

STATE OF MICHIGAN
COURT OF APPEALS

CARMELITA GREEN-CLARK and ANTEL
CLARK,

UNPUBLISHED
December 27, 2002

Plaintiffs-Appellants,

V

No. 236996
Wayne Circuit Court
LC No. 00-024767-CZ

STATE OF MICHIGAN,

Defendant-Appellee.

Before: Hood, P.J., and Smolenski and Kelly, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from the trial court's order granting defendant's motion for summary disposition.¹ We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, an African-American female, alleged that her termination from employment with the Michigan Department of Corrections within the one-year probationary period was in violation of Michigan's Civil Rights Act (MCRA), MCL 37.2101 *et seq.* In support of her complaint, plaintiff alleged that a Caucasian male, Kenneth Dettloff, had been reinstated following his termination. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), alleging that a prima facie case of discrimination could not be established because plaintiff and Dettloff were not similarly situated. The trial court granted defendant's motion.

Plaintiff alleges that the trial court erred in granting defendant's motion for summary disposition. We disagree. Our review of this issue is de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The moving party has the initial burden to support its claim to summary disposition by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to demonstrate that a genuine issue of disputed fact exists for trial. *Id.* To meet this burden, the nonmoving party must present documentary evidence establishing the existence of a material fact, and the motion is properly granted if this burden is not satisfied. *Id.* Affidavits, depositions, and documentary evidence offered in opposition to a motion shall be

¹ We will use the singular plaintiff to refer to Carmelita Green-Clark. The loss of consortium claim raised by Antel Clark is derivative in nature.

considered only to the extent that the content or substance would be admissible as evidence. MCR 2.116(G)(6); *Maiden, supra*.

Plaintiff's submission of the mediation award in her favor is not admissible documentary evidence that created a genuine issue of material fact regarding similarly situated employees. *Maiden, supra*. Furthermore, an employee is similarly situated when comparative in all relevant aspects such that the employment situation is nearly identical. *Town v Michigan Bell Telephone Co*, 455 Mich 688, 699-700; 568 NW2d 64 (1997). The documentary evidence failed to establish that Dettloff was similarly situated, particularly in light of the fact that the warden, contrary to the grievance rules, unilaterally modified his performance evaluation. Accordingly, the trial court properly granted defendant's summary disposition motion.

Affirmed.

/s/ Harold Hood

/s/ Michael R. Smolenski

/s/ Kirsten Frank Kelly