

SUPREME COURT OF ARKANSAS

No. 11-563

MONICA BRODIE

APPELLANT

V.

CITY OF JONESBORO

APPELLEE

Opinion Delivered January 12, 2012

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT
[NO. CV08-913]HONORABLE DAVID N. LASER,
JUDGEREVERSED AND REMANDED.**JIM HANNAH, Chief Justice**

In this employment-discrimination case, appellant Monica Brodie appeals the order of the Craighead County Circuit Court granting summary judgment in favor of the City of Jonesboro (“the City”). On appeal, she contends that the circuit court erred in using the *McDonnell Douglas* burden-shifting framework to evaluate her case. She further contends that, even assuming the application of the framework was appropriate, the circuit court erred in granting summary judgment on her failure-to-promote claim because she presented undisputed evidence that she was at least as qualified as the person eventually hired to fill the position, and the City presented no admissible evidence that it had a legitimate, nondiscriminatory motive for not promoting her. Finally, she contends that the circuit court erred in analyzing her claim as a constructive-discharge claim because she did not allege a constructive-discharge claim in her complaint. We reverse and remand.

Brodie, an African-American female, was employed by the City from March 2006

through December 2007 as Transit Accounting Technician in the Jonesboro Economical Transportation System (“JETS”), the public transportation system for the City. Brodie was responsible for providing bookkeeping and auditing support for JETS.

In 2007, the City decided to create an administrative supervisor position within JETS. The City, through Transportation Coordinator Joel Gardner, publicly announced that an interim Administrative Transit Supervisor would be appointed until the position was fully developed.¹ Gardner named Brodie to fill this position, and shortly thereafter, Gardner told Brodie that several bus drivers had complained that they did not favor her for the position and that they believed she received the position because she was having a sexual relationship with Gardner. Gardner told Brodie that even though these claims were untrue, in order to calm suspicions, he and Brodie were to have only open-door meetings in the JETS office. According to Brodie, Gardner then “took back” the interim responsibilities he had assigned to her.

Brodie, along with other applicants, interviewed for the newly proposed position. According to Brodie, after she was interviewed, Gardner told her that she would not be receiving the promotion, that he was going to offer the position to another applicant, and that she would have to train this applicant. Brodie submitted a letter of resignation to Gardner.

Brodie later filed a complaint against the City, alleging that the City failed to promote

¹Brodie disputes the City’s contention that the position was interim.

her on account of her race in violation of the Arkansas Civil Rights Act. The City moved for summary judgment, arguing that Brodie could not pursue a failure-to-promote claim because she voluntarily removed herself from the pool of applicants before a final decision had been made and that her claim was more akin to a constructive-discharge claim. The City further argued that Brodie's allegations were not sufficient to survive summary judgment as a constructive-discharge claim. Brodie responded, contending that she had alleged a failure-to-promote claim, not a constructive-discharge claim. She also contended that the circuit court should not use the *McDonnell Douglas* framework when evaluating her claim. After a hearing, the circuit court issued an order with the following findings:

Assuming the Court considers the case to be properly analyzed as a constructive-discharge claim, as the City of Jonesboro contends, there is a failure of proof to any degree that there was any sort of hostile work environment in the Plaintiff's work place; or in addition, that there was any sort of race-based motivation for what occurred in this case.

Assuming the case is considered as being a case for failure to promote based on racial discrimination, the Court believes there is insufficient proof of record that any failure to promote between the City of Jonesboro and the Plaintiff was based on any race-related basis.

Brodie now brings this appeal.

Brodie first contends that the circuit court erred in using the *McDonnell Douglas* framework to evaluate her case. She states that the framework is inappropriate at the summary-judgment stage of proceedings for employment-discrimination claims because it is incompatible with prior Arkansas jurisprudence and the statutory text of the Arkansas Civil Rights Act. In *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), the United States Supreme Court set forth the basic allocation of burdens and order of presentation of proof

in a Title VII case alleging discriminatory treatment. Pursuant to the three-stage burden-shifting standard set forth in *McDonnell Douglas*, the plaintiff bears the initial burden of proving by a preponderance of the evidence a prima facie case of discrimination. *Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 252–53 (1981). If a prima facie case is established, the burden shifts to the defendant “to articulate some legitimate, nondiscriminatory reason for the employee’s rejection.” *McDonnell Douglas*, 411 U.S. at 802. If the defendant carries this burden, then the plaintiff must have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination. *Burdine*, 450 U.S. at 253.

This court has previously applied the *McDonnell Douglas* framework in reviewing the grant of a summary-judgment motion in an employment-discrimination case, *see, e.g., Greenlee v. J.B. Hunt Transport Servs. Inc.*, 2009 Ark. 506, ___ S.W.3d ___, and Brodie fails to provide convincing argument that would cause us to reconsider our use of the framework. We hold that the *McDonnell Douglas* framework should be applied in this case.

Having said that, we cannot conclude that the circuit court properly evaluated this case under *McDonnell Douglas*. There is no mention in the circuit court’s findings about a prima facie case of discrimination, a legitimate, nondiscriminatory reason for the rejection, or pretext for discrimination. Accordingly, we must reverse and remand this case to the circuit court.

Under the *McDonnell Douglas* framework, the circuit court must first determine whether Brodie has established a prima facie case. To establish a prima facie case of race

discrimination for failure to promote, Brodie must establish, by a preponderance of the evidence, that (1) she is a member of a protected class; (2) she is qualified for the position; (3) she was rejected for the position sought; and (4) the position was granted to a person outside the protected class who is similarly or less qualified than Brodie. *Jordan v. City of Gary, Indiana*, 396 F.3d 825, 833 (7th Cir. 2005). If the circuit court concludes that Brodie has established a prima facie case, then the burden shifts to the City “to articulate some legitimate, nondiscriminatory reason for the employee’s rejection.” *McDonnell Douglas*, 411 U.S. at 802. If the City carries this burden, then Brodie must be given an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination. *Burdine*, 450 U.S. at 253.

Additionally, we agree with Brodie’s assertion that her claim should not be evaluated as a constructive-discharge case. “A plaintiff claiming constructive discharge must show that a reasonable person would have found the conditions of employment intolerable and that the employer either intended to force the employee to resign or could have reasonably foreseen that the employee would do so as a result of its actions.” *Feeny v. Dakota, Minnesota & E.R.R.*, 327 F.3d 707, 717 (8th Cir. 2003) (quoting *Kerns v. Capital Graphics, Inc.*, 178 F.3d 1011, 1017 (8th Cir. 1999)). The plaintiff must also “subjectively perceive the environment to be abusive.” *Feeny*, 327 F.3d at 717 (quoting *Johnson v. Runyon*, 137 F.3d 1081, 1083 (8th Cir. (1998))).

Brodie did not allege constructive discharge in her complaint, nor did she offer any

evidence of constructive discharge. Rather, she alleged that the City failed to promote her on account of her race. Accordingly, the circuit court erred in treating Brodie's claim as a case of constructive discharge.

Reversed and remanded.

BROWN, J., concurs.

ROBERT L. BROWN, Justice, concurring. I agree with the majority that this case must be reversed because the circuit court failed to use the *McDonnell Douglas* framework and erred in construing Brodie's claim as a constructive-discharge claim. I write separately to express my concern that, apart from the errors identified by the majority, the circuit court improperly granted summary judgment when questions of material fact remained outstanding.

This case is fraught with unanswered material questions of fact that make summary judgment inappropriate at this stage. Summary judgment is to be granted by a trial court only when it is clear that there are no genuine issues of material fact to be litigated and the moving party is entitled to judgment as a matter of law. *Foscue v. McDaniel*, 2009 Ark. 223, at 8, 308 S.W.3d 122, 127. For instance, Brodie alleges that she was told by Gardner that she was not going to get the promotion and so she resigned. Thus, there is a question of fact as to whether Brodie was denied the promotion prior to her resignation. I am unconvinced that even a proper application of the *McDonnell Douglas* framework would have resolved this question, or any remaining questions, of fact.