

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT J. MAJESKE,

Plaintiff-Appellant,

v

EATON CORPORATION,

Defendant-Appellee.

UNPUBLISHED

December 13, 2002

No. 236292

Saginaw Circuit Court

LC No. 00-033734-NZ

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition under MCR 2.116(C)(10) in this age discrimination action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought this action under MCL 37.2101 *et seq.*, asserting he was denied a job interview for a new position due to his age. To establish a prima facie case of discrimination, 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 give rise to an inference of discriminatory intent. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 172-173; 579 NW2d 906 (1998). The employer can rebut the presumption by articulating a legitimate, nondiscriminatory reason for the action. *Id.* at 173. Plaintiff must then show that there was a triable issue that the employer's proffered reasons were not the true reasons, but were pretext for discrimination. *Id.* at 174.

The trial court found that plaintiff established a prima facie case. Defendant presented evidence of a nondiscriminatory reason for the interview denial: that other applicants were more qualified. Plaintiff sought to establish that the reason was pretextual because the plant superintendent made a remark indicating that age was a factor in plaintiff's failure to receive an interview. Where the superintendent was not involved in deciding whom to interview, and defendant presented evidence that the other applicants were more qualified than plaintiff, plaintiff has failed to establish that the reason given was pretext for discrimination. The trial court properly granted summary disposition.

Affirmed.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Mark J. Cavanagh