first inspected the car. According to defendants, after those repairs were made and hidden problems became apparent, the McKnights became upset that the initial estimate did not cover those repairs. Again according to defendants, the dealership attempted to avoid an unpleasant situation by refunding the McKnights' payment and allowing them to take the car with paying for about $3,000 in repairs that had already performed. Defense counsel argued that Schwartz was merely expressing frustration in referring to the McKnights as "you people" and did not have any discriminatory intent. The trial court granted defendants' motion for summary disposition on the alleged Motor Vehicle Service and Repair Act violations because, it concluded, there was no evidence that the McKnights sustained any damages.[8] As for the three race-related claims, the trial court stated:

> [T]he use of "you people" without more does not raise an inference that Schwartz's actions were motivated by plaintiff's [sic] race sufficient to support a prima facie case.

---

[8] The McKnights do not challenge the trial court's decision to grant summary disposition to defendants on this claim. Accordingly, we do not address whether the trial court erred in this regard in our analysis.

> There is no evidence offered here that Schwartz used racial slurs on this or any other occasion. There's no evidence that Schwartz made derogatory comments about African Americans on this or any other occasion. There's no evidence of similar behavior against other African American customers by Schwartz. There's no evidence that Schwartz treated plaintiffs differently than any other patrons who were not African American. I disagree with defendant's cite to an unpublished Court of Appeals decision, Johnson versus General Motors, Docket Number 190340, decided September 12th, 1997, in that the defendant seems to suggest that the phrase "you people" used there was the basis for the court holding that the phrase is not, or does not show a racially motivated predisposition. I think under the facts of that case what the court was saying [was] that the entire statement by the defendant which contained the phrase "you people", in reference to African Americans, showed that the defendant did not act on a racially motivated predisposition. And, the Court's analysis went to the entire statement, not just to those two words. But I think without more, as required under the Elliot-Larson Act,[9] whether it's intentional discrimination or disparate treatment, whether it's the Ethnic Intimidation Act,[10] or if it's under 750.147,[11] which requires that the conduct be on account of race you have to have more than that phrase, and looking at the totality of these circumstances there isn't. And for that reason, the Court is going to grant the motion.

II. Summary Disposition

A. Standard Of Review

On appeal, the McKnights contend that the trial court erred when it summarily disposed of their three race-related claims. These issues present questions of law because they involve statutory interpretation and application, which requires review de novo.[12] Further, this standard of review is appropriate in this case because the trial court made its decision on these legal issues within the context of a motion for summary disposition, which is reviewed de novo.[13]

B. Legal Standards

A motion for summary disposition under MCR 2.116(C)(10) tests the factual underpinnings of a claim other than an amount of damages, so the deciding court considers all the evidence, affidavits, pleadings, admissions, and other information available in the record.[14] The deciding court must look at all the evidence in the light most favorable to the nonmoving

[9] The CRA, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*

[10] MCL 750.147b; MSA 28.344(2).

[11] MCL 750.147; MSA 28.344.

[12] *Grzesick v Cepela*, 237 Mich App 554, 559; 603 NW2d 809 (2000).

[13] *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

[14] MCR 2.116(G)(5); *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999).

party, who must be given the benefit of every reasonable doubt.[15] Only if there is no factual dispute, making the moving party entitled to judgment as a matter of law, would summary disposition be appropriate.[16] However, the nonmoving party must present more than mere allegations in order to demonstrate that there is a genuine issue of material fact in dispute, making trial necessary.[17] In other words, a plaintiff must show that there is a genuine issue of material fact regarding each element of his prima facie case to survive a motion for summary disposition under MCR 2.116(C)(10).[18]

The rules of statutory interpretation and application intersect with this legal standard for summary disposition at the point where the trial court deciding a motion for summary disposition considers whether the moving party is entitled to judgment as a matter of law. In other words, the trial court must understand what the law is in order to determine which party is entitled to judgment when there is a settled factual record.[19] These rules of interpretation and application are well-known:

> A fundamental rule of statutory construction is to ascertain the purpose and intent of the Legislature in enacting the provision. Statutory language should be construed reasonably and the purpose of the statute should be kept in mind. The first criterion in determining intent is the specific language of the statute. If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted and courts must apply the statute as written.[20]

Accordingly, we apply these rules to the public accommodation statutes, the ethnic intimidation statute, and the CRA in order to determine whether the trial court erred when it concluded that there was no material dispute that would permit the McKnights to bring a cause of action to trial for Schwartz's statements using the phrase "you people."

C. Equal Accommodations

MCL 750.146; MSA 28.343 states that "[a]ll persons within the jurisdiction of this state shall be entitled to full and equal accommodations, advantages, facilities and privileges of . . . places of public accommodation . . . ." As is relevant in this case, a "place of public

---

[15] *Atlas Valley Golf & Country Club, Inc v Village of Goodrich*, 227 Mich App 14, 25; 575 NW2d 56 (1998).

[16] See *Auto Club Ins Ass'n v Sarate*, 236 Mich App 432, 437; 600 NW2d 695 (1999).

[17] MCR 2.116(G)(4); *Etter v Michigan Bell Telephone Co*, 179 Mich App 551, 555; 446 NW2d 500 (1989).

[18] See *Richardson v Michigan Humane Society*, 221 Mich App 526, 527-528; 561 NW2d 873 (1997).

[19] See, generally, *Kent v Alpine Valley Ski Area, Inc*, 240 Mich App 731, 737-744; 613 NW2d 383 (2000) (interpreting statute in order to determine whether trial court erred in granting summary disposition).

[20] *Id*. at 736 (citations omitted).

accommodation" includes "a business . . . whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public."[21] MCL 750.147; MSA 28.344 defines a violation of the guarantee of equal access to public accommodations as well as a cause of action for such a violation:

> Any person being an owner, lessee proprietor, manager, superintendent, agent or employee of any such place who shall directly or indirectly refuse, withhold from or deny to any person any of the accommodations, advantages, facilities and privileges thereof . . . on account of race, color, religion [or] national origin . . . or that any particular race, color, religion [or] national origin . . . is not welcome, objectionable or not acceptable, not desired or solicited . . . shall be liable to the injured party, in treble damages sustained, to be recovered in a civil action . . . .

Whether Don Massey Cadillac, Inc. is a business that offers services to the public and, as a result, is subject to the public accommodation laws is not in dispute. However, as the trial court acknowledged the phrase "you people" does not include any overt references to race, whether positive or negative. While case law provides examples of this phrase being used in a patently derogatory manner,[22] there are also examples of this phrase being used in an innocuous way.[23] Each of these cases, especially those in which the comments were at the center of the legal controversy, make it clear that context in which a comment is made can distinguish derogatory uses of ambiguous phrases from innocuous uses of ambiguous phrases.

In this case, we have every reason to believe from the circumstances surrounding the heated exchange of words that the phrase "you people" was intemperate, disrespectful, inconsiderate, unprofessional, inappropriately colloquial, and infuriating to the McKnights. However, there is *no* evidence on the record that the phrase revealed a racial bias. Rather, *all* the evidence indicates that the sticking point in the McKnights' relationship with defendants related to the price, the speed of the repairs, and to whom the McKnights could complain. The dispute

---

[21] The public accommodation act does not define "other public accommodations." We assume without deciding that the definition we quote, which comes from the CRA MCL 37.2301(a); MSA 3.548(301)(a), tends to reveal the common understanding of what constitutes a "public accommodation." Further, we note that the dealership may fit within the definition of the word "store" as used in MCL 750.146; MSA 28.343.

[22] See, e.g., *People v Stevens*, 230 Mich App 502, 504; 584 NW2d 369 (1998) ("you people" used in conjunction with other slurs, including at least remark that included a reference to the complainant's race); *Khalifa v Henry Ford Hosp*, 156 Mich App 485, 499; 401 NW2d 884 (1986) (the phrase "you people" used in an incident that referred to the plaintiff's racial or ethnic heritage).

[23] See, e.g., *People v Malone*, 180 Mich App 347, 351; 447 NW2d 157 (1989) (trial court referring to the jurors when attempting to determine whether to continue deliberations); *People v Hryshko*, 170 Mich App 368, 381; 427 NW2d 572 (1988) (prosecutor's closing argument to the jury); *NuVision v Dunscombe*, 163 Mich App 674, 685 ; 415 NW2d 234 (1987) (arbitrator's reference to the corporate plaintiff).

did not relate to whether the dealership would be willing to work with African Americans. Natalie McKnight even conceded that anger at her husband's criticism of the dealership prompted, at least in-part, Schwartz's outburst. The portions of Andrew McKnight's deposition testimony in the record do not explain what he believed this phrase meant. There simply is no way to infer that – alone – the term "you people" expressed an intent to deprive the McKnights of "any of the accommodations, advantages, facilities and privileges" of the dealership because of their race based on the evidence on the record.[24]

Further, there is no evidence that dealership staff have used this phrase at any other times, much less in other ways that would indicate a hidden racial meaning behind these otherwise plain words. When asked at her deposition whether she knew of any other individuals who had been treated in a discriminatory fashion at the dealership, Natalie McKnight said that she did not know any other customers personally. She "knew" that "a lot of" other African Americans had purchased cars there and had "heard" that some "people" have had difficulties with the dealership. However, she could not give any concrete examples of other acts of discrimination there, much less discriminatory treatment marked by the phrase "you people." Further, that the McKnights suffered this indignity more than eight months into their already rocky relationship with the dealership indicates that the dealership was willing to deal with them as customers, contradicting the inference that they were unwelcome as customers because of their race. Because the McKnights failed to produce any evidence that the phrase "you people" was directed at them as members of a protected class, we conclude that the trial court did not err in granting summary disposition to defendants on this claim.

D. Ethnic Intimidation

The ethnic intimidation statute, MCL 750.147b; MSA 28.344(2), provides in relevant part:

> (1) A person is guilty of ethnic intimidation if that person maliciously, and with specific intent to intimidate or harass another person because of that person's race, color, religion, gender, or national origin, does any of the following:
>
> (a) Causes physical contact with another person.
>
> (b) Damages, destroys or defaces any real or personal property of another person.
>
> (c) Threatens, by word or act, to do an act described in subdivision (a) or (b), if there is reasonable cause to believe that an act described in subdivision (a) or (b) will occur.
>
> * * *

[24] See *Whitley v Peer Review Systems, Inc*, 221 F 3d 1053, 1056 (CA 8, 2000).

> (3) Regardless of the existence or outcome of any criminal prosecution, a person who suffers injury to his or her person or damage to his or her property as a result of ethnic intimidation may bring a civil cause of action against the person who commits the offense to secure an injunction, actual damages, including damages for emotional distress, or other appropriate relief. A plaintiff who prevails in a civil action brought pursuant to this section may recover both of the following:
>
> (a) Damages in the amount of 3 times the actual damages described in this subsection or $2,000.00, whichever is greater.
>
> (b) Reasonable attorney fees and costs.

The McKnights arguably presented evidence that Schwartz engaged in contact that falls under subsection (1) by presenting evidence that he stood very close to Andrew McKnight and was yelling in a manner that could be interpreted as threatening. Natalie McKnight said that she was frightened of Schwartz at that time. Andrew McKnight said that Schwartz threatened to remove him forcibly if he did not leave the dealership. Schwartz's actions also prompted Andrew McKnight to ask another dealership employee standing some distance away whether Schwartz was going to damage the Bentley. Giving the McKnights the benefit of all reasonable doubts, there is a dispute in the record concerning whether Schwartz was threatening to harm Andrew McKnight or the McKnights' property during the incident, intimidating both plaintiffs.

Nevertheless, this statute does not prohibit intimidation for any reason whatsoever. Rather, this intimidating conduct must be coupled with a malicious and "specific intent to intimidate or harass another person because of that person's race, color, religion, gender, or national origin."[25] The two published cases that comment on this statute each involve incidents in which the intimidator made explicit references concerning the victim's race,[26] satisfying the evidentiary requirement that there be "racial animosity"[27] underlying the incident before there can be legal liability, whether criminal or civil.[28] The only evidence that shows an illegal animus is the "you people" remarks. However, as our analysis above indicates, even giving the McKnights the benefit of all reasonable doubts, there is no way to infer that this phrase was used with a specific and malicious intent to intimidate them because of their race. There must, we hold, be *some* other evidence of race playing a role in the argument. For instance, had the argument occurred in the context of a civil rights protest,[29] even though the words "you people"

[25] MCL 750.147b(1); MSA 28.344(2)(1).

[26] See *Stevens*, *supra* at 503-504; *People v Richards*, 202 Mich App 377, 378; 509 NW2d 528 (1993).

[27] *Richards*, *supra* at 379.

[28] The evidentiary considerations relevant to a criminal prosecution are also relevant for a civil action because the ethnic intimidation statute permits both forms of legal action for the same conduct. See MCL 750.147b(1) and (3); MSA 28.344(2)(1) and (3).

[29] See, generally, *People v Weinberg*, 6 Mich App 345; 149 NW2d 248 (1967), citing cases involving civil rights protests.

might be considered benign, the underlying reason for the confrontation might be enough to reveal racial animosity, thus placing any intimidating behavior within the scope of the ethnic intimidation statute. This case, however, does not involve an atmosphere that was unmistakably charged with any of the biases identified in the ethnic intimidation statute.[30] Thus, we conclude that the trial court trial court properly granted summary disposition to defendants because the record lacks evidence of this racial element.

E. Civil Rights Act

The CRA, MCL 37.2302; MSA 3.548(302), provides that, unless permitted by law, a person "shall not:"

> (a) Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service because of religion, race, color, national origin, age, sex, or marital status.

Again, none of the parties disputes that the dealership is a public accommodation. Although this language in the CRA is not identical to the other statutes discussed above, this CRA provision still requires the McKnights to prove a racial component in the dealership's conduct in order to have a cause of action for a violation of their civil rights. Recently, in *DeBrow v Century 21 Great Lakes, Inc*,[31] the Supreme Court held that a single comment that is direct evidence of discrimination can provide sufficient evidence of a bias prohibited by the CRA to justify submitting a discrimination claim to a jury.[32] In reaching this conclusion, the Supreme Court obliquely observed that the comment at issue in that case included a reference to the illegal bias, age discrimination, and that the context in which the comment was made could be interpreted in more than one way.[33] Under the favorable view of the evidence given to the nonmovant when a trial court decides a motion for summary disposition, this single reference to age and the fact that the comment was made while the declarant was firing the plaintiff was enough to create a material question of fact.[34] Thus, summary disposition was improper in *DeBrow*.[35]

DeBrow is distinguishable from this case on any number of grounds, including the fact that it addressed employment discrimination and clarified when plaintiffs must satisfy a burden-shifting scheme. Nevertheless, the factors the Court identified that merited reversing the order granting summary disposition – the content of the comment and the context in which it was made – are germane in this case. The phrase "you people" does not, on its face, reveal an illegal bias.

[30] MCL 750.147b(1); MSA 28.344(2)(1).

[31] *DeBrow v Century 21 Great Lakes, Inc*, __ Mich __; __ NW2d __ (Docket No. 114615, dec'd January 17, 2001).

[32] Slip op at 5.

[33] *Id*.

[34] *Id*.

[35] *Id*. at 5-6.

Nor does the time, place, and manner in which Schwartz used this phrase reveal a discriminatory animus.

Further, MCL 37.2302(a); MSA 3.548(302)(a) prohibited the dealership, through its employees, from denying the McKnights "full and equal enjoyment" of the goods and services offered there. Giving the McKnights the benefit of every reasonable doubt, there is a real debate on the record concerning the quality of the service the dealership and its staff offered. For instance, it is not clear what motivated the dealership to ask the McKnights to pay in advance, why dealership personnel waited two months to inform them that the parts for the Bentley had arrived, why the original estimate did not anticipate or cover the additional repair work, why customer service staff prevented the McKnights from talking with the dealership's owner, and why individuals in a high-end business would adopt a confrontational approach when dealing with customers. Yet, the McKnights have not provided any evidence that they were subject to these arguably poor business practices *because* they are African American customers while better service is available for people who are not African American. This prevents us from inferring that the McKnights have been denied "full" "enjoyment" of the dealership's services that is *un*equal to the way others are treated there because of their race.

As we pointed out in our discussion of the ethnic intimidation statute, the statutes at issue in this case have special purposes related to discrimination based on "religion, race, color, national origin, age, sex, or marital status." The CRA is not, by its plain language, a broad consumer protection statute designed to ensure polite and helpful service in public accommodations. Without evidence of racial animus, the McKnights have failed to create a question of material fact concerning this element of their claim. Thus, in contrast to *DeBrow*, the trial court in this case properly granted summary disposition on this claim as well as the two other claims we have analyzed.

III. Alternative Grounds To Affirm

While reviewing the record in this case, we could not help but notice holes in the complaint. Each of these three claims require the plaintiffs to prove that they are part of a protected class and that the alleged discrimination or illegal conduct occurred because they are part of this class. However, the complaint fails to state that the McKnights are members of a protected class defined by race and that defendants acted illegally toward them because of their membership in the class. This merited summary disposition under MCR 2.116(C)(8) because, absent allegations that touched even lightly on these racial elements of the statutes, the McKnights have failed to plead a prima facie case under *any* of the statutes they cite. True, because of the documentary evidence in the record, we know that the McKnights are African Americans and would be members of a protected class. However, summary disposition under MCR 2.116(C)(8) is granted based on the complaint alone, regardless of other evidence.[36] Thus,

[36] MCR 2.116(G)(5).

had the trial court not granted summary disposition pursuant to MCR 2.116(C)(10), it could have granted summary disposition on this other basis.

Affirmed.

/s/ William C. Whitbeck
/s/ William B. Murphy
/s/ Jessica R. Cooper