STATE OF MICHIGAN

COURT OF APPEALS

RICHARD ARREDONDO,

Plaintiff-Appellant,

v

SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION,

Defendant-Appellee,

and

JAY LAMKY,

Defendant.

UNPUBLISHED
April 24 2001

No. 215596
Wayne Circuit Court
LC No. 97-717488-CK

Before: Zahra, P.J., and Hood and McDonald, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition. We affirm.

Plaintiff was employed by defendant as a mechanic. Plaintiff applied for the position of foreman in 1991, but the job was given to an African-American male, Robert Granger. Plaintiff was born in Mexico, immigrated to Texas, and spoke English with a Spanish accent. Plaintiff filed a complaint with the State of Michigan regarding the Granger promotion, but did not file a civil action. Plaintiff alleged that he was denied the position based on ethnic origin.[1] An

[1] While plaintiff alleged that defendant was out to "get him," plaintiff's employment record contained reports of bizarre behavior and attitudes by plaintiff. In 1993, it was reported that plaintiff told a fellow employee that he was going to "kill all white people." Additionally, plaintiff went to the Detroit Industrial Clinic from work after complaining of chest pains, stomach ache, and headache. Dr. Kerwin of the clinic could not find anything wrong with plaintiff. Plaintiff stated that if he went back to work, he would kill his foreman. This statement caused Dr. Kerwin to alert defendant and report the incident to police. When asked about this incident in his deposition, plaintiff could not recall any details regarding the incident.

investigation by the Michigan Department of Civil Rights (MDCR) found no violation and the U.S. Equal Employment Opportunity Commission accepted the findings of MDCR and dismissed the claim.

At some point, plaintiff purchased a coach bus from his employer and was discharged for driving the vehicle with defendant's license plate. The discharge was reduced, after an arbitration decision, to disciplinary action. In 1994, plaintiff was issued an alternator for replacement in a coach bus. The parts' department indicated that the alternator was new when issued. Defendant alleged that there was an apparent visual difference between a new and used alternator, and the alternator on the coach bus was not replaced by plaintiff. Defendant alleged that plaintiff had misappropriated the alternator. Specifically, it was alleged that plaintiff was motivated by his purchase of a coach bus in which the new alternator could be used. Ultimately, plaintiff was discharged, and the reason given for the discharge was misappropriation. The discharge was submitted to an arbitrator who concluded that defendant had just cause for the termination. MDCR also investigated plaintiff's claim of discrimination and did not find evidence of illegal discrimination. Plaintiff then filed this complaint alleging discrimination based on national origin brought under the Civil Rights Act, MCL 37.2101 *et seq*.; MSA 3.548(101) *et seq*., and amended the complaint to include a claim of retaliation. The trial court granted defendant's motion for summary disposition.

Plaintiff first argues that the trial court erred in granting summary disposition of the discrimination claim that was substantiated by direct evidence. As an initial matter, we note that plaintiff, as the appellant, has the responsibility of filing the record on appeal, including all transcripts and other proceedings. *Band v Livonia* Associates, 176 Mich App 95, 103-104; 439 NW2d 285 (1989). "We limit our review to what is presented on appeal and will not consider any alleged evidence or testimony proffered by the parties where there is no record support." *Id*. Documentary evidence that was not filed in the record below, such as additional deposition pages, has been submitted on appeal. A party may not seek to expand the record on appeal. *Staff v Johnson*, 242 Mich App 521, 529 n 4; 619 NW2d 57 (2000). We have limited our review to the documentary evidence filed in the record below. Additionally, to be preserved for appellate review, an issue must be raised and addressed in the trial court. *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997). In order to raise an issue before the court, a party must provide citation to authority and may not leave it to the court to search for authority. *Mann v Mann*, 190 Mich App 526, 536-537; 476 NW2d 439 (1991). Review of the record below reveals that plaintiff alleged that there was "direct evidence" to support his claims, but failed to cite authority to apprise the trial court of the different burden of proof involved between a direct and indirect evidence case. The trial court granted summary disposition based on defendant's briefing of the issue that did not involve the direct evidence standard, but rather evaluated the shifting burden of proof. Accordingly, this issue is not preserved for appellate review. Nonetheless even when examining a claim of discrimination based on direct evidence, we conclude that summary disposition was proper where plaintiff failed to meet the evidentiary standards of MCR 2.116(G)(4).

When a discrimination claim is based on direct evidence, the plaintiff must persuade the trier of fact that the employer acted with illegal discriminatory animus. *Graham v* Ford, 237 Mich App 670, 676-677; 604 NW2d 713 (1999). Then, the plaintiff must present direct proof that the discriminatory animus was causally related to the action taken by the decisionmaker. *Id*. In opposition to a motion for summary disposition, the plaintiff must present admissible documentary evidence, including but not limited to, deposition testimony or affidavits to

demonstrate a genuine issue of material fact. MCR 2.116(G)(4); *SSC Associates Ltd Partnership v General Retirement System of the City of Detroit*, 192 Mich App 360, 364; 480 NW2d 275 (1991). Plaintiff has failed to meet that burden. Review of the excerpts from plaintiff's deposition testimony that were submitted below reveals that plaintiff could only identify one statement of discrimination overheard while he was working underneath a vehicle. That is, plaintiff alleged that he overheard defendant's employee, Dale Mulvaney, state that "Mexicans suck" to another employee while walking by a bus that plaintiff was working on.[2] Plaintiff has failed to demonstrate, with admissible documentary evidence, that the discriminatory animus was causally related to the decisionmaker's action and that Mulvaney played a role in his termination.[3] *Id*.

Also, in opposition to the motion for summary disposition, plaintiff submitted the affidavit of plaintiff's former co-worker, Greg Morgan. However, review of the affidavit reveals that it fails to comply with MCR 2.116(G)(4). Mere conclusory allegations contained within an affidavit that are devoid of detail are insufficient to create a question of fact. *Quinto v Cross & Peters*, 451 Mich 358, 371; 547 NW2d 314 (1996). For example, Morgan opined that rebuilt alternators were not bathed in acid such that they were distinguishable from new alternators and frequently failed. However, Morgan did not witness the alternator when received from supply by plaintiff and could not dispute the condition of the alternator upon receipt. Accordingly, this conclusory factual statement fails to create a genuine issue of material fact, and summary disposition was proper.[4] Furthermore, the deficiencies in the documentary evidence in

[2] Plaintiff contends that comments by supervisors that he should "go back to Texas" are also actionable. Plaintiff fails to cite any authority from which we could conclude that the CRA was also designed to protect discrimination based on prior state residency. Accordingly, the comments regarding returning to Texas do not support plaintiff's case.

[3] Defendant alleged below that the decision to terminate plaintiff was made by director of operations Cliff Capshaw after he consulted with plaintiff's supervisor, Jay Lamky. On appeal, plaintiff alleges that additional individuals played a role in the decision to terminate as evidenced by the personnel change notice issued in 1994. However, this document was *not* preserved in the record below. Additionally, the signatures on the document are illegible. Accordingly, this document does not assist plaintiff in meeting the burden of proof as set forth in MCR 2.116(G)(4).

[4] Plaintiff also argues that the deposition testimony of Morgan precludes summary disposition. At oral argument, plaintiff stated that the deposition was submitted. However, it is unclear whether the entire deposition was submitted or whether certain highlighted pages were submitted for review. This evidence was not preserved in the record below, and we cannot conclude whether consideration of the entire deposition testimony is proper because of the failure to include it with the record on appeal. We note that, at times, Morgan concluded that discrimination occurred against Hispanics. However, he then went on to conclude that discrimination also occurred against African-Americans and based on age. When asked if all African-Americans, including Morgan, were discriminated against, he responded, "no." When asked if plaintiff was discriminated against based on national origin, Morgan concluded, "it could be any reason." Morgan also opined that Lamky and Granger were after plaintiff, not for discriminatory reasons, but because they believed he had scratched their cars. Even if we were to able to conclude that the trial court had the entire Morgan deposition available for review below, the deposition testimony as a whole fails to create a genuine issue of material fact. *SSC, supra*.

opposition to the dispositive motion also preclude plaintiff from proceeding on a theory of indirect discrimination or the shifting burden test.

Plaintiff next argues that the trial court erred in dismissing his retaliation claim. We disagree. Plaintiff's retaliation claim fails because he did not present evidence from which a reasonable factfinder could infer a causal connection between his complaint with the MDCR and EEOC complaint and defendant's adverse employment actions. *Feick v Monroe Co*, 229 Mich App 335, 344; 582 NW2d 207 (1998).

Affirmed.

/s/ Brian K. Zarah
/s/ Harold Hood
/s/ Gary R. McDonald