

STATE OF MICHIGAN
COURT OF APPEALS

TERRY CARTER,

Plaintiff-Appellant,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

UNPUBLISHED

March 5, 2009

No. 281415

Wayne Circuit Court

LC No. 06-609106-CZ

Before: Jansen, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the circuit court's decision granting defendant's motion for summary disposition of plaintiff's claim for unlawful retaliation under the Michigan Civil Rights Act, MCL 37.2101 *et seq.*¹ We affirm.

This Court reviews a trial court's summary disposition decision de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim. The court must consider any pleadings, affidavits, depositions, admissions, or other documentary evidence submitted by the parties in the light most favorable to the nonmoving party to determine whether a genuine issue of material fact exists to warrant a trial. MCR 2.116(G)(3)(b); *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999).

MCL 37.2701 provides, in pertinent part:

Two or more persons shall not conspire to, or a person shall not:

(a) Retaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act.

¹ The action proceeded to trial on plaintiff's separate claim for racial discrimination. A jury returned a verdict of no cause of action. The racial discrimination claim is not at issue on appeal.

To establish a prima facie case of retaliation, a plaintiff must show:

(1) that he engaged in a protected activity; (2) that this was known by the defendant; (3) that the defendant took an employment action adverse to the plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action. [*Garg v Macomb Co Community Mental Health Services*, 472 Mich 263, 273; 696 NW2d 646 (2005), amended 473 Mich 1205 (2005) (citation and quotation marks omitted).]

Once a plaintiff establishes a prima facie case of retaliation, the burden shifts to the defendant to show a legitimate business reason for its employment decision. *Taylor v Modern Engineering, Inc*, 252 Mich App 655, 659; 653 NW2d 625 (2002). If the defendant produces evidence establishing the existence of a legitimate reason for its decision, the plaintiff then has the opportunity to prove that the legitimate reason offered by the defendant was not the true reason, but was only a pretext for the decision. *Id.*

Plaintiff, who is African-American, alleges that he was retaliated against for complaining about and filing complaints of racial discrimination. In January 2004, plaintiff received a 30-day suspension for refusing to follow his supervisor's direct order. In February 2004, plaintiff filed complaints with the Michigan Department of Civil Rights and the National Labor Relations Board alleging that he was being discriminated against because of his race. In March 2004, plaintiff filed a claim of racial discrimination with the Equal Employment Opportunity Commission. In the meantime, on February 27, 2004, plaintiff received another 30-day suspension after he called another supervisor a "bitch." Plaintiff was thereafter discharged on May 20, 2004, for threatening his supervisor, but was subsequently allowed to return to work in November 2004 pursuant to a Reinstatement Agreement. The agreement required plaintiff to attend "AA/NA" meetings at the plant every week "without exception." Plaintiff missed a meeting in December 2004 and was suspended. Plaintiff missed another meeting in March 2005, following which he was discharged.

We agree that plaintiff failed to establish a causal connection between his protected activity and defendant's adverse employment decisions. Plaintiff suggests that unlawful retaliation may be inferred because he was discharged in May 2004, in violation of defendant's progressive disciplinary procedure. Under defendant's code of conduct, an employee is subject to progressive disciplinary measures for inappropriate conduct, consisting of a first written reprimand for an initial violation (step 1), followed by a second written reprimand (step 2), a third written reprimand (step 3), a 30-day disciplinary layoff (step 4), and finally discharge (step 5). It is undisputed that plaintiff received two 30-day suspensions during the four-month period preceding his May 2004 discharge. Plaintiff asserts that pursuant to a grievance settlement, his step-4 status was reduced to step-3 status in April 2004 and, therefore, he was not eligible for discharge at the time of his code violation in May 2004. However, defendant's code of conduct allows steps to be elevated if the behavior warrants it.

More significantly, the pertinent issue is not whether defendant violated its progressive disciplinary procedure, but whether there was a causal connection between plaintiff's protected activity and the adverse employment decision. A mere temporal relationship, standing alone, is not sufficient to factually demonstrate a causal connection. *West v Gen Motors Corp*, 469 Mich 177, 184-186; 665 NW2d 468 (2003). Rather, a plaintiff must show that the employer took an

adverse action because of the protected activity, not merely after the protected activity. *Id.* Importantly, plaintiff acknowledged that no one had ever said anything about his complaints of racial discrimination or union activities. Further, the evidence demonstrated that plaintiff had a lengthy disciplinary history for inappropriate conduct and was discharged in May 2004 for threatening to physically assault his supervisor. A superintendent and the plant manager, both of whom were also African-American, approved plaintiff's discharge.

Further, it is undisputed that plaintiff was permitted to return to work at step 3 pursuant to a negotiated Reinstatement Agreement. The agreement required plaintiff to attend mandatory in-plant AA/NA meetings every week for one year. One month after plaintiff's return, he missed a meeting and his status was elevated to step 4, a suspension. Plaintiff subsequently took the position that his attendance at the meetings was no longer necessary, but he was advised by his union committeeman that he was required to attend the meetings pursuant to the Reinstatement Agreement. Nonetheless, plaintiff failed to attend another meeting in March 2005, following which he was discharged. The Reinstatement Agreement specifically provided that plaintiff's attendance was required at the weekly meetings for one year "without exception."

Considering the lack of any specific causal evidence, as well as the overwhelming evidence of the legitimate business reasons for the various disciplinary actions against plaintiff, including that plaintiff's final discharge was consistent with the terms of the negotiated Reinstatement Agreement, we conclude that plaintiff failed to establish a genuine issue of material fact supporting a causal connection between his protected activity and the adverse employment actions. Thus, the trial court did not err in granting defendant's motion for summary disposition with respect to plaintiff's claim of retaliation.

Affirmed.

/s/ Kathleen Jansen
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood