# STATE OF MICHIGAN

# COURT OF APPEALS

CHARLES B. MCELROY, II,

Plaintiff-Appellant,

v

PIONEER ENGINEERING AND MANUFACTURING COMPANY, AERO-DETROIT, INC., a subsidiary of TAD INTERNATIONAL, RALPH MILLER and MICHAEL PRESSER,

Defendants-Appellees.

UNPUBLISHED
December 20, 1996

No. 182560
LC No. 94-472343

Before: Fitzgerald, P.J., and Cavanagh and N.J. Lambros,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court orders granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) and denying plaintiff's motion to compel discovery. We affirm.

On appeal, an order granting or denying summary disposition is reviewed de novo. A motion for summary disposition may be granted pursuant to MCR 2.116(C)(10) when, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Giving the benefit of reasonable doubt to the nonmovant, the trial court must determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Plieth v St Raymond Church*, 210 Mich App 568, 571; 534 NW2d 164 (1995).

Plaintiff, a black male, brought this action pursuant to the Civil Rights Act, MCL 37.2201; MSA 3.548(201), claiming that defendants discriminated against him because of his race. A prima facie case of race discrimination can be made by showing either intentional discrimination or disparate treatment. *Reisman v Regents of Wayne State Univ*, 188 Mich 526, 538; 470 NW2d 678 (1991). In the present case, plaintiff is proceeding under a theory of disparate treatment.

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

In order to establish a prima facie case of disparate treatment race discrimination, a plaintiff must show that he was a member of the class entitled to protection under the act and that, for the same or similar conduct, he was treated differently than one who was a member of a different race. *Betty v Brooks & Perkins*, 446 Mich 270, 281; 521 N.W.2d 518 (1994). Once a plaintiff establishes a prima facie case of discrimination, the burden shifts to the defendant to articulate some nondiscriminatory reasons for the discharge. If the defendant is able to meet this burden, the plaintiff must have the chance to prove that the reasons offered by the defendant were a pretext for discrimination. *Reisman*, *supra* at 539.

We conclude that plaintiff did not establish a prima facie case of discrimination because he did not establish that he was similarly situated to other employees who were treated differently. Plaintiff admitted in his deposition that he did not have a program to manage at the time of his termination. Defendants presented evidence that plaintiff and two other program managers, both white, did not have programs at that time. One of these other program managers was laid off at approximately the same time as plaintiff; the other was allowed to continue on medical leave. Since plaintiff has failed to show that he was similarly situated to any other employees who were not laid off when he was, he has not established a prima facie case of discrimination.

Moreover, even if plaintiff had established a prima facie case of racial discrimination, defendants presented a legitimate, nondiscriminatory reason for his dismissal. Defendant Michael Presser testified that plaintiff was laid off because he did not have any work. Although plaintiff asserts that he was developing a cardboard modeling project, he admitted in his deposition that he did not have a program to manage in January 1994. Therefore, plaintiff did not demonstrate that defendants' reasons for dismissing him were pretextual.

Plaintiff claims that he was treated differently by defendants because he was the only program manager who was placed on a thirty-day notice of termination. However, we find no evidence of racial discrimination. Plaintiff admitted in his deposition that he did not have a program to manage, and that Presser offered to work with him during the thirty days to help him find a program to manage. Although in plaintiff's opinion there was nothing that Presser could do to help him, the facts as alleged by plaintiff are insufficient to support a finding that defendants discriminated against plaintiff because of his race.

Plaintiff also cites as evidence of discrimination the fact that he was transferred to another office which had damaged furniture, claiming that no other program manager lost their office or was given broken furniture. However, Presser stated that plaintiff was moved to make room for Aero operations coming into the building, and that plaintiff's old furniture remained in the office in order to keep similar furniture on each floor. Plaintiff did not offer evidence that Presser's reason was a mere pretext for race discrimination. Plaintiff's subjective beliefs as to the reasons for defendants' actions are insufficient to establish specific facts showing a genuine issue for trial. See *Marsh v Dep't of Civil Service (After Remand)*, 173 Mich App 72, 81; 433 NW2d 820 (1988).

Plaintiff next argues that statements made by Ralph Miller, the president and CEO of Aero, in a letter dated December 21, 1993, created a legitimate expectation of just-cause employment.[1] We disagree.

A just-cause employment relationship can arise either by contract or by an employee's legitimate expectations in reliance on company policies. However, there is a strong presumption that employment contracts for an indefinite duration are terminable at the will of either party for any reason or for no reason at all. Under the legitimate-expectations theory, the courts must examine employer policy statements concerning employee discharge, if any, to determine, as a threshold matter, whether such policies are reasonably capable of being interpreted as promises of just-cause employment. *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 654-655; 513 NW2d 441 (1994). Oral statements of job security must be clear and unequivocal to overcome the presumption that employment is at will. *Clement-Rowe v Michigan Health Care Corp*, 212 Mich App 503, 505; 538 NW2d 20 (1995). A general statement concerning job security, without further discourse about causes for termination, is insufficient to establish an employer's intent to create a just-cause contract. *Coleman-Nichols*, *supra* at 656.

Plaintiff admits that he was an at-will employee with Pioneer, and that at-will employment is standard in the industry. Nevertheless, he argues that Miller's letter created a legitimate expectation of a just-cause contract. We find that Miller's statements could not reasonably be interpreted as promises of just-cause employment. His statements were not clear and unequivocal statements of job security, and he did not specifically address causes for termination. An optimistic expression of hope for a long relationship does not create a legitimate expectation of just-cause employment. See *Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627, 640; 473 NW2d 268 (1991) (Riley, J.). Therefore, since there was no genuine issue of material fact concerning plaintiff's expectation of just-cause employment, the trial court properly granted defendants' motion for summary disposition.

Plaintiff also argues that the trial court abused its discretion in refusing to compel discovery of the labor analysis reports because they were relevant to show that Presser lied when he told plaintiff that he was the highest paid program manager, which in turn demonstrates that Presser had a racial bias against him. We disagree.

This Court reviews a trial court's decision to grant or deny discovery for an abuse of discretion. *SCD Chemical Distributors, Inc v Medley*, 203 Mich App 374, 382; 512 NW2d 86 (1994). In order to proceed with discovery, a plaintiff need only show that the matter upon which discovery is sought is relevant and not privileged. *Yates v Keane*, 184 Mich App 80, 82; 457 NW2d 693 (1990). Evidence is relevant when it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. MRE 401. Even inadmissible evidence is discoverable if good cause for discovery is shown. Good cause is shown where the moving party establishes that the information sought is, or might lead to, admissible evidence, is material to the moving party's trial preparation, or is for some other reason necessary to promote the ends of justice. *Yates*, *supra*.

We find that the labor analysis reports were not relevant to show that defendants racially discriminated against plaintiff. Presser testified that plaintiff's salary had no impact on the decision to lay him off; rather, plaintiff was laid off because he did not have a program to manage. Plaintiff admits that he did not have a program to manage, and he has presented no evidence to contradict Presser's testimony that his salary was not a factor in the decision to lay him off. Therefore, the labor analysis reports did not have a tendency to make the existence of any relevant fact more probable or less probable than it would be without the evidence. Accordingly, the trial court did not abuse its discretion in denying plaintiff's motion to compel discovery.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Mark J. Cavanagh
/s/ Nicholas J. Lambros

[1] Although plaintiff does not explicitly state that he is only arguing a legitimate expectations theory, he does not assert that Miller's statements created a contract. Moreover, a reasonable person could not infer from Miller's statements that the company intended to enter into a contract with all of its employees for just-cause employment. See *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 654, 656 (1994).