

STATE OF MICHIGAN
COURT OF APPEALS

TERESA KEATHLEY,

Plaintiff-Appellant,

V

STATE OF MICHIGAN, DEPARTMENT OF
CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED

November 30, 2001

No. 224076

Ingham Circuit Court

LC No. 98-088179-CK

Before: O’Connell, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Plaintiff Theresa Keathley appeals as of right from the trial court’s order granting summary disposition to defendant State of Michigan Department of Corrections. We affirm.

Plaintiff first challenges the trial court’s decision regarding her delayed recall claim. Plaintiff argues that the trial court erroneously granted summary disposition to defendant because she presented sufficient evidence to raise a genuine issue of material fact concerning whether defendant discriminated against her because of her race and age. We disagree. A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual basis underlying a claim and permits summary disposition when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Michigan Mut Ins Co v Dowell*, 204 Mich App 81, 85; 514 NW2d 185 (1994). We review a trial court’s grant of summary disposition de novo. *Hanley v Mazda Motor Corp*, 239 Mich App 596, 600; 609 NW2d 203 (2000).

An employer is prohibited from discriminating against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of race or age. MCL 37.2202. To establish a prima facie case of employment discrimination, a plaintiff must prove that: (1) she was a member of a protected class, (2) she was subject to an adverse employment action, (3) she was qualified for the position, and (4) the position was given to another person under circumstances giving rise to an inference of unlawful discrimination. *Hazle v Ford Motor Co*, 464 Mich 456, 463; 628 NW2d 515 (2001); *Town v Michigan Bell Telephone Co*, 455 Mich 688, 695; 568 NW2d 64 (1997). Once the plaintiff presents a prima facie case of discrimination, the burden shifts to the defendant to articulate a legitimate, non-discriminatory reason for the adverse employment action. *Hazle, supra* at 464; *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973). In order to prevail,

the employee must then present evidence that the employer's explanation was a pretext for discrimination. *Town, supra* at 697.

Here, defendant presented evidence that its decision to delay plaintiff's recall was based on non-discriminatory reasons; i.e., plaintiff was not eligible for immediate recall because the union contract provided priority hiring for departmental transfers and because of the hiring freeze. Therefore, the burden shifted to plaintiff to present evidence that defendant's reasons were pretextual. A plaintiff can establish that a defendant's articulated legitimate, non-discriminatory reasons are pretexts, in one of the following ways: (1) by showing that the articulated reasons had no basis in fact, (2) if the articulated reasons have a basis in fact, by showing that they were not the actual factors motivating the decision, or (3) if the articulated reasons were factors motivating the decision, by showing that they were jointly insufficient to justify the decision. *Feick v Monroe Co*, 229 Mich App 335, 343; 582 NW2d 207 (1998). Here, plaintiff has failed to establish that defendant's business decision had no basis in fact. Additionally, plaintiff has failed to establish that her ineligibility and the hiring freeze were not the actual factors motivating defendant's decision. Furthermore, plaintiff has failed to show that her ineligibility for immediate recall and the hiring freeze were jointly insufficient to justify defendant's decision. Therefore, we conclude that the trial court appropriately granted defendant summary disposition of plaintiff's race and age discrimination claims based on her delayed recall.

Plaintiff next argues that the trial court erroneously granted defendant's motion for summary disposition to defendant on plaintiff's disparate treatment claim. Plaintiff specifically challenges defendant's decision to suspend her as evidence of racial discrimination. To establish a prima facie disparate treatment claim, plaintiff was required to show that she was a member of a protected class, and that she was treated differently than persons of a different class for the same or similar conduct. *Meagher v Wayne State University*, 222 Mich App 700, 716; 565 NW2d 401 (1997). We conclude that plaintiff failed to present a prima facie case of racial discrimination because she could not show that she was similarly situated to a Caucasian co-worker who was disciplined differently than plaintiff for engaging in different conduct. Additionally, plaintiff could not show that she was similarly situated to any employee of a different class who was not suspended for violating defendant's work conduct policy.

Finally, plaintiff alleges that the trial court erroneously granted defendant's motion for summary disposition regarding her retaliation claim. We disagree. It is unlawful for an employer to retaliate or discriminate against an employee because the employee has exercised his or her legal rights under the Civil Rights Act. MCL 37.2701(a); *Feick, supra* at 344. To prove a prima facie case of retaliation, a plaintiff must show the following:

(1) that the plaintiff engaged in a protected activity, (2) that this was known by the defendant, (3) that the defendant took an employment action adverse to the plaintiff, and (4) that there was a causal connection between the protected activity and the adverse employment action. [*Barrett v Kirtland Community College*, 245 Mich App 306, 315; 628 NW2d 63 (2001); quoting *Meyer v Center Line*, 242 Mich App 560, 568-569; 619 NW2d 182 (2000).]

Further, in order to establish causation, the plaintiff must show that his or her participation in protected activity was a “significant factor” in the employer’s adverse employment action, not just that there was a causal link between the two. *Barrett, supra* at 315.

Although plaintiff engaged in protected activity while employed with defendant, she has failed to establish that her actions were a “significant factor” in the employer’s adverse employment action. Therefore, plaintiff has failed to establish the causal connection required to state a prima facie claim. We affirm the trial court’s decision granting defendant’s motion for summary disposition.

Affirmed.

/s/ Peter D. O’Connell

/s/ David H. Sawyer

/s/ Michael R. Smolenski