

STATE OF MICHIGAN
COURT OF APPEALS

FOUAD K. ALNAJJAR,

Plaintiff-Appellant,

v

WAYNE STATE UNIVERSITY, WAYNE
STATE UNIVERSITY BOARD OF
GOVERNORS, ALAN REINSTEIN, TILDEN G.
EDELSTEIN, and MARILYN WILLIAMSON,

Defendants-Appellees.

UNPUBLISHED
October 22, 2002

No. 230254
Wayne Circuit Court
LC No. 97-710945-CZ

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

PER CURIAM.

Plaintiff appeals by right the trial court's order granting summary disposition of his employment discrimination claims under MCR 2.116(C)(10). We affirm.

Plaintiff, an Iraqi-American and a Muslim, was a professor in the accounting department at Wayne State University. On three separate occasions, plaintiff was considered for promotion and tenure. The first application was made in the 1993-1994 school year, the second application was made in the 1994-1995 school year, and in the 1995-1996 school year, the university agreed to conduct a de novo review of plaintiff's second application. Each time plaintiff was denied. Ultimately the university terminated his employment for his failure to attain tenure.

Plaintiff brought this action alleging religious and national origin discrimination under Michigan's Civil Rights Act, MCL 37.2101 *et seq.*¹ The trial court granted defendants' motion for summary disposition under MCR 2.116(C)(10).

We review de novo a trial court's ruling on a motion for summary disposition. *Mitan v Neiman Marcus*, 240 Mich App 679, 680; 613 NW2d 415 (2000). Summary disposition under MCR 2.116(C)(10) tests the factual support of a party's claim. *Ritchie-Gamester v Berkeley*, 461 Mich 76, 76-77; 597 NW2d 517 (1999). The moving party must support its position by affidavits, depositions, admissions, and other documentary evidence. *Graham v Ford*, 237 Mich

¹ Although plaintiff's complaint contained additional discrimination claims, only his claims alleging religious and national origin discrimination are at issue on appeal.

App 670, 672; 604 NW2d 713 (1999). The non-movant must support its position with substantive evidence; reliance on the pleadings alone is insufficient. *Id.* at 672-673. The trial court must consider all the evidence in the light most favorable to the party opposing the motion. *Ritchie-Gamester, supra* at 76. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4); *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999); *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).

Michigan's Civil Rights Act prohibits employers from discriminating against an employee or applicant on the basis of religion, race, color, national origin, age, sex, height, weight, or marital status. MCL 37.2202(1)(a). In an employment discrimination action, a plaintiff must present a prima facie case demonstrating (1) the plaintiff's membership in a protected class, (2) that the plaintiff suffered an adverse employment action, (3) that the plaintiff was qualified for the position, and (4) that 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, 462-463; 628 NW2d 515 (2001); *Lytle v Malady (On Rehearing)*, 458 Mich 153, 172-173; 579 NW2d 906 (1998); *Town v Michigan Bell Telephone Co*, 455 Mich 688, 695; 568 NW2d 64 (1997); *Harrison v Olde Financial Corp*, 225 Mich App 601, 608; 572 NW2d 679 (1997). Alternatively, a plaintiff can establish the fourth element by proving he was replaced by a non-member of the protected class. *Lilley v BTM Corp*, 958 F2d 746, 752 (CA 6, 1992).² The burden then shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the adverse action. *Hazle, supra* at 465-466. Thereafter, the plaintiff bears the burden of proving that the employer's articulated reason was not the true reason, but rather a mere pretext for discrimination. *Krohn v Sedgwick James of Michigan, Inc*, 244 Mich App 289, 295-296; 624 NW2d 212 (2001); *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 359; 597 NW2d 250 (1999).

Assuming that plaintiff presented sufficient evidence to establish a prima facie case, plaintiff's claims fail because defendant offered a legitimate nondiscriminatory reason for denying plaintiff's applications for promotion and tenure, and plaintiff failed to show that there was a triable issue that this reason was a mere pretext for discrimination. *Lytle (On Rehearing), supra* at 173-174 (Weaver, J.). Defendants maintained that plaintiff was denied promotion and tenure because his level of scholarship was deficient. In support of their denial of plaintiff's first application, defendants relied on outside reviewers' assessments of plaintiff's work, which was considered in the decision to deny tenure. The outside reviewers found plaintiff's publications to be "descriptive in nature," "good but not outstanding nor leading edge," and that it has not "had any significant impact on the field." Plaintiff was again denied promotion and tenure the following year, for the reason that "the quality of [his] scholarship has not improved so substantially as to overcome the objections of last year to its descriptive character[.]" and, of plaintiff's published articles, "the strongest papers are co-authored while the weaker ones are

² Federal case law may be considered in our resolution of discrimination cases. *Featherly v Teledyne Industries, Inc*, 194 Mich App 352, 357-358; 486 NW2d 361 (1992); *Meeka v D & F Corp*, 158 Mich App 688, 691; 405 NW2d 125 (1987).

single-authored.” Therefore, defendant offered evidence of a legitimate, nondiscriminatory reason for denying promotion and tenure.

Plaintiff failed to offer any evidence of pretext. *Town, supra* at 697. Plaintiff must establish not only that the proffered reason was false, but also that discrimination was the actual reason for the adverse action. *Lytle (On Rehearing), supra* at 182. Plaintiff’s argument below opposing summary disposition centered on the qualifications and competence of other candidates. However, plaintiff did not directly refute the specific criticisms of the independent reviewers regarding his scholarship and the quality of his published articles. Moreover, plaintiff has presented no evidence that discriminatory animus was a factor, let alone a motivating factor, in the decision-making process. Plaintiff’s direct evidence that Alan Reinstein harbored discriminatory animus toward plaintiff does not create a triable issue of fact because the record does not establish that Reinstein was involved in the decision-making process beyond the departmental level. Further, it is undisputed that Reinstein recommended plaintiff for promotion in 1994, and he recommended plaintiff for both promotion and tenure in 1995. Because plaintiff has not raised a genuine issue of material fact regarding whether defendants’ proffered reason for denying promotion and tenure was merely a pretext for discrimination, the trial court properly granted summary disposition in favor of defendants pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ Michael R. Smolenski

/s/ Michael J. Talbot

/s/ Kurtis T. Wilder