STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM RICHARDSON,

Plaintiff-Appellant,

V

NATIONAL-STANDARD COMPANY,

Defendant-Appellee.

UNPUBLISHED
October 19, 2001

No. 225454
Berrien Circuit Court
LC No. 98-003942-CL

Before: Gage, P.J., and Jansen and O'Connell, JJ.

PER CURIAM.

In this wrongful discharge action, plaintiff appeals as of right from the trial court's November 4, 1999, order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). Plaintiff was discharged in January 1998 after approximately thirty-five years of employment with defendant as part of a reduction in force (RIF). We affirm.

The events giving rise to this appeal occurred in January 1998. On January 30, 1998, defendant's management at its Corbin, Kentucky plant informed plaintiff that his services were no longer needed. During his deposition plaintiff testified that he was not surprised about his termination because business at the Corbin plant had declined. Specifically, plaintiff testified that his department manufactured the wire used in airbags, and that the demand for airbags had diminished. However, plaintiff further testified that he was not told exactly why he was being terminated, although he recognized that defendant was undergoing an RIF.[1]

After plaintiff wrote to defendant seeking an explanation for his termination, defendant's director of administration in Niles, Michigan, Michael Conn, replied in a letter dated March 31, 1998. Specifically, Conn explained that plaintiff was terminated as part of the RIF, and that while plaintiff's lengthy duration of employment with defendant was duly considered, he was chosen to be terminated because of past "write-ups in [plaintiff's] file over the last couple of years" as well as frequent verbal admonitions. In his September 19, 1999, affidavit in support of defendant's motion for summary disposition, Conn averred:

[1] The record reveals that plaintiff was disgruntled about his termination, and that he thought that other employees should have been terminated instead of him because of his seniority and superior ability.

> [Plaintiff's] employment with [defendant] was terminated due to a decision by [defendant] to reduce the total number of employees at its Corbin, Kentucky plant as a means of reducing its operating costs. There was no other reason for [plaintiff's] termination.

Plaintiff filed this wrongful discharge action on October 16, 1998. The complaint alleged that plaintiff was terminated without just cause, and that "[d]efendant refused to transfer [p]laintiff to other positions for which plaintiff had the experience, despite plaintiff's request to do so and in violation of its contract with plaintiff." As relevant to this appeal, defendant moved for summary disposition pursuant to MCR 2.116(C)(10) on September 20, 1999, arguing that plaintiff's employment was at will. Defendant further argued that even if plaintiff could only be terminated for cause, his termination as part of the RIF was just cause as a matter of law. In response, plaintiff argued that the RIF did not provide just cause for his discharge, because he was replaced by another employee, Ralph Centers. Plaintiff also argued that he was entitled to transfer to another position instead of being terminated.

Ruling from the bench, the trial court concluded that genuine fact issues existed regarding whether plaintiff's employment was terminable for cause. However, the trial court went on to observe that plaintiff's wrongful discharge claim was deficient because his termination as part of the RIF constituted just cause as a matter of law. Moreover, the trial court rejected plaintiff's argument that he was replaced by another employee following his discharge. Likewise, the trial court determined that plaintiff did not have a legitimate expectation of being transferred to another position within defendant's organization instead of being discharged.

This Court reviews de novo a trial court's grant of summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

> In evaluating a motion for summary disposition brought under [MCR 2.116(C)(10)], a trial court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).]

On appeal, plaintiff argues that the RIF did not provide just cause for his termination because he was replaced by another employee. We disagree.

Even if we were to agree with the trial court's determination that plaintiff's employment was terminable only for cause, the well-settled law of this state is that termination of employment as part of a RIF amounts to just cause as a matter of law. *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 114; 469 NW2d 284 (1991); *Clement-Rowe v Michigan Health Care Corp*, 212 Mich App 503, 506; 538 NW2d 20 (1995). Plaintiff does not challenge the legitimacy of the RIF, nor does he assert that it was a mere pretext for otherwise discriminatory action. See, e.g., *Ewers v Stroh Brewery Co*, 178 Mich App 371, 378-379; 443 NW2d 504 (1989). Rather, plaintiff contends that the RIF is not a defense under the circumstances of the present case because he was replaced by a coworker.

In support of his argument, plaintiff points to a decision of the United States Court of Appeals for the Sixth Circuit, *Barnes v Gencorp, Inc*, 896 F2d 1457 (CA 6, 1990).[2] In *Barnes*, the plaintiffs filed suit against the defendant for age discrimination in violation of the Age Discrimination in Employment Act of 1967 (ADEA) 29 USC § § 621 *et seq*,[3] after their employment was terminated as part of a RIF. As relevant to the present case, the *Barnes* court concluded that a plaintiff alleging age discrimination in the context of a RIF must produce "additional, direct, circumstantial, or statistical evidence tending to show that the employer singled out the plaintiff for discharge for impermissible reasons" in addition to his or her prima facie case. *Barnes, supra* at 1465. Consequently, pursuant to *Barnes*, the standard prima facie claim of age discrimination is modified when a plaintiff is discharged as part of a RIF. See *Godfredson v Hess & Clark, Inc*, 173 F3d 365, 371 (CA 6, 1999).[4]

After setting forth this heightened standard for a prima facie case of age discrimination in the context of a RIF, the *Barnes* court made the following comments that plaintiff argues are applicable in the present case.

> It is important to clarify what constitutes a true work force reduction case. A work force reduction situation occurs when business considerations cause an employer to eliminate one or more positions within the company. An employee is not eliminated as part of a work force reduction when he or she is replaced after his or her discharge. *However, a person is not replaced when another employee is assigned to perform the plaintiff's duties in addition to other duties, or when the work is redistributed among other existing employees already performing related work. A person is replaced only when another employee is hired or reassigned to perform the plaintiff's duties.* See *Sahadi* [*v Reynolds Chemical*, 636 F2d 1116, 1117 (CA 6, 1980)]. [*Barnes, supra* at 1465 (emphasis supplied).]

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[2] Plaintiff also relies on an unpublished federal decision, *Wolf v Lacy Diversified Industries*, unpublished opinion of the United States District Court for the Western District of Michigan, issued December 7, 1993 (Docket No. 1:92-CV-510). In *Lacy*, the plaintiff filed suit against the defendant alleging age discrimination and wrongful discharge. Evaluating the plaintiff's age discrimination claim, the *Lacy* court concluded that the plaintiff had presented sufficient evidence to create a genuine factual dispute regarding whether he was replaced by a younger worker. In a cursory fashion without detailed analysis, the *Lacy* court further concluded that because the plaintiff had put sufficient evidence to show that he was replaced as relevant to his age discrimination claim, "plaintiff could prevail on his [wrongful discharge] claim as well." *Id.* at 4.

[3] The *Barnes* plaintiffs also alleged age discrimination in violation of Ohio state law.

[4] Likewise, in Michigan, a plaintiff discharged during a RIF is required to "adduce additional proofs in order to establish discrimination." *Meagher v Wayne State Univ*, 222 Mich App 700, 717; 565 NW2d 401 (1997).

Plaintiff argues that this standard for determining the existence of a true RIF is also applicable in the wrongful discharge context.[5] In contrast, defendant summarily rejects plaintiff's reliance on *Barnes*, arguing that once the trial court determined that plaintiff was discharged as part of the RIF, "inquires into collateral issues such as the retention of all or part of the work previously performed by [plaintiff] [are] completely irrelevant."

In *Lytle v Malady (On Rehearing)*, 458 Mich 153, 177; 579 NW2d 106 (1998), our Supreme Court recognized that to make out a prima facie case of age discrimination, a plaintiff must demonstrate, in addition to other factors, that he or she was replaced by a younger employee. In this vein, the *Lytle* Court quoted the above holding from *Barnes* regarding a true RIF. *Id.*, n 27. Thus, to the extent that our Supreme Court has approved of the *Barnes* standard as a basis for discerning what constitutes a true RIF, it has done so only in the context of reviewing the replacement element of a prima facie claim of discrimination.

Where no claim of pretext is alleged, we believe that any inquiry by this Court into defendant's organization of its operations following plaintiff's discharge for cause is unnecessary. As our Supreme Court has recognized in a different context, "[a] court should be most reluctant to interfere with the business judgment and discretion of [corporate management] in the conduct of corporate affairs." *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 531; 473 NW2d 652 (1991) (opinion by Riley, J.), quoting *In re Butterfield Estate*, 418 Mich 241, 255; 341 NW2d 453 (1983). Because defendant terminated plaintiff's employment as part of the RIF, plaintiff's claim of wrongful discharge cannot succeed. *McCart, supra* at 114.

On appeal, plaintiff also contends that the trial court erred in concluding that defendant was not required to transfer him to another position instead of discharging him. Plaintiff has waived this issue on appeal by failing to cite any meaningful authority in support of his argument. See *Caldwell v Chapman*, 240 Mich App 124, 132-133; 610 NW2d 264 (2000) ("A party may not merely announce a position and leave it to this Court to discover and rationale the basis for the claim").[6]

Affirmed.

/s/ Hilda R. Gage
/s/ Kathleen Jansen
/s/ Peter D. O'Connell

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[5] We note that plaintiff has failed to direct our attention to a published Michigan case as authority for this proposition.

[6] To the extent that plaintiff does cite authority in this portion of his brief on appeal, he merely reiterates his earlier argument that his employment with defendant was terminable only for cause. However, plaintiff fails to develop any coherent argument articulating how these cases support his claim that he was entitled to transfer to another position rather than being discharged.