

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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THELMA EDMONDSON,

Plaintiff-Appellant,

v

DEPARTMENT OF TREASURY,

Defendant-Appellee.

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UNPUBLISHED

October 23, 2001

No. 223745

Ingham Circuit Court

LC No. 99-089702-NZ

Before: Whitbeck, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

In this employment discrimination case, plaintiff Thelma Edmondson appeals as of right from an order granting summary disposition to defendant Department of Treasury under MCR 2.116(C)(10). We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Treasury hired Edmondson as a general office assistant in 1981. Edmondson was the only African-American in her unit. Before 1991, her duties encompassed typing, answering telephones, and finding information. During this period of employment, Treasury did not reprimand Edmondson or tell her that she was incapable of performing this tasks. However, she said that, starting in 1991, Treasury gave most of her duties to white employees, first to an individual with more seniority, and then to new hires at Edmondson's civil service classification. Edmondson also claimed that Treasury denied her work assignments and training that would have put her in a position to be promoted, while her similarly classified white coworkers were consistently given such assignments. Finally, she contended that she was denied a reallocation or reclassification to a higher civil service level. In 1999, Edmondson took a voluntary lateral transfer.

In March 1999, Edmondson filed a complaint alleging race discrimination under the Civil Rights Act.<sup>1</sup> Following discovery, Treasury moved for summary disposition under MCR 2.116(C)(10). In considering Treasury's motion, the trial court characterized Edmondson's allegations of discrimination as a disparate treatment claim that she could prove either with

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<sup>1</sup> MCL 37.2101 *et seq.*

ordinary principles of proof or the *McDonnell Douglas*<sup>2</sup> burden-shifting framework. The trial court subsequently concluded that Edmondson failed to establish that Treasury had a predisposition to discriminate and that reallocating work assignments did not constitute an adverse employment decision. The trial court also determined that Edmondson had failed to show that Treasury denied her training opportunities when it granted that chance to other similarly employees situated. Further, Edmondson had not established that any such training would have qualified her for a reclassification. Finally, the trial court noted that the decision to reallocate Edmondson's position was not Treasury's to make. In all, the trial court decided to grant the motion for summary disposition because it concluded that Edmondson had failed to demonstrate a prima facie case of racial discrimination.

## II. Standard Of Review And Legal Test

Edmondson contends that the trial court erred in granting the motion for summary disposition because she sustained her burden of demonstrating the existence of evidentiary support her a prima facie case of racial discrimination. We review de novo the trial court's decision to grant a motion for summary disposition.<sup>3</sup>

"A motion for summary disposition under MCR 2.116(C)(10) . . . tests the factual support of a claim . . . ."<sup>4</sup> MCR 2.116(G)(5) requires the reviewing court to consider "affidavits, together with the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties . . . ." The court reviews this documentary evidence in the "light most favorable to the nonmoving party."<sup>5</sup> However,

an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her.<sup>[6]</sup>

In other words, summary disposition is appropriate "if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact,<sup>[7]</sup> and the moving party is entitled to judgment as a matter of law."<sup>8</sup>

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

<sup>3</sup> See *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

<sup>4</sup> *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999).

<sup>5</sup> See *id.*, quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).

<sup>6</sup> MCR 2.116(G)(4).

<sup>7</sup> See *Richardson v Michigan Humane Society*, 221 Mich App 526, 527-528; 561 NW2d 873 (1997) (plaintiff must show genuine issue of material fact regarding each element of prima facie case to survive a motion for summary disposition under MCR 2.116[C][10]).

<sup>8</sup> *Smith, supra* at 454-455, quoting *Quinto, supra*.

### III. Disparate Treatment

MCL 37.2202(1)(a) prohibits an employer from discriminating “with respect to employment, compensation, or a term, condition, or privilege of employment, because of . . . race.” Claims for unlawful discrimination, including racial discrimination, can be divided into two broad categories: “disparate treatment” and “disparate impact.”<sup>9</sup> Disparate treatment claims, such as the claim in this case, also fall into two categories: “mixed motive” or intentional discrimination claims that are established under ordinary principles of proof with direct or indirect evidence, and “pretextual” claims that are established by using the *McDonnell Douglas* burden-shifting framework.<sup>10</sup>

Edmondson’s argument focuses on pretextual disparate treatment. A plaintiff establishes a prima facie case of pretextual discrimination by demonstrating that

“(1) she was a member of the protected class; (2) she suffered an adverse employment action . . .; (3) she was qualified for the position; but (4) she [suffered the adverse employment action] under circumstances that give rise to an inference of unlawful discrimination.”<sup>[11]</sup>

By providing proof of these elements, a plaintiff creates a rebuttable presumption of discrimination, which then requires the employer to provide a “legitimate, nondiscriminatory reason for its employment decision to rebut the presumption . . .”<sup>12</sup> If the employer fulfills this burden of going forward, the presumption of discrimination no longer exists.<sup>13</sup> Instead, the plaintiff must then submit evidence that the discriminatory animus motivated the employer’s decision, meaning that the legitimate reason articulated for the decision was merely a pretext for unlawful discrimination.<sup>14</sup>

In this case, Edmondson failed to establish her prima facie case because she did not demonstrate that Treasury took an adverse employment action against her.

Specifically, in order for an employment action to be adverse for purposes of a discrimination action, (1) the action must be materially adverse in that it is more than “mere inconvenience or an alteration of job responsibilities,” *Crady* [v *Liberty Nat’l Bank & Trust Co*, 993 F2d 132, 136 (CA 7, 1993)], and (2) there must be some objective basis for demonstrating that the change is adverse because “a plaintiff’s ‘subjective impressions as to the desirability of one position over

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<sup>9</sup> *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 358; 597 NW2d 250 (1999).

<sup>10</sup> *Id.* at 359-360.

<sup>11</sup> *Id.* at 361, quoting *Lytle v Malady (On Rehearing)*, 458 Mich 153, 172-173; 579 NW2d 906 (1998) (Weaver, J.) (alterations in *Wilcoxon*).

<sup>12</sup> *Hazle v Ford Motor Co*, 464 Mich 456, 464; 628 NW2d 515 (2001).

<sup>13</sup> *Id.* at 465; see *id.* at 465, n 9.

<sup>14</sup> *Id.* at 465-466.

another' [are] not controlling," *Kocsis [v Multi-Care Mgt, Inc]*, 97 F3d 876 (CA 6, 1996)], quoting *Kelleher v Flawn*, 761 F2d 1079, 1086 (CA 5, 1985).<sup>[15]</sup>

Edmondson, however, admitted that Treasury never demoted her and that her compensation remained unaffected by this alleged discrimination. Her argument that Treasury took adverse action against her by eroding her duties is ultimately unpersuasive because she has failed to provide an "objective basis" to conclude that her responsibilities really were worse.<sup>16</sup> Similarly, though Edmondson claimed that Treasury denied her training opportunities, she did not present any evidence concerning what those opportunities were or how they would have led to a reallocation of her position. With respect to Edmondson's claim that she was denied a promotion, she admitted that the Department of Civil Service made the reallocation decision, not Treasury. Even if Treasury did take action concerning her job, she failed to create a question of fact regarding whether that action was materially adverse.<sup>17</sup> Thus, the trial court did not err in granting the motion for summary disposition because Edmondson had failed to demonstrate that a question of fact existed concerning this element of her prima facie case.<sup>18</sup>

Affirmed.

/s/ William C. Whitbeck

/s/ Janet T. Neff

/s/ Joel P. Hoekstra

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<sup>15</sup> *Wilcoxon, supra* at 364.

<sup>16</sup> *Id.*

<sup>17</sup> MCR 2.116(G)(4).

<sup>18</sup> See *Richardson, supra*.