STATE OF MICHIGAN

COURT OF APPEALS

ARTHUR J. WALKER and MARY ANN MARKHAM,

Plaintiffs–Appellants,

v

DEPARTMENT OF LABOR and DIRECTOR OF DEPARTMENT OF LABOR,

Defendants–Appellees.

UNPUBLISHED
August 2, 1996

No. 181681
LC No. 92-071505-CL

Before: Sawyer, P.J., and Bandstra and M.J. Talbot,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from a jury verdict for defendants in this action alleging race and sex discrimination in employment in violation of the Elliott-Larsen Civil Rights Act, MCL 37.2202(1); MSA 3.548(202)(1). We affirm.

Plaintiffs Walker and Markham were, respectively, the director and deputy director of the former Bureau of Employment Standards (BES) within the Department of Labor (DOL). Walker is a black male; Markham is a white female. As a result of reorganization within the DOL, the BES was abolished and its functions merged into the Bureau of Safety and Regulation (BSR). The director and deputy director of the BSR, both white males, remained in their positions, while plaintiffs' former positions were abolished. Plaintiffs asserted that the DOL should have opened up the director and deputy director positions in the post-consolidation BSR to competition. They also maintained that statistical evidence indicated that non-white males were disproportionately harmed by various changes made to the positions within the DOL eligible for participation in the Classified Executive Service (CES).

First, plaintiffs argue that the admission of testimony regarding the reorganization of non-CES eligible positions was irrelevant. We disagree. Evidence is relevant if it has any tendency to make the existence of a fact at issue more or less probable than it would be without that evidence. MRE 401;

---

* Circuit judge, sitting on the Court of Appeals by assignment.

Rodriguez v Solar of Michigan, Inc, 191 Mich App 483, 487; 478 NW2d 914 (1991). Plaintiffs' counsel indicated in opening statement that plaintiffs were asserting, in part, a claim of discrimination with discriminatory motive. Evidence that the consolidation of the two bureaus and related changes were motivated by financial concerns reduced the likelihood that such actions were motivated by race and/or sex based animus. That is the case for evidence regarding both CES and non-CES positions. The court did not abuse its discretion by not excluding the evidence on the ground that it was irrelevant. *Cleary v The Turning Point*, 203 Mich App 208, 210; 512 NW2d 9 (1994).

Accordingly, the trial court also did not abuse its discretion by refusing plaintiffs' request that the jury be instructed that evidence regarding non-CES positions not be considered in determining whether unlawful discrimination occurred. *Bordeaux v The Celotex Corp*, 203 Mich App 158, 168-169; 511 NW2d 899 (1993). Plaintiffs have not demonstrated that the trial court's instructions failed to adequately and fairly present the law applicable to this case. *Id*.

Plaintiffs argue that the trial court abused its discretion by excluding testimony from a white male DOL employee that he was demoted for participating in the unsuccessful re-election campaign of Governor James Blanchard. We disagree. Under MRE 404, if a proponent's only theory of relevance for other acts evidence is that it shows inclination to wrongdoing in general to prove a party committed the conduct in question, such evidence is inadmissible. *People v VanderVliet*, 444 Mich 52, 63; 508 NW2d 114 (1993), amended 445 Mich 1205; 520 NW2d 338 (1994). Thus, evidence that defendants acted adversely toward a third party due to political affiliation was not admissible to show that defendants committed race or sex discrimination. The Michigan Civil Rights Act, MCL 37.2202; MSA 3.548(202), does not enumerate political affiliation as a ground on which discrimination in employment is prohibited.

Finally, plaintiffs have abandoned their arguments regarding the trial court's denial of their directed verdict motion and motion for a new trial based on the great weight of the evidence. *Ramsey v Michigan Underground Storage Tank Financial Assurance Policy Bd*, 210 Mich App 267, 271; 533 NW2d 4 (1995). They cite no authority under the state Civil Rights Act or civil rights case law supporting their positions, but merely quote an excerpt from *Hazelwood School District v United States*, 433 US 299, 312-313; 97 S Ct 2736; 53 L Ed 2d 768 (1977), that is not pertinent. Regardless, we conclude that reversal is not warranted. In reviewing a ruling on a directed verdict question, we examine the evidence in a light most favorable to the nonmoving party. *Garabedian v William Beaumont Hospital*, 208 Mich App 473, 475; 528 NW2d 809 (1995). Denial of a new trial motion based on the great weight of the evidence is reviewed for abuse of discretion and given substantial deference. *Arrington v Detroit Osteopathic Hospital Corp (On Remand)*, 196 Mich App 544, 555, 560; 493 NW2d 492 (1992). It was reasonable to conclude that plaintiffs did not establish a disparate impact claim because they did not articulate one or more specific employment practices that disparately impacted black or female CES employees as a group. *Jones v Pepsi-Cola Metropolitan Bottling Company, Inc*, 871 F Supp 305, 308-309 (ED Mich, 1994). Further, according to Dr. Gilliland's testimony, analysis of seniority based groupings found no statistically

significant disparities between the adverse impact on black and white or female and male CES position employees. A factfinder could reasonably infer that, to the extent that adverse employment decisions were successfully made based on merit, employees with less seniority would tend to be more greatly impacted.

We affirm.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Michael J. Talbot