STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0443

Howard Norsetter,
Appellant,

vs.

Minnesota Twins, LLC,
Respondent.

Filed November 8, 2021
Affirmed
Florey, Judge

Hennepin County District Court
File No. 27-CV-18-17629

Steven E. Uhr, Law Office of Steven E. Uhr, P.L.L.C., Bloomington, Minnesota (for appellant)

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Considered and decided by Florey, Presiding Judge; Connolly, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this appeal following a previous remand by this court, appellant challenges the district court's grant of summary judgment to respondents on his age-discrimination claim, specifically challenging its determination that (1) respondent had a legitimate reason for

not renewing appellant's contract and (2) there are no genuine issues of material fact regarding pretext. We affirm.

FACTS

Appellant Howard Norsetter alleges respondent Minnesota Twins, LLC violated the Minnesota Human Rights Act (MHRA) when it decided not to renew his one-year contract as a talent scout in September 2017 and failed to consider him for other open scouting positions.

Norsetter was 59 years old at the time his contract expired and was employed as the Twins' international scouting supervisor based in Australia. He is a permanent resident of Australia and has lived there since 1984. He was employed by the Twins under a series of one-year, fixed-term contracts for 27 years as a talent scout and had completed various assignments in several countries. From 2006 to 2017, Norsetter served as the Twins' Minor League International Supervisor. Norsetter brought many notable players to the Twins organization over the course of his career, and received favorable evaluations, reviews, and feedback regarding his job performance.

In September 2016, Norsetter signed a contract for 2017 that would expire on December 31, 2017. The terms of the contract stated that the Twins could terminate the contract for any reason upon ten days' written notice.

In the fall of 2016, the Twins hired Derek Falvey as executive vice president, chief baseball officer, and Thad Levine as general manager. Falvey and Levine assessed the Twins' scouting strategy to determine how the Twins could most effectively spend their money and receive the best return on their investment. They determined, based on their

prior employment with other MLB teams, that the Twins were spending "an inordinate" amount of money scouting in Australia, considered a "niche market," relative to their return on the investment. Changes to the MLB's international spending rules further informed Falvey's and Levine's decision; namely, the MLB implemented international spending rules to limit signing bonuses given to international players in order to "level the playing field" for international player signings. This change resulted in many MLB clubs scouting more heavily in the Latin American markets than in niche markets. With these observations in mind, Falvey and Levine decided to devote the Twins' resources to the markets that have produced the most MLB talent, like Latin America, and reduce the Twins' presence in niche markets, like Australia.

On August 30, 2017, Levine sent an email to Mike Radcliff, Norsetter's supervisor, vice president, director of player personnel, and Rob Antony, vice president, assistant general manager, soliciting their feedback in response to the proposed change in the Twins' international scouting strategy. The email stated in pertinent part:

> With the limitations associated with the spending cap, we intend to increase our investment in scouting the Latin American markets, maintain our position in the Taiwanese amateur market, lessen our position in the Australian and South Korean amateur market, meaningfully reduce our presence in the European and Japanese amateur markets and eliminate our position covering the South African amateur market.

The email also stated that Levine recommended "parting ways" with Norsetter along with the international scouts based in Taiwan, Sweden, and South Africa. Radcliffe responded that he agreed with Levine's proposed statement regarding the Twins' scouting strategy, noting "[t]his appears to be the general approach for most of the 30 clubs." With

regard to Norsetter, Radcliffe stated that he would not recommend parting ways but rather "would discuss different application of his skill set" and "would probably need to include move." Antony stated that if the Twins continued to scout in Australia, Norsetter should remain in his current role, but if not, there was no longer a need for Norsetter's services. Ultimately, the Twins decided to eliminate its full-time scouting presence in Australia.

Around this time, Norsetter told Radcliffe that he would relocate and take a pay cut to remain with the Twins. Radcliff told Falvey and Levine that Norsetter "had a skill set that [he] hoped [the Twins] would be able to retain." Levine responded, "I understand [Radcliff], you don't agree with this, but I need you to call [Norsetter] and inform him, unfortunately, that his contract is not being renewed."

In September 2017, Radcliff informed Norsetter that his employment would not continue following the expiration of his contract on December 31, 2017, because his position was being eliminated. Following the expiration of Norsetter's contract, the Twins hired eight scouts in North America who were in their 20s, 30s, and 40s; six were more than 20 years younger and three were more than 30 years younger than Norsetter. Norsetter was not informed of or considered for the openings.

In September 2018, Norsetter sued the Twins, claiming that the Twins discriminated against him on the basis of his age in violation of the MHRA. He alleged that the Twins discharged him and did not consider him for other positions because of his age and that their explanation for his dismissal was a pretext for discrimination.

During his deposition, Norsetter testified that the Twins needed to focus their international scouting efforts in Latin America. He also acknowledged that the Twins had

changed their scouting strategy throughout his employment, had the right to run baseball operations as they saw fit, and were free to make the business decisions to focus on international scouting efforts in the markets they chose. Norsetter further acknowledged that the Twins were not obligated to find a new position for him and that his position was eliminated, and he was not replaced.

Falvey testified that he was not aware that Norsetter wanted to remain with the Twins. Radcliff testified that he informed Falvey in September 2017 that Norsetter was interested in working in another capacity with the Twins. The Twins' counsel also stated during oral argument on the first appeal that the Twins do not dispute that "Radcliff communicated to Levine and Falvey that in fact [Norsetter] was interested in maintaining . . . his scout relationship with the team."

In May 2019, the district court granted the Twins' motion for summary judgment, determining that the Twins' decision to not renew Norsetter's contract was not motivated by discrimination. The district court reasoned that Norsetter established a prima facie case of age discrimination but that the Twins articulated a legitimate, nondiscriminatory reason for not renewing Norsetter's contract. The district court further reasoned that Norsetter failed to show that the Twins' reason or conduct was pretextual.

Norsetter appealed to this court, and the case was reversed and remanded to the district court for further limited discovery. *Norsetter v. Minnesota Twins, LLC*, 2020 WL 4932350 at *6 (Minn. App. Aug 24, 2020). Specifically, this court the reversed the district court's decisions (1) to the grant of protective orders barring Norsetter from deposing three Twins officers who may have had relevant information concerning the Twins' reasons for

eliminating Norsetter's position and not considering him for other scouting positions; (2) to deny Norsetter's request to compel discovery of all emails exchanged between Norsetter, Falvey, and Levine because the emails may have been relevant to Norsetter's claim; and (3) to deny Norsetter's request to compel production of the eight domestic scouts' resumes who were hired in 2017 because those resumes bore directly on Norsetter's claim. *Id.* *5-*6.

Following the additional discovery, both parties filed cross motions for summary judgment in November 2020. The district court granted the Twins' motion for summary judgment, determining that, while Norsetter had established a prima facie case of age discrimination, the Twins met their burden to demonstrate a legitimate, nondiscriminatory reason for their business decision not to renew Norsetter's one-year contract. The district court further determined that Norsetter did not meet his burden of showing that the Twins' decision was pretextual. The district court stated:

> While the Court is sympathetic to Mr. Norsetter not having his contract, it is not the Court's role to evaluate the Twins' change to its business and scouting philosophy. The Twins may eliminate positions so long as those decisions were not motivated by bias. The Court concludes that, even with all inferences in Mr. Norsetter's favor, he cannot meet his burden to survive summary judgment because he has not put forward sufficient evidence to demonstrate that the Twins' proffered explanation is pretext. Mr. Norsetter has not shown that the Minnesota Twins' decision not to renew his contract was based on his age and not a shift in their international scouting strategy.

Norsetter appeals.

DECISION

No genuine issue of material fact exists precluding the district court's grant of summary judgment to the Twins.

Norsetter alleges that the district court erred by granting summary judgment to the Twins. We disagree.

On appeal from summary judgment, we review de novo whether there are any genuine issues of material fact and whether the district court erred in applying the law. *Ruiz v. 1st Fid. Loan Servicing, LLC*, 829 N.W.2d 53, 56 (Minn. 2013). "We view the evidence 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, 76-77 (Minn. 2002). A genuine issue of material fact exists when the evidence could lead a rational factfinder to find for the nonmoving party. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

Norsetter alleges that the Twins violated the MHRA by discriminating against him because of his age. The MHRA provides that an employer may not, because of age, "discriminate against a person with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment." Minn. Stat. § 363A.08, subd. 2(3) (2020). Under the MHRA, "[t]he prohibition against unfair employment or education practices based on age prohibits using a person's age as a basis for a decision if the person is over the age of majority." Minn. Stat. § 363A.03, subd. 2 (2020). In construing the MHRA, we apply Minnesota caselaw and "law developed in federal cases

arising under Title VII of the 1964 Civil Rights Act." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

Under the MHRA, an age-discrimination plaintiff can survive summary judgment by submitting sufficient circumstantial evidence to survive the burden-shifting test set out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 98 S. Ct. 1817 (1973). *See Dietrich v. Canadian Pac. Ltd.*, 536 N.W.2d 319, 323 (Minn. 1995) (applying *McDonnell Douglas* test to claim under MHRA). There are three steps in the *McDonnell Douglas* analysis: first, the plaintiff must establish a prima facie case of discrimination; second, the burden then shifts to the employer to articulate a legitimate, nondiscriminatory reason for its conduct; and third, the plaintiff must prove by a preponderance of the evidence that the reason offered by the defendant is merely a pretext for discrimination. *Id*. The district court concluded, and the parties do not contest, that Norsetter met the first step of the *McDonnel Douglas* analysis by showing a prima facie case of age discrimination. On appeal, Norsetter contests the district court's findings and conclusions on the second and third steps of the *McDonnel-Douglas* analysis.

A. The Twins offered a legitimate, nondiscriminatory reason for not considering Norsetter for the open scouting positions.

Norsetter admits that the Twins "provided a legitimate, nondiscriminatory explanation for reorganizing its scouting department and eliminating Norsetter's position." But he argues that the Twins "failed to provide a credible legitimate, nondiscriminatory reason for not considering him for the open scouting positions, which is the adverse employment action at issue."

The burden lies with the Twins to offer a legitimate, non-discriminatory reason for not considering Norsetter for open scounting positions. To meet its burden, the employer must "clearly set forth, through the introduction of admissible evidence, the reasons for the plaintiff's rejection." *Texas Dep't of Cmty Affs. v. Burdine*, 450 U.S. 248, 255 (1981). "While reviewing the employer's articulated reasons for discharge and the plaintiff's refutation thereof, we must keep in mind that . . . courts do not sit as a super-personnel department that reexamines an entity's business decisions. . . . Rather, our inquiry is limited to whether the employer gave an honest explanation of its behavior." *Wilking v. Cty. of Ramsey*, 153 F.3d 869, 873 (8th Cir. 1998) (quotations omitted).

Here, the record shows that Norsetter had resided in Australia since 1984 and since his employment with the Twins began in 1991. The Twins considered Norsetter to be their Australian scout and Norsetter's expertise to be in international scouting; consequently, the Twins did not consider him for a domestic scouting position. The record further establishes that the Twins decided to shift their international scouting philosophy after reviewing their investment returns and changes to the MLB rules capping international player signing expenditures, which resulted in the elimination of not only Norsetter's position as the Australian scout, but also several other "niche" international scouting positions. Furthermore, Norsetter acknowledged that the Twins (1) changed its international scouting philosophy throughout his employment and (2) needed to focus its international scouting efforts in Latin America.

Norsetter does not cite to any case law in support of his proposition that the Twins needed to provide a legitimate, nondiscriminatory reason for "failing to consider" him for

open scouting positions. Generally, employers do not have a legal duty to transfer an employee whose position was eliminated. *See, e.g.*, *Reynolds v. Land O'Lakes, Inc.*, 112 F.3d 358, 363 (8th Cir. 1997) (employer not obligated to find new position for employee whose position was eliminated), *Leidig v. Honeywell, Inc.*, 850 F. Supp. 796, 806 (D. Minn. 1994) (explaining there is generally no legal duty to transfer an employee whose position had been eliminated). Norsetter argues that because the Twins were aware of his desire to remain employed with the organization, they were required to inform him of the open positions and failed to do so. However, the law generally does not impose such a duty on employers. *See, e.g.*, *Leidig*, 850 F. Supp. at 805. Based on the foregoing, we determine that the Twins' explanation for its decision to eliminate Norsetter's position in the Australian market is legitimate and nondiscriminatory.

B. Norsetter has not offered evidence sufficient to show that the Twins' proffered explanation was merely pretextual.

Because we determine that the Twins have provided a legitimate, nondiscriminatory reason for not renewing Norsetter's contract, the burden shifts to Norsetter to "put forward sufficient evidence to demonstrate that [the Twins] proffered explanation was a pretext for discrimination." *Goins v. West Group*, 635 N.W.2d 717, 724 (Minn. 2001). "A plaintiff may fulfill this prong . . . either directly by persuading the court that a discriminatory reason likely motivated the employer or indirectly by showing that the employer's proffered reason is unworthy of credence." *Aase v. Wapiti Meadow Cmty. Techs & Servs. Inc.*, 832 N.W.2d 852, 859 (Minn. App. 2013) (quotation omitted). This burden is not met merely by a showing that the employer's proffered reason was false; "rather, the plaintiff must

demonstrate that a discriminatory animus lies behind the [employer's] neutral explanations." *Wilking*, 153 F.3d at 874 (quotation omitted). Further, "the employee must do more than show that the employment action was ill-advised or unwise, but rather must show that the employer has offered a phony excuse." *Meads v. Best Oil Co.*, 725 N.W.2d 538, 542-43 (Minn. App. 2006) (quotation omitted).

Norsetter argues that, viewing the evidence in the light most favorable to him, "a reasonable juror could conclude" that "[Twins'] various and inconsistent explanations are a cover for unlawful discrimination" and that "Norsetter was far and away the best candidate for the [open domestic scouting positions]." He further argues that the Twins' actions were against its best interest and contrary to its policy and practice; that he was not informed of other scouting positions; that his request to be considered for the other open scouting positions was ignored, and that statistical evidence suggested pretext.

Here, even with all reasonable inferences in Norsetter's favor, he has not put forth sufficient evidence to demonstrate that the Twins' proffered explanation is pretextual. Furthermore, even if Norsetter had put forth evidence that the Twins' proffered reason for not renewing his contract was "phony," he has not shown that his age was a determinative factor—or any factor at all—in that decision.

While Norsetter has put forth statistical evidence that the Twins favored hiring younger domestic scouts since his employment ended, this evidence alone is insufficient to prove pretext. *See, e.g., Hutson v. McDonnel Douglas Corp.*, 63 F.3d 771, 778 (8th Cir. 1995) (explaining that there must be additional, independent grounds other than statistics for disbelieving an employer's explanation). Norsetter also argues that a reasonable juror

would see that he is more qualified than the scouts subsequently hired for the domestic scouting positions; however, Norsetter's beliefs regarding his skillset are irrelevant to determining pretext. *Wilking*, 153 F.3d at 873.

It is not this court's role to evaluate the merits of the Twins' decisions to change its scouting philosophy and eliminate Norsetter's position. *See, e.g.*, *Reynolds*, 112 F.3d at 363 (employer's determination as to which positions to eliminate were business decisions that the court will not second guess); *Hanson v. Robert Half Int'l*, 796 N.W.2d 359, 368 (Minn. App. 2011) (declining to second guess employer's business judgment to eliminate employee's position). Therefore, when viewed in the light most favorable to Norsetter, Norsetter has not carried his burden of showing that the Twins' proffered explanation was pretext.

Because no genuine issue of material fact exists precluding summary judgment, we determine that the district court properly granted summary judgment to the Twins.

Affirmed.