

STATE OF MICHIGAN  
COURT OF APPEALS

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SHAKHAR THAKUR,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS and STATE  
OF MICHIGAN,

Defendants-Appellees.

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UNPUBLISHED

May 18, 2001

No. 221584

Ingham Circuit Court

LC No. 98-087861-NZ

Before: Gage, P.J., and Cavanagh and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants summary disposition pursuant to MCR 2.116(C)(10). Plaintiff, who has Asian-Indian heritage, claimed racial discrimination under the Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*, alleging that defendant removed him from the civil service list and failed to hire him as a civil service employee despite his qualifications. We affirm.

We review de novo a trial court's summary disposition ruling resting on MCR 2.116(C)(10) to determine whether any genuine issue of material fact exists to warrant trial. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). If a plaintiff presents a prima facie disparate treatment claim of unlawful discrimination, the burden shifts to the defendant to offer a legitimate nondiscriminatory reason for the employment action. On the defendant's showing of a legitimate nondiscriminatory reason, the burden returns to the plaintiff to show that the offered reason was merely pretextual.<sup>1</sup> *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 359; 597 NW2d 250 (1999).

Even assuming that plaintiff adequately established a prima facie case of disparate treatment, plaintiff failed to present evidence refuting defendants' proffered nondiscriminatory reasons for failing to interview plaintiff. Defendant presented affidavits explaining that plaintiff

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<sup>1</sup> The burden shifting analysis does not apply in a "mixed motive" case, but here plaintiff presented no direct or indirect evidence of defendants' predisposition to discriminate against members of plaintiff's protected class. *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 359-361; 597 NW2d 250 (1999).

was not interviewed for a position, open to doctors of plaintiff's rank, because plaintiff did not at the relevant time appear on a register of eligible civil service employees, and that plaintiff's name had been removed from the register after one year pursuant to a documented civil service regulation. Plaintiff alleged that his name "was secretly removed from the list," but did not substantiate that either defendant secretly removed his name. The affidavits of other, prior litigants against defendants that plaintiff submitted to the trial court neither refuted defendants' proffered reasons in this case, nor did the affidavits tend to establish that defendants harbored any racially discriminatory animus. Because plaintiff did not establish the existence of an issue of fact contradicting defendants' proffered explanations, the trial court appropriately granted defendant summary disposition under MCR 2.116(C)(10).

While plaintiff further argues that the Department of Corrections' statistical racial composition shows disparate impact against plaintiff's protected group, plaintiff has not connected any alleged shortage of minority employees to a facially neutral employment practice, as is required. *Roberson v Occupational Health Centers*, 220 Mich App 322, 329-330; 559 NW2d 86 (1996).

Affirmed.

/s/ Hilda R. Gage  
/s/ Mark J. Cavanagh  
/s/ Kurtis T. Wilder