STATE OF MICHIGAN

COURT OF APPEALS

SALEEM SHARIFF,

Plaintiff-Appellant,

and

KHALID ALI ALWARD, ABDUL MOHAMED and SALEH MOHAMED OMAR,

Plaintiffs,

v

FORD MOTOR COMPANY,

Defendant-Appellee.

UNPUBLISHED
December 22, 2009

No. 286390
Wayne Circuit Court
LC No. 07-710923-CD

Before: Donofrio, P.J., and Sawyer and Owens, JJ.

PER CURIAM.

Plaintiff[1] appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm.

Plaintiff was a temporary employee at defendant's engine plant on September 11, 2001, and was perceived, along with a coworker also of Arabic descent, as exhibiting signs of celebration when the World Trade Center was attacked. Dave Allen, one of defendant's labor relations employees, and the plant's union agreed that plaintiff would be allowed to finish his temporary employment, and thereafter would be considered for further employment with defendant only at other locations.

Plaintiff's subsequent efforts to obtain additional employment with defendant were unsuccessful. Plaintiff was once notified that another temporary position was available to him,

[1] Of the four original plaintiffs in this case, only Shariff is pursuing this appeal. Accordingly, for purposes of this opinion, the singular "plaintiff" will refer exclusively to that plaintiff.

but the offer was then canceled without explanation. Then, in late 2006 through early 2007 defendant instituted a buy-out program, resulting in the need to hire temporary workers. Cathy Carpenter, head of hourly employment, was in charge of hiring decisions at this time. She compiled a list of candidates consisting of all temporary employees who had been hired at the Rouge Complex in the preceding two years, along with persons who received a referral from other employees. Plaintiff met neither criterion.

Plaintiff filed suit, claiming that he was denied an employment opportunity because of unlawful discrimination based on his national origin.[2] Defendant filed a motion for summary disposition. Following a hearing, the trial court granted defendant's motion.

This Court reviews a trial court's decision on a motion for summary disposition de novo. See *Associated Builders & Contractors v Wilbur*, 472 Mich 117, 123; 693 NW2d 374 (2005). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). In ruling on such a motion, the trial court must consider the pleadings, as well as depositions, affidavits, admissions, and any other documentary evidence. MCR 2.116(G)(5). Inferences should be drawn in favor of the nonmoving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 361-362; 547 NW2d 314 (1996). Summary disposition is appropriate if the opposing party fails to present documentary evidence establishing the existence of a material issue of fact. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

Michigan's Elliot-Larsen Civil Rights Act prohibits an employer from discriminating against an employee because of race or national origin. MCL 37.2202(1)(a). To establish a prima facie case of discrimination, a plaintiff must show the following: (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) he suffered the adverse employment action under circumstances that give rise to an inference of unlawful discrimination. *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 361; 597 NW2d 250 (1999).

In the instant case, the trial court granted summary disposition in favor of defendant on the grounds that plaintiff had failed to show that Dave Allen had animus toward plaintiff's national origin and that plaintiff had presented no evidence showing that there was a question of

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[2] Plaintiff's argument against the trial court's decision to grant defendant's summary disposition motion includes assertions to his call back, then subsequent denial, in 2004. However, that incident is not actionable because plaintiff's complaint was filed on April 23, 2007, and the statute of limitations for a CRA claim is three years. MCL 600.5805(10). Plaintiff impliedly concedes that any claims relating to the 2004 failure to call him back are time barred, given that he references only the 2006-2007 denial of employment in the statement of facts of his brief on appeal. Accordingly, the canceled call back, and any other adverse employment situations in connection with which any claims would now be time barred, bear on this case only insofar as they may constitute evidence of a pattern of discrimination in support of his claim based on conduct within the three-year period. See *Campbell v Dep't of Human Services*, ___ Mich App ___; ___ NW2d ___ (Docket No. 281592, issued November 24, 2009), slip op at 3-5.

fact that Cathy Carpenter was the sole decision maker in connection with a decision not to rehire him.

Plaintiff first argues that the trial court erred in concluding that he had failed to establish that Dave Allen was motivated by animus toward his national origin. We disagree.

At deposition, plaintiff admitted that his sole basis for concluding that Allen was motivated by unlawful discrimination was Allen's response to the incident that occurred on September 11, 2001. Plaintiff further testified that he had no knowledge of Allen having a problem with any worker at the plant of Arabic descent other than himself and the co-worker involved in that incident.

Accordingly, plaintiff has failed to establish that Allen's conduct following the September 11 incident was based on anything other than plaintiff's admitted behavior, rather than plaintiff's national origin. Plaintiff asserts in his brief that his conduct was misinterpreted "because he is Arab." This constitutes speculation whether laughing and exchanging high-fives after learning of the deadly terrorist attack would have been deemed acceptable if he had belonged to another ethnicity. However, speculation is insufficient to overcome a properly supported motion for summary disposition. *Libralter Plastics, Inc v Chubb Group Ins Co*, 199 Mich App 482, 486; 502 NW2d 742 (1993). Moreover, we find it illogical to suggest that the determination whether certain conduct is appropriate is determined by the ethnicity of the person engaging in the conduct, rather than the conduct itself along with the circumstances under which it occurs.

Plaintiff also argues that the trial court erred in concluding that Cathy Carpenter was the sole decision maker concerning whether plaintiff's name was included on the to-hire list. We disagree.

Plaintiff argues that Kevin Steckroth was also responsible for hiring decisions during the time relevant. But review of Steckroth's deposition testimony demonstrates that, although he testified that he had some involvement in hiring decisions, he maintained that Carpenter was his boss at the time in question, and he did not testify that he had any input on the creation of the to-hire list. Moreover, plaintiff does not dispute that he failed to meet either of the requirements necessary to be included on the new to-hire list, despite his assertions that he was purposely excluded from the to-hire list because of the incident that occurred on September 11, 2001.

In light of the forgoing, we conclude that the trial court correctly held that plaintiff failed to present sufficient evidence of unlawful discrimination to withstand defendant's motion for summary disposition.

Affirmed.

/s/ Pat M. Donofrio
/s/ David H. Sawyer
/s/ Donald S. Owens