

STATE OF MICHIGAN
COURT OF APPEALS

ERIC BERRY,

Plaintiff-Appellant,

v

CSMC OF KALAMAZOO, INC.,
D/B/A RADISSON PLAZA HOTEL,

Defendant-Appellee.

UNPUBLISHED

April 22, 1997

No. 192872

Kalamazoo Circuit Court

LC No. 94-001732-CZ

Before: Bandstra, P.J., and Hoekstra and J.M. Batzer*, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant. We affirm.

Plaintiff claims that the trial court erroneously granted defendant's motion for summary disposition on the ground that no evidence was presented from which a reasonable jury could conclude that plaintiff's termination was the result of either intentional discrimination or disparate treatment. A trial court's decision to grant a motion for summary disposition is reviewed de novo by this Court to determine if the defendant was entitled to judgment as a matter of law. *Citizens Ins Co v Bloomfield Twp*, 209 Mich App 484, 486; 532 NW2d 183 (1995). In reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(10), this Court construes the evidence in favor of the nonmovant. *Shirilla v Detroit*, 208 Mich App 434, 437; 528 NW2d 763 (1995). All relevant affidavits, depositions, admissions, and other documents are examined. *Id.* The nonmovant must, by documentary evidence, set forth specific facts demonstrating that there is a genuine issue of material fact. *Check Reporting Serv, Inc v Michigan Nat'l Bank-Lansing*, 191 Mich App 614, 622; 478 NW2d 893 (1991). This Court then determines, based on the evidence, whether a genuine issue of material fact exists on which reasonable minds could differ. *Shirilla, supra*.

A prima facie case of race discrimination under the Elliot-Larsen Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*, can be made by demonstrating either disparate treatment or

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

intentional discrimination. *Reisman v Regents of Wayne State Univ*, 188 Mich App 526, 538; 470 NW2d 678 (1991). In a disparate treatment case, the plaintiff can establish a prima facie case of discrimination by showing (1) that he was a member of the class entitled to protection under the act, and (2) that, for the same or similar conduct, he was treated differently than one who was a member of a different race. *Reisman, supra*; *Sisson v Bd of Regents of the Univ of Michigan*, 174 Mich App 742, 746-747; 436 NW2d 747 (1989). In an intentional discrimination case, the plaintiff must demonstrate (1) that he was a member of the affected class, (2) that he was discharged, (3) that the person who discharged him was predisposed to discriminate against persons in the affected class, and (4) that person actually acted on that disposition in discharging him. *Reisman, supra*.

If the plaintiff successfully proves a prima facie case of discrimination, the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the discharge. *Id.* at 539. Once the defendant presents its reason, the plaintiff is required to put forth evidence to raise a triable issue of fact as to whether the proffered reason was a mere pretext. *Sisson, supra* at 748. The plaintiff may demonstrate pretext by directly showing that a discriminatory reason motivated the defendant or by demonstrating that the proffered reason is not worthy of credence. *Id.*

In the present case, plaintiff has failed to present sufficient facts to support a prima facie case of disparate treatment. It is undisputed that plaintiff, a black male, is a member of a class entitled to protection. However, plaintiff has failed to present evidence that any white employee was treated differently for the same or similar conduct. In the situation upon which plaintiff relies to support this contention, the conduct of the black employee was more egregious than that of the white employee.

With respect to a claim of intentional discrimination, it is undisputed that plaintiff was a member of an affected class and that he was discharged. However, plaintiff has failed to provide evidence that the person who discharged him was predisposed to discriminate against persons in the affected class and that the person actually acted on that disposition in discharging him. In fact, the evidence demonstrates that the individuals involved in plaintiff's discharge were accommodating to him on several occasions.

Moreover, defendant provided documentary evidence to support that plaintiff was terminated for legitimate, nondiscriminatory reasons. Plaintiff has also failed to specify the factual or evidentiary basis to support his conclusion that defendant's proffered reasons were pretextual. Thus, plaintiff has failed to set forth, by documentary evidence, specific facts demonstrating that there is a genuine issue of material fact upon which reasonable minds could differ.

Plaintiff also claims that the trial court erred in denying his motion for reconsideration. Plaintiff included this issue in his statement of questions presented; however, he failed to argue the merits of the issue within his brief. Therefore, appellate review is precluded. *Richmond Twp v Erbes*, 195 Mich App 210, 220; 489 NW2d 504 (1992).

We affirm. Defendant, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ James M. Batzer