

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1676**

Harvey Lawhorn,
Appellant,

LeVares Pearson,
Plaintiff,

vs.

State of Minnesota,
Minnesota Department of Corrections,
Respondent.

**Filed September 30, 2008
Reversed and remanded
Schellhas, Judge**

Ramsey County District Court
File No. C0-05-10417

Nana Amoako, 2500 Highway 88, Suite 108, Minneapolis, MN 55418 (for appellant)

Lori Swanson, Attorney General, Daniel L. Abelson, Gary R. Cunningham, Assistant
Attorneys General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101 (for
respondent)

Considered and decided by Halbrooks, Presiding Judge; Klaphake, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

In this race-discrimination case, appellant challenges the district court's grant of summary judgment to respondent. Appellant argues that a genuine issue of material fact exists as to whether respondent's reason for issuing him an oral reprimand was pretextual. Because we agree that a genuine issue of material fact exists, we reverse and remand for further proceedings in the district court.

FACTS

Appellant Harvey Lawhorn started working as a corrections officer for respondent Minnesota Department of Corrections at its Lino Lakes facility in 1994. In September 2005, appellant and LeVares Pearson, another corrections officer, sued respondent, alleging, among other things, that respondent unlawfully discriminated against them on the basis of their race. At oral argument, appellant abandoned his discrimination claim based on respondent's refusal to consider him for a promotion to a lieutenant position at respondent's Rush City facility.

After appellant and Pearson commenced their action, respondent conducted an investigation of appellant because another corrections officer, J.H., filed a general harassment complaint against appellant and others. In July and August 2006, respondent conducted 13 interviews regarding this harassment complaint and issued an oral reprimand to appellant, having concluded that "[appellant] gave a directive to his subordinates not to provide backup to another correctional officer when he conducted count." In addition to issuing an oral reprimand to appellant, respondent issued an oral

reprimand to Michelle Autey, who was appellant's girlfriend and a corrections officer also named in the harassment complaint, and respondent conducted a "supervisory conference" with another corrections officer, whom respondent found had followed appellant's directive.

Our review of the confidential transcripts of the 13 investigative interviews reveals that none of the officers who observed appellant's allegedly wrongful directive described it in terms of a directive not to provide backup to another corrections officer. Rather, the interviewed officers, who mentioned the subject directive by appellant, described it in terms of appellant directing officers to "not assist" with rounds, to "not help people" with rounds, or "not to do rounds." And, in his affidavit submitted to the district court, appellant explained his directive as follows:

At a meeting with the security squad officers, I relayed to them Captain Freer's orders that when they went to the living unit, they must stay at the desk of the officer posted to that unit while that officer was doing the rounds, and to monitor the posted officer for security purposes and not to do the rounds for the officer.

One of respondent's staffing managers stated in an affidavit submitted to the district court that while supervisory conferences "are not discipline but rather coaching sessions," an oral reprimand qualifies as discipline. A corrections lieutenant employed by respondent testified at his deposition that in order to qualify for a promotion from sergeant to lieutenant, "you had to have two years as a sergeant" and "you had to be discipline-free." Thus, the oral reprimand issued to appellant would arguably preclude his promotion to lieutenant.

In November 2006, respondent moved for summary judgment. In the same month, appellant and Pearson moved to amend their original complaint. As support for appellant's claim in the original complaint that he had been forced to work in an intimidating, hostile, and offensive working environment, appellant sought to add to paragraph 5 of the original complaint:¹

- e. After [appellant] commenced this action, [respondent], Freer and others engaged in subtle and blatant acts of retaliation against him for exercising his right to bring them to justice. Such acts included a vicious investigation into baseless allegations that [appellant] had ordered certain corrections officers not to provide backup assistance to another officer. The outcome of the investigation was predetermined as [respondent] refused to consider statements from individuals whose testimony supported [appellant]. [Respondent] would go on to issue an oral reprimand to [appellant].
- f. As a further example of retaliation against [appellant], [respondent] has reduced [appellant]'s responsibilities since he filed this suit.

Additionally, appellant sought to amend the original complaint to include a count of defamation and a claim for punitive damages. Respondent opposed appellant's motion to amend. Respondent's motion for summary judgment and appellant's motion to amend the complaint were heard together in November.

In December 2006, the district court granted summary judgment to respondent, dismissing appellant's claims in the original complaint in their entirety. The district court dismissed all claims based on acts that occurred prior to September 13, 2004, as time

¹These paragraphs are actually misidentified in the proposed amended complaint. They should be identified as paragraphs d. and e.

barred, under Minn. Stat. § 363A.28, subd. 3. The district court also dismissed appellant's other claims, *including* appellant's claim involving the oral reprimand issued to him after the commencement of the action. In its memorandum, the district court specifically addressed appellant's claim involving the oral reprimand, which was the subject of his motion to amend his complaint, as follows:

[Appellant] alleges an oral reprimand issued to him somehow constitutes a discriminating action. The reprimand was a result of [appellant] allegedly ordering his subordinates not to provide assistance to another officer conducting an inmate count. According to [appellant], this reprimand was intended to harass him. This conclusory statement, not supported by specific facts, does not support [appellant]'s claims of harassment.

The district court also noted that “[t]he vast majority of [appellant]’s claims of alleged discrimination did not result in an adverse employment action.” And, the court further stated that

Assuming *arguendo* the Plaintiff may have shown some evidence satisfying the *prima facie* [sic] case requirement under *McDonnell Douglas v. Green*; [t]he Defendant has produced overwhelming substantial evidence proving a legitimate, non-discriminatory reason for its decisions. The [appellant] has failed to meet his burden to show that the reasons offered by Defendant are pre-textual.

Based on the foregoing, [appellant] has failed to meet his burden under the *McDonnell Douglas* analysis. There being no genuine issue of material fact, [appellant]’s Complaint should be and hereby is dismissed in its entirety.

In concluding its memorandum, the district court said:²

The Plaintiffs have not provided sufficient evidence to support amending the Complaint to seek an award of punitive damages. Plaintiff also seeks to amend the Complaint to include a count of Discrimination based on gender. The Plaintiffs have previously pled a Count on Sex Discrimination in their original Complaint (Count III). *The Plaintiffs' Motion to Amend the Complaint is denied in its entirety.*

(Emphasis added.)

DECISION

On appeal from summary judgment, a reviewing court considers whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Pursuant to Minn. R. Civ. P. 56.03, summary judgment is only appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.” On review, evidence must be viewed “in the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citation omitted). No genuine issue of material fact exists when “the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable

² Although the district court says that “[p]laintiff also seeks to amend the Complaint to include a count of Discrimination based on gender,” the proposed amended complaint does not include such a count. Instead, as previously noted, appellant proposed to add a count of defamation.

persons to draw different conclusions.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). But, “summary judgment is inappropriate if the nonmoving party has the burden of proof on an issue and presents *sufficient evidence* to permit reasonable persons to draw different conclusions.” *Schroeder v. St. Louis County*, 708 N.W.2d 497, 507 (Minn. 2006). If a nonmoving party can show that a genuine issue of material fact exists, we will reverse summary judgment. *Hoover v. Norwest Private Mortgage Banking*, 632 N.W.2d 534, 539 (Minn. 2001).

Appellant alleges that he was discriminated against on the basis of race in violation of the Minnesota Human Rights Act (MHRA), Minn. Stat. §§ 363A.01-.41 (2006). The *McDonnell-Douglas* framework applies to claims brought under the MHRA. *Hubbard v. United Press Int’l, Inc.*, 330 N.W.2d 428, 441 (Minn. 1983). Under the *McDonnell-Douglas* framework, a plaintiff must first show a prima facie case of discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 1824 (1973). Respondent does not dispute that plaintiff has made a prima facie case of discrimination on the basis of race. Once a plaintiff makes this prima facie case, the burden shifts to the employer to show that it had legitimate, non-discriminatory reasons for its actions. *Id.* If the employer shows legitimate, non-discriminatory reasons for its actions, the burden shifts back to the plaintiff to show that the employer’s reasons are pretextual. *Id.* at 804, 93 S. Ct. at 1825. To avoid summary judgment, a plaintiff only has the burden to show that a fact question exists as to whether the proffered reason was a pretext for unlawful discrimination. *Meads v. Best Oil Co.*, 725 N.W.2d 538, 544 (Minn. App. 2006), *review denied* (Minn. Feb. 20, 2007). In this case, the district court

concluded that appellant “failed to meet his burden to show that the reasons offered by [respondent] are pre-textual.”

Respondent argues that it had a legitimate, non-discriminatory reason for issuing an oral reprimand to appellant because, on the basis of its investigation, it concluded that appellant gave a directive to his subordinates not to provide backup to another officer conducting count. Respondent’s assertion that such an order is a serious matter because it is dangerous for an officer not to have adequate backup when conducting an inmate count is reasonable. But respondent relies solely on an affidavit from the warden of its Lino Lakes facility to support its assertion that appellant gave a directive to his subordinates not to provide backup for an officer conducting count. Appellant argues that respondent’s reason is pretextual.

Pretext can be demonstrated by showing that the employer’s stated reason for the adverse action has no basis in fact. *Stallings v. Hussmann Corp.*, 447 F.3d 1041, 1052 (8th Cir. 2006). Appellant denies that he gave subordinates a directive to refuse to provide backup to another correctional officer and disputes the facts on which respondent based its investigative conclusion. To survive summary judgment, a plaintiff need only show a fact issue as to whether pretext exists. *Meads*, 725 N.W.2d at 544. Given the dearth of evidence respondent provides to show that its reason for giving appellant an oral reprimand was legitimate and the sufficiently probative evidence provided by appellant to the contrary, we conclude that a genuine issue of material fact exists about whether

respondent's explanation is pretextual. Thus, the district court erred in granting summary judgment to respondent on appellant's claim of race discrimination.

Reversed and remanded.