

STATE OF MICHIGAN  
COURT OF APPEALS

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LEONARD THOMAS,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 181318

LC No. 94-471157-NI

AIN PLASTICS OF MICHIGAN, INC., MEL  
ETTENSON, BRIAN MCCULLOUGH, DAVID  
DITMAN and ROBERT BOGNER,

Defendants-Appellees.

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Before: McDonald, P.J., and White and P.J. Conlin,\* JJ.

WHITE, J. (concurring)

I concur in the affirmance of the dismissal of plaintiff's discrimination claim because I agree with the majority that defendants articulated a legitimate nondiscriminatory reason for plaintiff's discharge—plaintiff's tardiness and absenteeism--and that plaintiff failed to establish that defendants' reason was a mere pretext for his discharge.

As to plaintiff's retaliation claim, I concur in the affirmance of the dismissal because, while I do not agree with the majority's interpretation of *McLemore v Detroit Receiving Hospital*, 196 Mich App 391; 493 NW2d 441 (1992),<sup>1</sup> I conclude that plaintiff failed to present sufficient evidence to raise a genuine issue of fact in support of his claim. The record, including plaintiff's own deposition, the notice of probation, and Bogner's un rebutted affidavit, provides insufficient support for plaintiff's assertion that defendants' warnings and reprimands occurred only after plaintiff threatened to consult an attorney, and thus failed to create a genuine issue whether plaintiff's discharge was linked to his raising the possibility of seeking legal counsel.

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

<sup>1</sup> *McLemore* states in its analysis of the plaintiff's retaliation claim under the CRA:

In *Booker v Brown & Williamson Tobacco Co, Inc*, 879 F2d 1304, 1312-1314 (CA 6, 1989), the federal court of appeals decided that the Civil Rights Act did not protect from retaliation an employee who had merely expressed concern to his employer about possible discrimination. **We strongly disapprove with this interpretation of the act. Regardless of the vagueness of the charge or the lack of formal invocation of the protection of the act, if an employer's decision to terminate or otherwise adversely effect [sic] an employee is a result of that employee raising the spectre of a discrimination complaint, retaliation prohibited by the act occurs.** [196 Mich App at 396. Emphasis added.]