

STATE OF MICHIGAN  
COURT OF APPEALS

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MILDRED SMITH,

Plaintiff-Appellant,

v

FLINT COMMUNITY SCHOOL DISTRICT,

Defendant-Appellee.

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UNPUBLISHED

March 13, 1998

No. 202119

Genesee Circuit Court

LC No. 96-044779-CL

Before: Doctoroff, P.J., and Reilly and Allen\*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendant in this age discrimination case. We affirm.

Plaintiff was born in 1927, and began her career with defendant in 1954 as a teacher. Throughout her career, plaintiff held various positions, both administrative and teaching. In the summer of 1995, plaintiff applied for two administrative positions. Plaintiff was among the candidates who were interviewed for both positions. Each candidate met with a committee of four to six individuals who asked the candidate a series of predetermined questions, and the candidates were given numerical scores based on the quality of their answers. Both positions were offered to other candidates who were younger than plaintiff.

Plaintiff argues that she presented a prima facie case of age discrimination and offered sufficient evidence to establish that defendant's legitimate reasons for the adverse employment decisions were merely a pretext for discrimination. We disagree.

A trial court's grant of summary disposition is reviewed de novo on appeal. *Plieth v St Raymond Church*, 210 Mich App 568, 571; 534 NW2d 164 (1995). A motion for summary disposition may be granted pursuant to MCR 2.116(C)(10) when, except with regard 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. *Id.* Giving the benefit of doubt to the nonmoving party, this Court must determine

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

whether a record might be developed which will leave open an issue upon which reasonable minds could differ. *Id.* This Court is not permitted to assess credibility, or to determine factual issues. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). The party seeking summary disposition must identify the issues for which it claims there is no factual support. *Id.* at 160. The nonmoving party must then respond with affidavits or other evidentiary materials that establish the existence of a factual issue for trial. *Id.* Where the burden of proof at trial rests on the nonmoving party, the nonmoving party may not simply rely on the pleadings or allegations in the complaint. *Quinto v Cross & Peters*, 451 Mich 358, 362; 547 NW2d 314 (1996). If the opposing party cannot present documentary evidence to establish that a material dispute exists, summary disposition is proper. *Id.* at 362-363.

Plaintiff's claim of age discrimination is based upon the Elliott-Larsen Civil Rights Act (ELCA), which provides:

(1) An employer shall not do any of the following:

(a) Fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of . . . age. [MCL 37.2202; MSA 3.548 (202).]

In a claim under the ELCA, the burden of proof is allocated as follows: (1) the plaintiff has the burden of proving a prima facie case of discrimination by a preponderance of the evidence; (2) if the plaintiff is successful in proving a prima facie case, the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for its actions; and (3) the plaintiff then has the burden of proving by a preponderance of the evidence that the legitimate reason offered by the defendant was merely a pretext. *Lytle v Malady*, 456 Mich 1, 28-30; 566 NW2d 582 (1997).

A prima facie case of age discrimination can be established by proving either intentional discrimination or disparate treatment. *Barnell v Taubman Co, Inc*, 203 Mich App 110, 120-121; 512 NW2d 13 (1993). To establish a prima facie case of age discrimination under the intentional discrimination theory, plaintiff must show that: (1) she was a member of a protected class; (2) she was denied the promotions; (3) she was qualified for the positions; and (4) younger persons were given the jobs. *Id.* Plaintiff's age does not need to be the only reason or even the main reason for the adverse employment decision, but it must be one of the reasons that made a difference in determining whether to promote plaintiff. *Plieth, supra* at 572.

Here, plaintiff established a prima facie case of age discrimination under an intentional discrimination theory. Plaintiff was 68 years old at the time she applied for the positions, and, therefore, was a member of the protected class. Even defendant acknowledged, by granting plaintiff an interview for each position, that plaintiff was at least minimally qualified for the two positions. Plaintiff was not offered the positions, which eventually were filled by younger individuals. Because plaintiff established a prima facie case of age discrimination, defendant was required to come forth with legitimate, nondiscriminatory reasons for its employment decisions. *Lytle, supra* at 29.

We find that defendant met its burden. Defendant asserted that its reason for failing to promote plaintiff was that she simply was not the best candidate for the positions. The successful applicants were better suited for the positions and had relevant experience in the areas for which they were hired. While plaintiff possessed a Ph.D. and met the minimum qualifications for each position, she had no administrative experience in the previous 17 years. Because defendant raised legitimate, nondiscriminatory reasons for its decisions not to promote plaintiff, the burden shifted to plaintiff to establish that the reasons offered by defendant were merely a pretext for discrimination. *Lytle*, supra at 29-30. We find that plaintiff was unable to carry this burden.

[A] plaintiff must present factual allegations allowing the inference that the defendant had a discriminatory reason that was more likely its true motivation or factual allegations that show the defendant's proffered reason was unworthy of credence. The plaintiff must set forth specific facts showing that there is a genuine issue for trial; conclusory allegations are insufficient to rebut evidence of nondiscriminatory conduct. [*Featherly v Teledyne Industries, Inc*, 194 Mich App 352, 362-363; 486 NW2d 361 (1992) (quoting *Clark v Uniroyal Corp*, 119 Mich App 820; 826; 327 NW2d 372 (1982)).]

In an effort to prove pretext, plaintiff relies on much of the same evidence that she used to establish a prima facie case of age discrimination. However, plaintiff must offer more than allegations and the initial assertions contained in her pleadings in order for her claim to survive a motion for summary disposition. *Quinto*, supra at 362. Plaintiff failed to offer any factual evidence to establish that defendant's legitimate reasons for selecting the younger candidates were unworthy of credence. Instead, plaintiff offered conclusory allegations that she was more qualified for the positions, and that she failed to apply for the position of Parent Involvement Advocate because an employee of defendant intentionally misled into believing that she did not have to apply. However, there is no factual support for these assertions. Plaintiff also alleged that the principal of the school where plaintiff worked had a discriminatory motive when she asked plaintiff when she was going to retire. However, the principal was not involved in deciding whom to hire for the positions at issue in this case. Plaintiff failed to produce any evidence that the members of the interviewing committee, who made the actual decisions regarding the promotions, harbored any discriminatory bias or motivation.

Viewing the evidence in a light most favorable to plaintiff, the trial court did not err in granting defendant's motion for summary disposition. Plaintiff failed to offer additional evidence apart from mere conclusory allegations to establish that defendant's reasons for failing to promote plaintiff were a pretext for discrimination.

Affirmed.

/s/ Martin M. Doctoroff  
/s/ Maureen Pulte Reilly  
/s/ Glenn S. Allen, Jr.