STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0158

George Mentonis,
Appellant,

vs.

Abbott Laboratories Inc., et al.,
Defendants,

St. Jude Medical S.C., Inc.,
Respondent.

Filed December 7, 2020
Affirmed
Slieter, Judge

Ramsey County District Court
File No. 62-CV-18-6009

David E. Schlesinger, Laura A. Farley, Nichols Kaster, PLLP, Minneapolis, Minnesota (for appellant)

Jillian Kornblatt, Briana Al Taqatqa, Trevor Brown, Dorsey & Whitney LLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Bratvold, Judge; and Cochran, Judge.

U N P U B L I S H E D O P I N I O N

SLIETER, Judge

Appellant George Mentonis sued respondent St. Jude Medical S.C., Inc. (SJM) alleging age discrimination following his discharge as part of a company-wide reduction

in force (RIF). The district court granted SJM's motion for summary judgment. Because we agree that SJM presented a legitimate nondiscriminatory reason for discharging Mentonis and Mentonis has not presented genuine issues of material fact that the reason for his discharge was pretextual or partially motivated by Mentonis's age, we affirm.

FACTS

George Mentonis began working as a medical sales representative for Pacesetter—the company which would later be acquired by SJM—in 1986. Although SJM conducted sales throughout the country, Mentonis largely did sales within New York City.[1] Mentonis continued in this position until his employment with SJM ended in 2015. Following his departure from SJM, Mentonis briefly worked in medical sales for Boston Scientific.

In June 2016, Mentonis was contacted by SJM regional director John Arancio about the possibility of returning to SJM. Mentonis, age 65 years old at the time, returned to employment as a sales representative with SJM in October 2016. Mentonis was given sales territory in a portion of New York City and placed under the supervision of two regional directors—Arancio and Steven Nystedt. Both Arancio and Nystedt reported to Robert Biolsi, who became area vice president in November 2016. Mentonis was paid SJM's standard sales representative base salary plus commission, and was assigned a $500,000 annual sales quota.

[1] Although the events which gave rise to this action took place in New York and New York law controls the analysis of Mentonis's action, this matter was venued in the Ramsey County District Court pursuant to a forum-selection clause in Mentonis's employment contract.

Mentonis's supervisors testified by deposition that they began to have concerns with his performance not long after he returned to work at SJM. On September 7, 2017, SJM discharged Mentonis as part of an RIF. Both Biolsi and Arancio indicated that the decision to discharge Mentonis was collaborative and was made in large part because of Mentonis's low sales numbers and the minimal disruption the elimination would have on the sales region. Mentonis was 66 years old on the date of discharge.

Through his amended complaint, Mentonis's sole claim against SJM is for age discrimination pursuant to the New York City Human Rights Law (NYCHRL). SJM moved for summary judgment. The district court granted SJM's motion concluding that, though Mentonis had stated a *prima facie* case of discrimination, evidence of Mentonis's poor sales performance and communication while at SJM constituted a legitimate nondiscriminatory reason for discharge, and that the few stray or irrelevant comments about his age alleged by Mentonis failed to show either pretext for discrimination or discrimination even in part. This appeal follows.

D E C I S I O N

Appellate courts "review a district court's summary judgment decision de novo" to determine "whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). "A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

The evidence is viewed "in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn. 2002).

Though this case is subject to Minnesota procedural law pursuant to the parties' forum-selection clause, New York caselaw and the NYCHRL control our analysis of the underlying substantive issues. The NYCHRL provides that "[i]t shall be an unlawful discriminatory practice . . . [f]or an employer or an employee or agent thereof, because of the actual or perceived age . . . of any person, to refuse to hire or employ or to bar or discharge from employment such person." Admin. Code of City of NY § 8-107(a) (2018). In recognition of the fact that "[i]t is not uncommon for covered entities to have multiple or mixed motives for their action," *Bennett v. Health Mgmt. Sys., Inc.*, 936 N.Y.S.2d 112, 120 (N.Y. App. Div. 2011), the NYCHRL's stated goal is to "prevent discrimination from playing *any role* in actions relating to employment . . . ." Admin. Code of City of NY § 8-101 (2018) (emphasis added). Courts must construe the NYCHRL "broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible." *Melman v. Montefiore Med. Ctr.*, 946 N.Y.S.2d 27, 32 (N.Y. App. Div. 2012) (quotation omitted). The NYCHRL "explicitly requires an independent liberal construction" so as to serve the "uniquely broad and remedial purposes" of the NYCHRL. *Bennett*, 936 N.Y.S.2d at 115 (quotations omitted).

A defense motion for summary judgment pursuant to the NYCHRL must be analyzed under both the standard *McDonnell Douglas* framework set forth by the United States Supreme Court as well as the more lenient "mixed motive" framework. *Hamburg*

v. New York Univ. Sch. of Med., 62 N.Y.S.3d 26, 32 (N.Y. App. Div. 2016) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973)). The mixed-motive framework is applicable as "[u]nder Administrative Code § 8-101, discrimination shall play *no role* in decisions relating to employment, housing or public accommodations." *Bennett*, 936 N.Y.S.2d at 120 (emphasis added) (alteration in original) (quotation omitted).

The *McDonnell Douglas* and mixed-motive frameworks are each comprised of three prongs, the first two prongs of which are identical. *Hamburg*, 62 N.Y.S.3d at 32. First, the plaintiff must establish a *prima facie* case of discrimination. *Id.* Second, the burden shifts to the defendant, who must demonstrate a legitimate nondiscriminatory reason for the employment decision. *Id.* At this point, the two frameworks diverge as the NYCHRL provides an alternative method to *McDonnell Douglas* by which a plaintiff may demonstrate discrimination.

Pursuant to prong three of *McDonnell Douglas*, the burden shifts back to the plaintiff to show that the employer's provided reason is a pretext for discrimination. *Hamburg*, 62 N.Y.S.3d at 32. The burden is on the plaintiff to show "both that the stated reasons were false and that discrimination was the real reason." *Melman*, 946 N.Y.S.2d at 35 (quotation omitted). However, under prong three of the mixed-motive analysis, the plaintiff need only provide evidence showing that "unlawful discrimination was one of the motivating factors, even if it was not the sole motivating factor, for [the] adverse employment decision." *Hamburg*, 62 N.Y.S.3d at 32 (quotation omitted). A defense motion for summary judgment under the NYCHRL should be granted only if no jury could

find the defendant liable under the *McDonnell Douglas* pretext analysis or the mixed-motive analysis. *Id.*

The existence of the first two prongs of both tests—a *prima facie* case and a proffered nondiscriminatory reason for discharge—is not seriously contested by either party. Indeed, the *prima facie* burden placed upon plaintiffs under the NYCHRL has been described as *de minimis* and has been met by Mentonis. *Id.* at 33. Furthermore, the reasons proffered by SJM for Mentonis's discharge—poor sales performance and communication—clearly satisfy their burden under the second prong.

Therefore, the issue before this court is whether there is a triable issue as to whether SJM's justification for discharge was a pretext for discrimination or whether they were motivated, at least in part, by discriminatory bias.

I. There is no genuine issue of material fact regarding the *McDonnell Douglas* pretext prong.

To withstand summary judgment on this prong of the *McDonnell Douglas* analysis, Mentonis must demonstrate a genuine issue of material fact as to whether SJM's proffered reasons for discharge were a pretext for discrimination. *Id.* at 33, n.7. A reason is pretextual if it is "false, incomplete, or misleading." *Bennett*, 936 N.Y.S.2d at 121. Evidence of pretext necessarily raises questions of fact which can be answered only by the jury. *Id.*

Mentonis argues that the district court erred in its *McDonnell Douglas* pretext analysis. In support of his argument that there is a fact issue regarding pretext for discriminatory intent, Mentonis points to allegedly discriminatory statements made by

Nystedt (who was not involved in Mentonis's discharge) and several of his non-supervisory peers at SJM, statements by Arancio, SJM's allegedly skewed calculation of Mentonis's sales performance data, disputes regarding a purported January 2017 meeting between Mentonis and Biolsi, a summer 2017 "memorandum of expectation," and, finally, a meeting between Mentonis and Biolsi in August 2017 which took place shortly before Mentonis's discharge.[2] Mentonis argues that he has provided sufficient evidence to create a genuine issue of material fact as to whether SJM's reasons for discharge were a pretext for discrimination when this evidence is viewed in the totality of the circumstances. For the reasons below, we disagree.

A. Statements made by non-decision-makers do not create genuine fact issues suggesting pretext for discrimination.

Mentonis alleges that a number of his peers at SJM made age-related jokes and remarks such as asking Mentonis if he still wanted to "carry the bag" or asking "you still here?" when Mentonis arrived at meetings. Mentonis also alleges that Nystedt made similar comments such as "you still want to be here?" However, there is no evidence that Mentonis's non-supervisory peers were involved in the decision to discharge Mentonis, and Nystedt—though he did play some role in the RIF overall—was not involved in the decision to discharge Mentonis. Comments such as these, made by non-decision-makers—

[2] Mentonis's briefing also indicates that Arancio and Nystedt on multiple occasions specifically asked Mentonis why he would want to keep "carrying the bag" (i.e., keep working as a salesperson). This assertion appears unsupported by the record. However, these allegations would not be determinative even if they were found in the record because all allegations of ageist statements by Arancio and Nystedt are of limited probative value, for the reasons discussed herein.

i.e., a person "uninvolved in the decision to terminate"—are of little probative value. *Radler v. Catholic Health Sys. of Long Island, Inc.*, 41 N.Y.S.3d 88, 89 (N.Y. App. Div. 2016).

Mentonis suggests that these comments are nevertheless relevant, and contribute to the evidence which points to discrimination not only by decision-makers but by SJM as a whole. *See Malarkey v. Texaco, Inc.*, 983 F.2d 1204, 1207-10 (2d Cir. 1993) (holding statements by non-decision-makers were relevant to claim under EEOC as evidence of "pervasive corporate hostility" because plaintiff's "actions became a matter of open discussion in management circles" causing her to become a "*persona non grata*" within her place of employment). However, New York caselaw, including *Radler* and *Forrest v. Jewish Guild for the Blind*, 819 N.E.2d 998 (N.Y. 2004), is clear regarding the limited probative value of non-decision-maker comments—the non-binding federal caselaw cited by Mentonis does not affect or modify that clear precedent.

These comments are of limited probative value and do not contribute to creating a genuine issue of material fact regarding pretext for discriminatory intent.

B. Statements by Arancio—who hired Mentonis—do not create a genuine fact issue suggesting pretext for discrimination.

Mentonis argues that a number of remarks by Arancio are evidence of pretext for age discrimination. Specifically, Mentonis testified in a deposition that Arancio made a number of age-related comments to him such as "well you still want to do this?" and "do you really want to work this hard in this stage of your life?" Mentonis also points to remarks made by Arancio in Mentonis's 2016 year-end performance review, including

Arancio's notes that Mentonis was a "very senior sales rep" who should "mentor some of the younger reps in the region" as evidence of Arancio's age-related bias.

The limited probative value these arguably innocent and objectively factual comments made by Arancio is lessened by the fact that although Arancio did decide to discharge the 66-year-old Mentonis, he was also the individual who decided to hire Mentonis at the age of 65. The same-actor doctrine recognizes that it is difficult to impute a decision to discharge an employee with discriminatory intent when the same person makes the decision both to hire and to fire. *See, e.g.*, *Dickerson v. Health Mgmt. Corp. of Am.*, 800 N.Y.S.2d 391, 394 (N.Y. App. Div. 2005); *Schnabel v. Abramson*, 232 F.3d 83, 91 (2d Cir. 2000); *Grady v. Affiliated Cent., Inc.*, 130 F.3d 553, 560 (2d Cir. 1997). This inference against the existence of discriminatory intent is stronger when, as here, the discharge occurs soon after the hiring. *Dickerson*, 800 N.Y.S.2d at 394.

Mentonis argues that this doctrine is inapposite due to the passage of New York City's Restoration Act of 2005. The Act amended the NYCHRL to include its current requirement that its provisions be "construed liberally." New York, N.Y., Local Civil Rights Restoration Act of 2005, § 8-130 (2005). Mentonis, in support of his argument that the doctrine no longer applies, directs us to *Rollins v. Fencers Club, Inc.*, 8 N.Y.S.3d 202 (N.Y. App. Div. 2015). Our review of *Rollins* suggests the same-actor doctrine remains intact.

In *Rollins*, the New York appellate division affirmed the denial of a defense motion for summary judgment in the context of alleged age discrimination pursuant to the NYCHRL. *Rollins*, 8 N.Y.S.3d at 204-05. In so doing, the court held that an inference of

discrimination was not negated simply because the plaintiff was both hired and fired while a member of the protected class, but only because the primary driver behind the plaintiff's discharge was not involved in the original decision to hire. *Id.* at 204. Implicit in this decision is that the same-actor doctrine—which applies when the same individual hires and fires—is still relevant in analyzing evidence of age discrimination despite the Restoration Act's requirement that the NYCHRL be viewed liberally.

Arancio began to pursue Mentonis for employment at SJM in 2016, when Mentonis was 65 years old. Applying the same-actor doctrine to Arancio necessarily creates a strong inference that discrimination was not a factor in his decision to discharge Mentonis. *Dickerson*, 800 N.Y.S.2d at 394. This inference, which is enhanced due to the short period of time between when Arancio recruited Mentonis and when he decided to discharge him (a little more than a year), "strongly suggest[s] that invidious discrimination was unlikely." *Grady*, 130 F.3d at 560.

C. SJM's calculation of Mentonis's sales data does not create a genuine issue of fact suggesting pretext for discrimination.

Mentonis also challenges SJM's calculation of his sales numbers and argues that SJM's failure to accurately represent his sales performance shows an intentional skewing of data thereby evincing pretext for discriminatory intent. SJM, in response, provided data showing that Mentonis's total sales through September 2017 amounted to $281,306.77. This was the lowest among similar sales employees in the region. Nonetheless, Mentonis claims this data is misleading because SJM failed to:

- account for sales Mentonis would have made through the day he was discharged;

- consider that Mentonis did not finish the month of September;

- indicate the date the decision to discharge Mentonis was made and provide evidence regarding Mentonis's sales data as of that time; and

- look at Mentonis's performance as a ratio of sales to his $500,000 quota, rather than total sales amount.

Mentonis argues that SJM relied on "self-serving sales numbers that misrepresent Mentonis's sales in relation to his peers," and that this decision serves as evidence of bad motive and pretext. We are not persuaded.

Presuming the facts alleged by Mentonis to be true, they do not create a triable issue because an age discrimination plaintiff "must do more than challenge the employer's decision as contrary to 'sound business or economic policy,' since such an argument does not give rise to the inference that the employee's discharge was due to age discrimination." *Bailey v. New York Westchester Sq. Med. Ctr.*, 829 N.Y.S.2d 30, 35 (N.Y. App. Div. 2007) (quotation omitted). This rule specifically contemplates situations in which a discrimination defendant may base an employment decision on even patently unsound business judgment, yet win on summary judgment. *Melman*, 946 N.Y.S.2d at 36; *Bailey*, 829 N.Y.S.2d at 35; *Kelderhouse v. St. Cabrini Home*, 686 N.Y.S.2d 914, 915 (N.Y. App. Div. 1999) ("[A] challenge by a discharged employee to the *correctness* of an employer's decision does not, without more, give rise to the inference that the employee's discharge was due to age discrimination.").

As such, even if we were to assume, as Mentonis argues, that SJM made its decision to discharge Mentonis based on flawed, inaccurate, or no information, this does not

demonstrate a discriminatory pretext "as long as [the decision was] made in good faith." *Melman*, 946 N.Y.S.2d at 36 (quotation omitted); *Bailey*, 829 N.Y.S.2d at 35. Furthermore, the decision to discharge Mentonis fits precisely within the business decisions stated by Arancio and Biolsi as reasons for discharging Mentonis. It is undisputed that Mentonis's book of business was substantially smaller than the average in his region and it naturally follows that his discharge was substantially less disruptive than discharge of an employee with larger sales numbers would have been. Making calculations in the way they did, while challenged by Mentonis as "self-serving," was a choice SJM was entitled to make. Without actual evidence that the calculation of his sales was made in bad faith, Mentonis's disagreement with SJM's sales data calculations by itself does not give rise to an inference of bad motive or pretext. *Melman*, 936 N.Y.S.2d at 36. Mentonis has presented no such evidence.

D. Disputes over the occurrence of a January 2017 meeting between Mentonis and Biolsi and a summer 2017 "memorandum of expectation" do not create a genuine issue of fact suggesting pretext for discrimination.

Mentonis also claims that pretext for discrimination is shown by two different incidents. First, a January 2017 meeting between Biolsi and Mentonis, which Mentonis claims did not occur and of which he believes Biolsi "manufactured," during which Biolsi claims to have formed an initial negative impression of Mentonis. Second, a summer 2017 "memorandum of expectation" which, although it was never delivered to Mentonis, describes concerns with Mentonis's poor communication and integration with his sales team. Neither incident creates triable fact issues of discrimination.

Mentonis's suggested inference that Biolsi "manufactured" the January 2017 meeting to "justify his bias against Mentonis" is conclusory, speculative, and unsupported by the record. Furthermore, Mentonis has not provided any evidence regarding what was in the "memorandum of expectation" nor what relevance it had to the decision of SJM to discharge him. Such conclusory arguments are insufficient to create a genuine issue of material fact as to pretext for discrimination. *See Patton v. Newmar Corp.*, 538 N.W.2d 116, 120 (Minn. 1995) (determining "bare conclusions" supported by "few facts beyond those which could be expected to be contained in the complaint" insufficient to withstand summary judgment).

E. Stray comments by Biolsi, without more, do not constitute evidence of pretext for discrimination.

Mentonis urges this court to view his claims of pretext "in the totality of the circumstances." Mentonis argues that even if the individual instances he has alleged do not suggest a discriminatory pretext, the entire record when viewed collectively demonstrates a triable issue of fact as to whether SJM offered pretextual reasons for discharge to mask their ageist discriminatory bias.

We note that the "totality of the circumstances" is not a formal legal framework articulated or used by New York courts in the context of the NYCHRL, nor in the broader *McDonnell Douglas* discrimination framework. Rather, the question is simply whether all the evidence Mentonis has provided is sufficient to create a triable issue as to whether the reasons for discharge proffered by SJM were a pretext for discrimination. *Melman*, 946 N.Y.S.2d at 35.

However, it is correct that individual comments—which may be legally insufficient to demonstrate discrimination alone—may become convincing when viewed in light of all the other evidence presented. *See Godbolt v. Verizon New York, Inc.*, 981 N.Y.S.2d 694, 696 (N.Y. App. Div. 2014) (stating individual remarks can constitute evidence of discrimination if there is some additional evidence and nexus between comments and challenged employment decision). Regardless, as outlined above, nearly all the purported pretext evidence provided by Mentonis is of limited probative value. As such, even viewing all the allegations collectively, the evidence presented is insufficient to create a genuine issue of fact as to pretext for discrimination.

The one allegation not addressed above involves an August 2017 conversation between Biolsi and Mentonis, during which Biolsi allegedly made several age-related remarks. Though Mentonis and Biolsi agree that this meeting occurred, they disagree on the substance of their conversation. Mentonis testified that Biolsi made references to how long Mentonis had been working, whether he wanted to retire, and whether he wanted to spend time with his grandchildren. Biolsi's remarks, when viewed in the light most favorable to Mentonis, could be viewed by a jury as discriminatory. However, having rejected the other alleged evidence of discrimination discussed above, Biolsi's comments, although made by a decision-maker, now stand alone as mere stray remarks.

Stray remarks by a decision-maker, without more, do not constitute evidence of discrimination. *Melman*, 946 N.Y.S.2d at 39-40 (citing *Danzer v. Norden Sys., Inc.*, 151 F.3d 50, 56 (2d Cir. 1998)); *Godbolt*, 981 N.Y.S.2d at 696. Consistent with *Melman* and *Godbolt*'s instruction that "more" is needed to constitute evidence of discrimination,

the stray-remarks doctrine may be overcome if "other indicia of discrimination" are properly presented and the comments can no longer be deemed "stray." *Danzer*, 151 F.3d at 56.

Danzer is one example of a case in which this burden was met. In *Danzer*, a plaintiff alleging age discrimination presented evidence that employees were required to chart their ages, were told by a supervisor that one of the goals was to "get some younger people on board" (to raise the IQ of the staff), and were referred to as a bunch of "alta cockers," a Yiddish derogatory term meaning "old fogies." *Id.* at 53. The defendant argued that the derogatory Yiddish could not be considered, as it was a mere "stray remark." *Id.* at 56. However, the court held that this remark could no longer be considered "stray," as other indicia of discrimination—the charting of ages, statements regarding hiring younger people to raise the IQ of the staff, etc.—had been presented by the plaintiff. *Id.*

Conversely, the plaintiff in *Godbolt* failed to provide the additional evidence required to overcome the stray remarks doctrine. In that case, the plaintiff presented the court with "one remark made in an email exchange that took place weeks after the decision to terminate him was made and that concerned the resolution of his union's grievance following the termination." *Godbolt*, 981 N.Y.S.2d at 696. Potential criminal-history discrimination was shown in the email when an employee of the defendant "declined to reconsider the penalty because of the nature of plaintiff's [criminal] convictions." *Id.* Because the plaintiff had failed to provide any other evidence of discrimination, the court concluded the remark was stray. *Id.*

Viewed in light of the above caselaw and this court's conclusions regarding the very limited probative value of the other evidence presented by Mentonis, the comments made by Biolsi in August 2017—which stand alone as the only purportedly discriminatory comments to have been made by a decision-maker who was not also involved in the decision to recruit Mentonis—are stray. None of the other evidence discussed above serves as evidence of discrimination sufficient to raise Biolsi's comments above the level of "stray."

As such, Mentonis has failed to make the required showing under the *McDonnell Douglas* framework pretext analysis. The evidence presented—even when viewed in the light most favorable to Mentonis—fails to "form a quantum of proof sufficient to support a finding that the legitimate reasons [SJM] proffered" for discharge were a pretext for discrimination. *Melman*, 946 N.Y.S.2d at 40.

II. There is insufficient evidence to create a genuine issue of material fact pursuant to the mixed-motive framework.

As noted above, the first two prongs of the mixed-motive framework are identical to those of the *McDonnell Douglas* framework. The third prong of the mixed-motive framework requires that a plaintiff provide evidence from which a jury could find that "unlawful discrimination was one of the motivating factors, even if it was not the sole motivating factor, for [the] adverse employment decision." *Id.* at 41. Pursuant to the mixed-motive framework, discrimination can play "no role" in employment decisions. *Bennett*, 936 N.Y.S.2d at 121. If a plaintiff can prove that unlawful discrimination was a

motivating factor, they do not need to disprove the legitimate motivating factor(s) proffered by the defendant. *Melman*, 946 N.Y.S.2d at 40-41.

Mentonis correctly notes that the mixed-motive framework places a lesser burden on discrimination plaintiffs than the *McDonnell Douglas* pretext analysis. *Bennett*, 936 N.Y.S.2d at 116. The mixed-motive framework's burden is lesser only in that it does not require a discrimination plaintiff to prove the defendant's legitimate nondiscriminatory reasons were "false, misleading, or incomplete." *Id.* at 123. A discrimination plaintiff attempting to withstand summary judgment under either framework must still demonstrate that discriminatory intent was a motivation for the employment decision, either in whole or in part. *Melman*, 946 N.Y.S.2d at 39. However, Mentonis has failed to create a genuine issue of material fact even under this framework.

As detailed above, the sum of the evidence presented supporting a finding of discrimination consists of a few stray comments made by Biolsi during the August 2017 conversation. As such, Mentonis has failed to present evidence "both that the stated reasons were false and that discrimination was the real reason." *Id.* at 31 (quotation omitted). Consequently, he has also failed to present evidence sufficient to show that the true reason for discharge was discriminatory even in part, as required under the mixed-motive analysis. *Id.* at 41. Because Mentonis cannot provide that the decision to discharge him was discriminatory, he also cannot prove it was discriminatory in part. Hence, Mentonis has not presented a triable issue pursuant to the mixed-motive framework.

Affirmed.