

STATE OF MICHIGAN
COURT OF APPEALS

YOLANDA HARVEY,

Plaintiff-Appellee,

v

HENRY FORD HEALTH SYSTEM,

Defendant-Appellant.

UNPUBLISHED
December 1, 2005

No. 254605
Wayne Circuit Court
LC No. 03-304063-CL

Before: Smolenski, P.J., and Schuette and Borrello, JJ.

MEMORANDUM.

In this employment discrimination action brought under the Elliott-Larsen Civil Rights Act, MCL 37.2202(1)(a), defendant appeals by leave granted from the trial court order denying its motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court erred in finding there was a genuine issue of material fact and in denying defendant's motion for summary disposition. In order to present a prima facie case of discrimination under the disparate treatment theory and thus avoid defendant's motion for summary disposition, plaintiff was required to show that she (1) was a member of a protected class; (2) was subjected to an adverse employment action; (3) was qualified for the position; and (4) that another similarly situated and outside the class was treated differently. *Lytle v Malady*, 458 Mich 153, 177; 579 NW2d 906 (1998). Plaintiff failed to present evidence to support a finding that there was another similarly situated person outside her class who was treated differently. The only possible person identified by plaintiff was an employee who, although he worked in the same department, did not hold the same position as plaintiff. Moreover, plaintiff's claim was based on the alleged disparate administration of competency examinations, yet she failed to introduce evidence of another who was administered the same examination and treated differently. Therefore, the trial court erred in failing to grant defendant's motion for summary disposition.

Reversed.

/s/ Michael R. Smolenski

/s/ Bill Schuette

/s/ Stephen L. Borrello