

STATE OF MICHIGAN
COURT OF APPEALS

SHEABRA L. SIMPSON, Ph.D.,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS, JAN EPP,
and HAMPTON E. WALKER, JR.,

Defendants-Appellees.

UNPUBLISHED

May 27, 2008

No. 275554

Wayne Circuit Court

LC No. 04-438895-CD

Before: Saad, C.J., and Borrello and Gleicher, JJ.

PER CURIAM.

In this race and gender discrimination action, plaintiff Sheabra L. Simpson, Ph.D., appeals as of right the trial court's order granting summary disposition in favor of defendants Department of Corrections (DOC), Jan Epp, and Hampton E. Walker, Jr., under MCR 2.116(C)(7) and (8). We affirm.

I. Facts and Procedural History

Plaintiff, a psychologist, is an African American female. Defendant DOC hired plaintiff as a staff psychologist in 1989. During her employment with defendant DOC, plaintiff worked as a psychologist at the Western Wayne Correctional Facility, Scott Correctional Facility, and Mound Correctional Facility. She was responsible for providing mental health care for prisoners. In 1997, plaintiff filed an action against defendant DOC, alleging racial and gender harassment, racial and gender discrimination in promotions, and unlawful retaliation. The trial court granted the DOC's motion for summary disposition under MCR 2.116(C)(10), and this Court affirmed.¹ Thereafter, plaintiff took an approved leave of absence from her position and was assigned to work as a union representative. After her union leave, plaintiff was on medical leave for about four months. Plaintiff claims that shortly after she returned to the job in June 2003, defendant DOC wrongfully terminated her employment.

¹ *Simpson v Dep't of Corrections*, unpublished opinion per curiam of the Court of Appeals, issued November 6, 2001 (Docket No. 220050).

An Employee Departure Report indicates that plaintiff was terminated, in part, “for violation of MDOC Employee Handbook Rule . . . 47.” According to a June 5, 2003, memorandum regarding a disciplinary conference for plaintiff, Rule 47 relates to “Falsification or Altering Documents.” This memorandum found that plaintiff’s “violation of work rule 47 is sustained” and stated that “Work Rule 47 calls for dismissal.” Although she characterizes the misrepresentation of her academic credentials as “de minim[us],” she acknowledges in her second amended complaint that she “inadvertently indicated” in her 1989 application for a limited license in psychology to the Department of Consumer and Industry Services “that she had earned a Master of Arts Degree from California State University by marking the wrong box.”² In fact, plaintiff had a B.A. in psychology as well as a Ph.D. in social psychology and clinical psychology, but, while she had completed most of the coursework to obtain a Master’s Degree in psychology, she did not, in fact, hold a Master’s Degree in clinical psychology.

Plaintiff filed a complaint against defendants, alleging among numerous other claims, racial and gender discrimination in violation of the Elliott Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq.*, racial and gender retaliation, sexual harassment, and wrongful discharge. Defendants moved for summary disposition, and the trial court granted the motion, but granted leave to allow plaintiff to file a motion to amend Counts I (racial discrimination), II (gender discrimination), and III (racial and gender retaliation). Plaintiff filed a motion for reconsideration and/or clarification of the trial court’s order granting summary disposition of plaintiff’s ELCRA claims. The trial court granted the motion and reinstated plaintiff’s race and gender discrimination and retaliation claims against defendant DOC. The trial court again granted plaintiff leave to file a motion to amend Counts I, II and III of her complaint. Thereafter, plaintiff moved to amend the complaint. The trial court denied the motion as to plaintiff’s retaliation claim, but granted the motion “as to Count I (Race Discrimination) and Count II (Sex Discrimination).” Plaintiffs subsequently filed a second amended complaint, which contained claims of race and gender discrimination.

Defendants moved for summary disposition of plaintiff’s second amended complaint pursuant to MCR 2.116(C)(7) and (8). The trial court granted summary disposition in favor of

² Review of the application reveals that in the application, the letters “M.A.” are actually handwritten in a column designated “Degree Earned”. Furthermore, the major is handwritten as “clinical psychology,” and the date that the degree was earned is listed as “9/75.” Plaintiff signed the application and attested that the statements in the application were true and correct. To the extent that the trial court granted defendants’ motion for summary disposition under MCR 2.116(C)(7), our consideration of documentary evidence would be proper. *Bryant v Oakpointe Villa Nursing Centre, Inc.*, 471 Mich 411, 420; 684 NW2d 864 (2004) (“In making a decision under MCR 2.116(C)(7), we consider all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict it.”) However, to the extent that the trial court granted summary disposition based on MCR 2.116(C)(8), our consideration of any documents other than the pleadings would be improper. We note that we have not relied on plaintiff’s application for a limited license in psychology in affirming the trial court’s grant of summary disposition under MCR 2.116(C)(8).

defendants, ruling that summary disposition of plaintiff's race and gender discrimination claims was proper under MCR 2.116(C)(8) and that plaintiff's claims of discriminatory allocation of resources and work assignments were barred by MCR 2.116(C)(7).

II. Analysis

This Court reviews de novo a trial court's grant or denial of summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim on the basis of the pleadings alone to determine whether the plaintiff has stated a claim upon which relief can be granted." *Morden v Grand Traverse Co*, 275 Mich App 325, 331; 738 NW2d 278 (2007). This Court must accept the plaintiff's well-pleaded factual allegations as true and construe them in a light most favorable to the nonmoving party. *Id.* "The motion should be granted if no factual development could possibly justify recovery." *Beaudrie v Henderson*, 465 Mich 124, 130; 631 NW2d 308 (2001).

Plaintiff first argues that the trial court erred in granting summary disposition of her race and gender discrimination claims under MCR 2.116(C)(8). A claim of discrimination may be established by direct or indirect evidence. See *Hazle v Ford Motor Co*, 464 Mich 456, 462; 628 NW2d 515 (2001). In cases involving direct evidence of discrimination, a plaintiff may prove unlawful discrimination in the same manner as a plaintiff would prove any other civil case. *Sniecinski v BCBSM*, 469 Mich 124, 132; 666 NW2d 186 (2003). Direct evidence is evidence, which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the employer's actions. *Id.* at 133. In a case in which there is direct evidence, the plaintiff must "present direct proof that the discriminatory animus was causally related to the adverse decision." *Id.* "In cases involving indirect or circumstantial evidence, a plaintiff must proceed by using the burden-shifting approach set forth in *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973)." *Id.* at 133-134. To establish a rebuttable prima facie case of discrimination, a plaintiff must present evidence that (1) she belongs to a protected class, (2) she suffered an adverse employment action, (3) she was qualified for the position, and (4) her failure to obtain the position occurred under circumstances giving rise to an inference of unlawful discrimination. *Id.* at 134. "Circumstances give rise to an inference of discrimination when the plaintiff 'was treated differently than persons of a different class for the same or similar conduct.'" *Wilcoxon v Minnesota Mining & Manufacturing Co*, 235 Mich App 347, 361; 597 NW2d 250 (1999), quoting *Reisman v Wayne State Univ Regents*, 188 Mich App 526, 538; 470 NW2d 678 (1991).

In this case, the trial court concluded that plaintiff's complaint failed to sufficiently allege a claim of discrimination based on direct evidence. In plaintiff's second amended complaint, she alleged that her supervisor, Hampton E. Walker, Jr., a white male who was the Regional Director of Psychological Services for defendant DOC, wrote a letter in which he stated that plaintiff had neglected certain prisoners' cases, and that this letter was one of the grounds for the termination of her employment. The trial court stated that if the letter were motivated by discriminatory animus, it would qualify as direct evidence of discriminatory intent. However, the trial court observed that plaintiff's complaint did not allege a causal connection between the direct evidence and the adverse employment decision and that under *Golec v Metal Exch Corp*, 208 Mich App 380, 382; 528 NW2d 756 (1995), affirmed and remanded 453 Mich 149 (1996), a mere statement

of conclusions that are not supported by allegations of fact will not suffice to state a cause of action under MCR 2.116(C)(8). Therefore, the trial court ruled that plaintiff's complaint failed to sufficiently allege a claim of discrimination based on direct evidence.

As stated above, in a case involving direct evidence of discrimination, the plaintiff must present direct proof that the discriminatory animus was causally related to the adverse employment decision. *Sniecinski, supra* at 133, 135. We disagree with the trial court's conclusion that plaintiff's complaint failed to sufficiently allege a causal connection between the letter and the termination of plaintiff's employment. The complaint alleged that "[t]his letter . . . was one of the grounds for her dismissal in 2003," and this sufficiently alleges the necessary causal connection between the letter and the adverse employment decision. However, summary disposition was nevertheless proper because plaintiff alleges in her second amended complaint that the "letter is an example of the retaliatory acts directed towards Plaintiff[.]" and the trial court previously granted summary disposition of plaintiff's retaliation claim and, when plaintiff moved to amend her complaint, the trial court specifically ruled that plaintiff's amended complaint could not contain a claim for retaliation. Thus, plaintiff's allegations regarding the letter, while not specifically characterized as a retaliation claim, were an attempt by plaintiff to resurrect a claim that had already been dismissed by the trial court. Summary disposition was therefore appropriate, although for a different reason than that articulated by the trial court.

Regarding the sufficiency of plaintiff's allegations of indirect evidence of discrimination, the trial court ruled that plaintiff failed to allege that a male and/or Caucasian who falsified documents was treated differently than she was treated. Plaintiff's amended complaint contained a list of fifteen white males and females who committed certain offenses for which they were not terminated. According to the trial court, none of the offenses committed by the other psychologists included falsification of documents, so plaintiff failed to sufficiently allege that she was treated differently than a male and/or Caucasian psychologist who committed the same offense. Plaintiff alleged in her second amended complaint that she was treated differently from white (male and female) psychologists employed by defendant DOC who were not disciplined, investigated or fired for a variety of conduct, ranging from failure to compete progress notes to criminal convictions. An inference of discrimination arises when a plaintiff was treated differently than persons of a different class for the same or similar conduct. *Wilcoxon, supra* at 361. None of the conduct that plaintiff alleged regarding the other individuals was the same or similar to plaintiff's conduct of including inaccurate information about her educational qualifications in her application for licensure. Thus, the trial court properly concluded that plaintiff failed to sufficiently allege a prima facie case of race and gender discrimination because she did not allege that she was treated differently than persons of a different class for the same or similar conduct. *Id.*

Plaintiff next argues that the trial court erred in granting summary disposition of her race and gender discrimination claims based on the statute of limitations. Plaintiff's argument is confusing and not well articulated, and it appears to demonstrate plaintiff's misunderstanding regarding the trial court's statute of limitations ruling. Although the trial court did rule that plaintiff's claims of discriminatory allocation of resources and work assignments were barred by the statute of limitations, the trial court did not make a blanket ruling that plaintiff's race and gender discrimination claims were barred by the statute of limitations. To the contrary, the trial court ruled that "to the extent Plaintiff is claiming that the termination of her employment was

motivated by discriminatory animus, her action is *not barred by the limitations period . . .*” [Emphasis added.] Moreover, plaintiff has not cited any legal authority to support her argument. It is not enough for an appellant to simply announce a position or assert an error in a brief and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. *Yee v Shiawassee Co Bd of Comm’rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). To the extent that plaintiff has failed to adequately develop her argument and cite legal authority to sustain her position, this portion of her argument on appeal is abandoned. *Id.*

Plaintiff finally argues that her second amended complaint establishes a claim for retaliation. The third count in plaintiff’s original complaint was a claim for “race and sex retaliation.” In an opinion and order dated August 26, 2005, the trial court granted defendant’s motion for summary disposition of plaintiff’s retaliation claim under MCR 2.116(C)(8), but granted leave to allow plaintiff to file a motion to amend Counts I (race discrimination), II (sex discrimination), and III (race and sex retaliation). Thereafter, plaintiff moved to amend the complaint. On the record at the February 17, 2006, hearing on plaintiff’s motion to amend the complaint, the trial court specifically “den[ie]d the amendment of the complaint to state a claim of retaliation.” In a written order, the trial court granted the motion “as to Count I (Race Discrimination) and Count II (Sex Discrimination).” Because the trial court specifically denied plaintiff’s motion to amend the complaint to add a retaliation claim, plaintiff’s attempt to assert a retaliation claim when the trial court previously granted summary disposition as to that claim is unavailing.

Affirmed.

/s/ Henry William Saad
/s/ Stephen L. Borrello