STATE OF MICHIGAN

COURT OF APPEALS

RONALD M. BRYANT,

Plaintiff-Appellant,

v

DETROIT MEDICAL CENTER,

Defendant-Appellee.

UNPUBLISHED
May 6, 2004

No. 244333
Wayne Circuit Court
LC No. 01-118189-CL

Before: Talbot, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this employment discrimination and retaliatory discharge case. We affirm.

On appeal, plaintiff contends that the trial court erred by granting summary disposition in favor of defendant as there existed a genuine issue of material fact, the trial court improperly made findings of fact, and improperly accepted as true a factual assertion central to defendant's motion. We disagree.

We review a trial court's decision regarding a motion for summary disposition de novo. *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 369; 666 NW2d 251 (2003). Summary disposition is appropriate when, after reviewing the evidence in the light most favorable to the nonmovant, there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003); *Quality Products, supra* at 369.

Plaintiff's first contention is that defendant's termination of his employment amounted to age discrimination in violation of the Michigan Civil Rights Act, MCL 37.2101 *et seq*. We find that plaintiff presented a prima facie case of discrimination under *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d (1973), by showing that 1) he is a member of a protected class; 2) who suffered an adverse employment decision; 3) was qualified for the position; and 4) the adverse action occurred under circumstances giving rise to an inference of unlawful discrimination. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 134; 666 NW2d 186 (2003). Viewing the evidence in the light most favorable to plaintiff, he established a prima facie case by showing that he is a fifty-two year old employee with twenty-

five years of experience who was terminated from his employment before a number of younger employees were hired.

However, we conclude that plaintiff is unable to show that the legitimate, nondiscriminatory reason for plaintiff's discharge presented by defendant is mere pretext. See *Sniecinski*, *supra* at 134. Defendant has a uniformly applied written leave of absence policy, which plaintiff violated. Even if defendant improperly terminated plaintiff's employment prior to the end of the one-year leave of absence grace period, plaintiff would have been terminated before he attempted to return to work. See *Meagher v Wayne State University*, 222 Mich App 700, 712; 565 NW2d 401 (1997).

Plaintiff also contends that he was discharged in retaliation for filing a worker's compensation claim and for his past union activity. Either party to an at-will employment contract may terminate the contract at any time, for any reason, absent a contrary contractual provision, unless the grounds for discharge violate public policy. *Phillips v Butterball Farms Co., Inc. (After Second Remand)*, 448 Mich 239, 244; 531 NW2d 144 (1995). An employer may not discharge an employee for exercising a right conferred by a well-established legislative enactment. *Id.* To establish a claim of retaliatory discharge, a plaintiff must show that 1) he was engaged in protected activity, 2) of which the defendant was aware, 3) the defendant treated the plaintiff adversely, and 4) the adverse action was caused by the plaintiff's engagement in the activity. *Meyer v Center Line*, 242 Mich App 560, 566-567; 619 NW2d 182 (2000); see also *MESPA v Evart Public Schools*, 125 Mich App 71, 74; 336 NW2d 235 (1983).

The Worker's Disability Compensation Act both confers the right to employees to file claims and expressly protects employees from being discharged for exercising that right. MCL 418.301(11); *Phillips*, *supra* at 244-245. The right to organize a union is also conferred to employees by statute. MCL 423.8. As such, discharging an employee in retaliation for exercising either right would contravene public policy. However, as we noted *supra*, plaintiff has not presented evidence that he was discharged for any reason other than his violation of defendant's leave of absence policy. As such, we find the grant of summary disposition in defendant's favor was proper.

Affirmed.

/s/ Michael J. Talbot
/s/ Janet T. Neff
/s/ Pat M. Donofrio