

STATE OF MICHIGAN
COURT OF APPEALS

ELENA VAYSMAN,

Plaintiff-Appellant,

v

SCHOOLCRAFT COMMUNITY COLLEGE
DISTRICT and MIDGE CARLETON,

Defendants-Appellees.

UNPUBLISHED

January 22, 2004

No. 242222

Wayne Circuit Court

LC No. 00-039848-NZ

Before: Donofrio, P.J., and Griffin and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendants' motion for summary disposition in this employment discrimination action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's employment as a part-time mathematics instructor with Schoolcraft Community College was terminated after an incident with a student. Plaintiff brought this action against the college and her supervisor, Midge Carleton, asserting that she was terminated because she was Russian, in violation of the Civil Rights Act prohibition against national origin discrimination. MCL 37.2202(1)(a). The trial court granted defendants' motion for summary disposition, finding that plaintiff failed to present evidence that the termination was based on national origin animus, and that plaintiff did not overcome the legitimate business reason proffered by defendants for the dismissal.

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In evaluating the motion, the trial court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in a light most favorable to the party opposing the motion. *Ritchie-Gamester v Berkley*, 461 Mich 73, 75-76; 597 NW2d 517 (1999).

If a plaintiff can produce direct evidence of discrimination, she can go forward and prove unlawful discrimination in the same manner as a plaintiff would in any other civil case. *Hazle v Ford Motor Co*, 464 Mich 456, 462; 628 NW2d 515 (2001). If no direct evidence is available, plaintiff must proceed through the steps set forth in *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973). Plaintiff must first present evidence to establish a prima facie case of discrimination: (1) she belongs to a protected class, (2) she suffered an

adverse employment action, (3) she was qualified for the position, and (4) she was discharged under circumstances that give rise to an inference of unlawful discrimination. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 172-173; 579 NW2d 906 (1998). The burden then shifts to the defendant to articulate a legitimate non-discriminatory reason for the termination. *Id.* Once the defendant produces such evidence, the burden of proof shifts back to plaintiff to show that the proffered reasons were not true, but a mere pretext for discrimination. *Id.*, 174.

Disproof of an employers articulated reason for an adverse employment decision defeats summary disposition only if such disproof raises a triable issue that discriminatory animus was a motivating factor underlying the employer's action. *Id.*, 175.

Plaintiff failed to present any evidence giving rise to an inference of unlawful discrimination. Carleton's actions did not reflect an animus sufficient to support a finding that plaintiff was terminated because she is Russian. Carleton made no specific remarks that would show that she was predisposed to discriminating against Russians.

Even if plaintiff had established a prima facie case, she did not present any evidence showing that the proffered reason for termination was a pretext for discrimination. Plaintiff did have a confrontation with a student. While plaintiff asserts that the incident was improperly characterized as an assault, and that defendants failed to properly investigate the incident, she has not presented any evidence to show that the reason was a pretext, and that the actual motivation for her termination was improper national origin animus. *Hazle, supra; Lytle, supra.*

Affirmed.

/s/ Pat M. Donofrio
/s/ Richard Allen Griffin
/s/ Kathleen Jansen