

STATE OF MICHIGAN
COURT OF APPEALS

BILLY WILSON and SUSAN WILSON,

Plaintiffs-Appellants,

v

FORD MOTOR COMPANY and STANLEY
BLAKE,

Defendants-Appellees.

UNPUBLISHED

June 24, 1997

No. 190517

Macomb Circuit Court

LC No. 93-5348-CZ

Before: Markman, P.J., and Holbrook, Jr., and O'Connell, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition to defendants of plaintiff Billy Wilson's claims of age discrimination and retaliatory discharge. We affirm.

Plaintiff first argues that summary disposition of his age discrimination claim was improperly granted in favor of defendants. To establish a prima facie case of age discrimination, an employee must prove that he was a member of a protected class, that he was discharged, that he was qualified for the position, and that he was replaced by a younger person. *Matras v Amoco Oil Co*, 424 Mich 675, 683; 385 NW2d 586 (1986); *Barnell v Taubman Co, Inc*, 203 Mich App 110, 120-121; 512 NW2d 13 (1993). Because plaintiff failed to establish that the person who replaced him was indeed younger than plaintiff, he did not establish a prima facie case of age discrimination. See *Reidy v Travelers Ins Co*, 928 F Supp 98, 108 (D Mass, 1996), *aff'd* without op 107 F 3d 1 (CA 1, 1997) (mere allegation that the plaintiff believed he was replaced by a younger person was insufficient to establish prima facie case of age discrimination).

Nonetheless, assuming for purposes of this appeal that plaintiff's replacement was younger than him, plaintiff failed to establish a genuine issue of material fact whether defendant's articulated legitimate, nondiscriminatory reason for its termination of plaintiff was pretextual. At this stage of the proofs, plaintiff must present specific, substantial evidence of pretext by showing that the reason for his discharge was without basis in fact or, if a basis in fact was shown, that the actual motivating factor was age. *Dubey v Stroh Brewery Co*, 185 Mich App 561, 565; 462 NW2d 758 (1990). See also *St*

Mary's Honor Center v Hicks, 509 US 502, 507; 113 S Ct 2742; 125 L Ed 2d 407 (1993). Here, plaintiff concedes that his conduct toward female coworkers was inappropriate but argues that defendant's true reason for firing him was his vigorous criticism in 1990 of defendant's policy of hiring college trainees and contract workers to replace older employees. Plaintiff failed to offer any evidence from which an inference could be made that *his* termination in 1992 was connected to these complaints. Although there was some evidence that his immediate supervisor, defendant Stanley Blake, knew that plaintiff had complained about the treatment of salaried workers, there was no evidence that the persons who actually decided to terminate plaintiff, those superior to Blake, were aware of any such complaints. Blake's superior, Marty Malloy, ordered an independent investigation into the sexual harassment charges after Blake conducted his investigation. Malloy's superior then decided that termination was warranted. Thus, plaintiff failed to offer evidence that age was a motivating factor in his discharge. Moreover, plaintiff's effort to downplay his sexual harassment of coworkers as innocent jokes and his claim that he should have been given a warning and opportunity to change his conduct are irrelevant in the context of this discrimination claim. Neither the soundness nor the fairness of a private employer's business judgment may be questioned as a means of showing pretext. *Dubey, supra*. Accordingly, summary disposition of plaintiff's age discrimination claim was properly granted.

Plaintiff also argues that summary disposition of his retaliatory discharge claim was improper. Retaliation against a person because the person has opposed acts of age discrimination is prohibited. MCL 37.2701; MSA 3.548(701). Plaintiff's claim that he was fired in retaliation for complaining about defendant's age discriminatory policies is belied by the record. Plaintiff offered vague evidence regarding defendant's policy of hiring contract workers to replace senior employees because they were paid less, not necessarily because they were younger. An employer's financial considerations, even if indirectly tied to age, are not evidence, standing alone, of age discrimination. See *Plieth v St Raymond Church*, 210 Mich App 568, 573-574; 534 NW2d 164 (1995). Moreover, as explained above, because plaintiff offered no evidence that the persons who actually made the decision to terminate him knew of any complaints he may have made, plaintiff did not make a prima facie case of retaliatory discharge. Cf. *McLemore v Detroit Receiving Hosp & Univ Medical Center*, 196 Mich App 391, 396; 493 NW2d 441 (1992).

Affirmed.

/s/ Stephen J. Markman
/s/ Donald E. Holbrook, Jr.
/s/ Peter D. O'Connell