

STATE OF MICHIGAN
COURT OF APPEALS

VINCENT SANCIMINO,

Plaintiff-Appellant,

V

CERIDIAN CORPORATION,

Defendant-Appellee.

UNPUBLISHED

October 23, 2001

No. 226162

Oakland Circuit Court

LC No. 99-014260-CL

Before: Zahra, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting summary disposition in favor of defendant. We affirm.

Plaintiff argues that the trial court erred by failing to address his claim that defendant manipulated events in order to fill an open position with a younger, healthier individual. A trial court's grant or denial of a motion for summary disposition is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties in the light most favorable to the nonmoving party. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if there is no genuine issue of material fact, entitling the moving party to judgment as a matter of law. *Id.*

To support a claim for age discrimination based on discharge from employment, a plaintiff must prove by a preponderance of the evidence: (1) membership in a protected class, (2) discharge from employment, (3) that the plaintiff was qualified for the position, and (4) that he was replaced by a younger person. *Hall v McRea Corp*, 238 Mich App 361, 370; 605 NW2d 354 (1999); *Meagher v Wayne State University*, 222 Mich App 700, 711; 565 NW2d 401 (1997). Thereafter, the burden shifts to the defendant to present a legitimate, nondiscriminatory reason for the plaintiff's discharge. *Hall, supra* at 370; *Meagher, supra* at 711. The defendant need not prove that it was actually motivated by the reasons presented, but rather, it is sufficient if the defendant presents evidence raising a genuine issue of material fact regarding whether it discriminated against the plaintiff. *Hall, supra* at 370. If the defendant satisfies its burden of production, the presumption created by the plaintiff's prima facie case is rebutted. *Id.* The burden of proof then shifts back to the plaintiff who must show that there exists an issue of fact

that the defendant's proffered reasons were not the true reasons for the plaintiff's discharge, but were a mere pretext for discrimination. *Hall, supra* at 370; *Meagher, supra* at 711. The prima facie case elements and burden-shifting analysis apply as well to plaintiff's handicap discrimination claim. *Hall, supra* at 371.

To prove a prima facie case of discrimination under the Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq.*, a plaintiff must prove:

(1) that she is disabled as defined by the PWDCRA, (2) that the disability is unrelated to her ability to perform the duties of a particular job, and (3) that she was discriminated against in one of the ways described in the statute. [*Lown v JJ Eaton Place*, 235 Mich App 721, 727; 598 NW2d 633 (1999).]

Here, plaintiff contends that defendant scheduled his independent medical examination several weeks after plaintiff expressed interest in returning to work and that defendant offered Tim Roumaya the position only one day prior to plaintiff's examination. The record shows that plaintiff was the lowest-ranking employee in his group and that defendant, as part of a company-wide workforce reduction, intended to eliminate his position effective February 1, 1996. Plaintiff was informed of defendant's decision to eliminate his position on January 2, 1996. Plaintiff went on disability leave because of alcoholism and depression on January 23, 1996. Thereafter, plaintiff made various threats to his coworkers, which involved threats to shoot people at defendant's facility and to commit suicide.¹ In December 1998, when plaintiff wanted to return to work, he produced a written release from his family physician, indicating his diagnosis as hypertension. Plaintiff's release to return to work did not mention either his alcoholism or his depression. Defendant thereafter scheduled an independent medical examination for January 23, 1999. Defendant was not informed of the results of the independent medical examination until February 2, 1999, subsequent to hiring Roumaya to fill the computer operator position on January 22, 1999. It is undisputed that Roumaya is younger than plaintiff, and there is no indication that Roumaya had any disability. Even assuming that under these circumstances, plaintiff presented a prima facie case of discrimination, plaintiff cannot prevail because there is not evidence rebutting defendant's legitimate, nondiscriminatory reason for plaintiff's discharge.

Defendant met its burden of providing a legitimate, nondiscriminatory reason for plaintiff's discharge, that being that no positions were available when plaintiff was cleared to return to work. *Hall, supra* at 370; *Meagher, supra* at 711. The burden then shifted back to plaintiff to show a triable issue of fact that defendant's reasons for plaintiff's discharge were merely a pretext for discrimination. *Hall, supra* at 370; *Meagher, supra* at 711. While plaintiff argued that defendant intentionally stalled plaintiff's independent medical examination in order to hire a younger, healthier individual, he presented no evidence of such intent. In fact, when asked if he had any evidence to suggest that defendant hired Roumaya because of Roumaya's age, plaintiff responded, "Not because of his age. They just didn't want me back." Plaintiff also

¹ Defendant's personnel took the above threats seriously and hired a security service to provide an armed guard to monitor the front entrance and to escort defendant's district vice president and general manager to and from her home.

failed to present any evidence that defendant's decision to hire Roumaya was the result of a disability or perceived disability on behalf of plaintiff. The record indicates that plaintiff had not revealed any disability to defendant at the time the decision was made to eliminate his position. Therefore, plaintiff failed to create an issue of fact that defendant's reason for his discharge constituted a mere pretext for discrimination on the basis of age or disability. *Hall, supra* at 370; *Meagher, supra* at 711. As such, the trial court properly granted defendant's motion for summary disposition.²

Affirmed.

/s/ Brian K. Zahra

/s/ Michael R. Smolenski

/s/ Michael J. Talbot

² To the extent that the trial court granted defendant's motion on a different basis, this Court will not reverse a trial court's decision reaching the correct result for the wrong reasons. *Hall, supra* at 369.