# STATE OF MICHIGAN

# COURT OF APPEALS

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| TYRONE STOKES,<br><br>Plaintiff-Appellant, | UNPUBLISHED<br>June 22, 2004 |
| v | No. 246524<br>Wayne Circuit Court |
| GREEKTOWN CASINO, L.L.C., and JOHN HAWKINS,<br><br>Defendants-Appellees. | LC No. 01-141684-CL |

Before: Murphy, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Plaintiff Tyrone Stokes appeals as of right the trial court's order granting summary disposition in favor of defendants Greektown Casino, L.L.C., ("Greektown") and John Hawkins on plaintiff's claims of racial and reverse gender employment discrimination pursuant to MCR 2.116(C)(10).[1] We affirm.

## I. Facts and Procedural History

Greektown hired plaintiff, an African-American male, as an assistant slot shift manager in September of 2000, as an at-will employee.[2] On November 11, 2000, plaintiff was reprimanded by written warning for handling two customer machine disputes in a manner that violated Greektown's Code of Conduct. The warning, as well as the Code of Conduct, indicated that plaintiff could be terminated for further infractions.

On October 30, 2000, Greektown issued a written bulletin reminding employees that it was the policy of the casino that employees only be dropped off and picked up at the Greektown Casino Parking Facility. Plaintiff received a ticket on February 6, 2001, for blocking traffic while dropping off his immediate supervisor, Clivalee Mundle, at the Beaubien Street entrance, as opposed to the parking facility, per casino policy. Plaintiff demanded to speak to the issuing

[1] The trial court also dismissed plaintiff's claim of retaliatory discharge, but plaintiff does not contest that ruling on appeal.

[2] Mr. Hawkins, as Vice President of Slot Operations, participated in the hiring decision.

officer's supervisor regarding the officer's conduct. Sergeant Joseph Solomon arrived to handle the complaint. Sergeant Solomon reported the incident to the Michigan Gaming Control Board (MGCB),[3] describing plaintiff as "something of a hot head."[4] The MGCB in turn contacted Mr. Hawkins regarding the incident.

As a result of the February incident, plaintiff was placed on an immediate investigative suspension. Greektown terminated plaintiff's employment a week later, citing the November reprimand, the current infraction, and concern over the negative attention from the MGCB pertaining to the incident. Plaintiff filed the current lawsuit alleging discrimination and defendants brought a motion for summary disposition. In granting defendants' motion, the trial court noted the lack of evidence of discrimination and the fact that plaintiff clearly violated Greektown policy in dropping off Mr. Mundle at the casino entrance.

## II. Legal Analysis

This Court reviews a trial court's determination regarding a motion for summary disposition de novo.[5] A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim.[6] "In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in the light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists."[7] Summary disposition is appropriate only if there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law."[8]

### A. Racial Discrimination

Plaintiff asserts that the trial court erred in granting defendants' motion for summary disposition on his claim of racial discrimination. We disagree. Michigan's Civil Rights Act prohibits an employer from discriminating against an individual with respect to employment based on race.[9] Absent direct evidence of discrimination, a plaintiff must proceed under the shifting burdens of proof articulated in *McDonnell Douglas Corp v Green*.[10] To establish a

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[3] The MGCB is the state agency that regulates casinos and administers occupational licenses to casino employees.

[4] [Affidavit of Sergeant Joseph Solomon.]

[5] *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001).

[6] *Auto-Owners Ins Co v Allied Adjusters & Appraisers, Inc*, 238 Mich App 394, 397; 605 NW2d 685 (1999).

[7] *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001).

[8] *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001).

[9] MCL 37.2202(1)(a); *Wilcoxon v 3M*, 235 Mich App 347, 358; 597 NW2d 250 (1999).

[10] *Hazle v Ford Motor Co*, 464 Mich 456, 463-464; 628 NW2d 515 (2001), citing *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973).

prima facie case under *McDonnell Douglas*, a plaintiff must prove that: (1) he was a member of a protected class; (2) he suffered an adverse employment action; (3) he was qualified for the position; and (4) the adverse employment action occurred under circumstances giving rise to an inference of discrimination.[11] If a plaintiff establishes a prima facie case, "a presumption of discrimination arises."[12] Thereafter, the defendant bears the burden of articulating a legitimate, nondiscriminatory reason for its employment decision.[13] "If the employer makes such an articulation, the presumption created by the *McDonnell Douglas* prima facie case drops away."[14]

Plaintiff failed to establish a prima facie claim of disparate treatment based on race. Plaintiff alleged that he was treated differently than members of another race for the same conduct without presenting any evidence to that effect. Contrary to his assertion that non-African-American employees were *not* disciplined for violating the drop-off policy, an African-American female was subject to verbal reprimand for such a violation. Plaintiff also acknowledges that Mr. Mundle, another African-American male, was *not* reprimanded or disciplined for his participation or involvement in the incident. In contradiction to his claim of racial discrimination, plaintiff actually asserts that defendants give African-American females preferential treatment. As such, plaintiff has failed to establish a prima facie claim of disparate treatment based upon race.

Furthermore, defendants have provided a legitimate nondiscriminatory reason for plaintiff's discharge. Plaintiff was an at-will employee and, as such, could be discharged at any time and for any reason by defendants. Defendants have asserted various legitimate reasons for plaintiff's discharge, not limited to plaintiff's violation of the drop-off policy. Plaintiff received a prior written warning that any further infractions could result in the termination of his employment. As plaintiff has failed to establish a prima facie case, and has failed to present any evidence that defendants' proffered reasons for his discharge were a mere pretext for racial discrimination, the trial court properly granted defendants' motion for summary disposition.[15]

B. Reverse Gender Discrimination

Plaintiff also contends that the trial court erred in granting defendants' motion for summary disposition and inappropriately applied a heightened standard of proof on plaintiff's claim of reverse gender discrimination. This Court has utilized a version of the *McDonnell*

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[11] *Id.* at 463.

[12] *Lytle v Malady (On Rehearing)*, 458 Mich 153, 173; 579 NW2d 906 (1998).

[13] *Hazle*, *supra* at 464.

[14] *Id.* at 465.

[15] We decline to review plaintiff's contention that the findings of fact by an administrative law judge in a hearing pertaining to the availability of unemployment benefits establish a prima facie claim of disparate treatment. Plaintiff fails to provide any law in support of his contention and we are not required to make a party's argument for him. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), citing *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

*Douglas* test in gender-based reverse discrimination claims.[16] Pursuant to the "background circumstances" test in *Allen v Comprehensive Health Services*, a plaintiff may establish a prima facie claim of reverse gender discrimination by proving: (1) the background circumstances supporting the suspicion that the defendant is the unusual employer that discriminates against men; (2) the plaintiff was qualified for the position; (3) the plaintiff was discharged despite his qualification; and (4) a female employee of similar qualifications was treated differently.[17] This Court recently held that *Allen* was wrongly decided as it improperly modifies *McDonnell Douglas* by requiring a plaintiff to establish the background circumstances for his suspicion.[18] The Supreme Court recently granted leave in *Lind v Battle Creek*,[19] to determine whether Allen's background circumstances test violates the Civil Rights Act.[20] However, the issue is not outcome determinative in the present case as the trial court properly granted defendants' motion for summary disposition under either analysis.

Plaintiff suggests that defendants give preferential treatment to African-American female employees, but has failed to come forward with any evidence to support his claim. Assuming, for purposes of a straight *McDonnell Douglas* analysis, that plaintiff is a member of a protected class who suffered an adverse employment action and was qualified for his position, plaintiff has not demonstrated that "others, similarly situated and outside the protected class, were unaffected by the employer's adverse conduct."[21] Contrary to plaintiff's position, a female employee was verbally reprimanded for violation of the drop-off policy. Although the female employee was not discharged, the factual circumstances surrounding plaintiff's incident are distinguishable. As the only relevant evidence plaintiff has presented fails to establish a factual basis for plaintiff's claim, the trial court properly granted defendants' motion for summary disposition.

Even resorting to the *Allen* background circumstances test, plaintiff has failed to establish his claim of reverse gender discrimination. Plaintiff has not surmounted defendants' legitimate, nondiscriminatory reasons for his discharge by establishing that the evidence, construed in his

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[16] *Allen v Comprehensive Health Services*, 222 Mich App 426; 564 NW2d 914 (1997).

[17] *Id.* at 433.

[18] *Venable v General Motors Corp (On Remand)*, 253 Mich App 473; 656 NW2d 188 (2002), lv den 468 Mich 870 (2003).

[19] *Lind v Battle Creek*, 468 Mich 869; 661 NW2d 230 (2003).

[20] MCL 37.2101 *et seq.*

[21] *Smith v Goodwill Indus of W Michigan, Inc*, 243 Mich App 438, 447-448; 622 NW2d 337 (2000).

favor, would be sufficient for a reasonable trier of fact to conclude that discrimination was a motivating factor in his discharge.[22] Therefore, summary disposition was proper under either analysis.

Affirmed.

/s/ William B. Murphy
/s/ Kathleen Jansen
/s/ Jessica R. Cooper

[22] *Hazle, supra* at 465.