

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

ERIC KOSKI

Appellant

v.

WILLOWWOOD CARE CENTER OF BRUNSWICK, INC.

Appellee

C.A. No. 03CA0083-M

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE No. 02 CIV 0291

DECISION AND JOURNAL ENTRY

Dated: May 26, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

BAIRD, J.

{¶1} Appellant, Eric Koski (“Koski”), appeals the judgment of the Medina County Court of Common Pleas, which granted a directed verdict in favor

of the Appellee, Willowood Care Center of Brunswick, Inc. (“Willowood”). We affirm.

I.

{¶2} Koski was employed by Willowood as a nursing home administrator. He worked for the company from March of 1996 through February 11, 2002. On March 14, 2002, Koski filed a complaint with the Medina County Court of Common Pleas, claiming that Willowood had discriminated against him on the basis of his gender, in violation of R.C. 4112.02, and also on the basis of his marital status, in violation of Ohio public policy.

{¶3} Willowood filed a motion for summary judgment on August 11, 2002. The trial court granted Willowood’s motion with respect to the marital status claim, but overruled the motion with respect to the gender discrimination claim. On June 9, 2003, the matter proceeded to a jury trial on the gender discrimination claim.

{¶4} At the close of Koski’s case, Willowood moved for a directed verdict, claiming that Koski had failed to establish a prima facie case of gender discrimination. The trial court granted the motion. This appeal followed. Koski raises one assignment of error, and Willowood also raises one assignment of error, pursuant to App.R. 3(C)(2).

II.

Appellant’s Assignment of Error

“THE TRIAL COURT PREJUDICIALLY ERRED WHEN IT DISMISSED THE PLAINTIFF’S CASE BASED UPON THE DEFENDANT’S MOTION FOR DIRECTED VERDICT FINDING IN EFFECT THAT IT IS NOT DISCRIMINATION BASED UPON SEX WHEN A MALE PLAINTIFF AND HIS [FIANCÉE] CO-WORKER WHO ARE EQUALLY SUBJECT TO AN ALLEGED COMPANY ANTI-DATING POLICY ARE ACCUSED OF VIOLATING THE SAME, AND ONLY THE MALE IS DISCIPLINED FOR THE SOLE REASON HE HAD A SUPERVISORY JOB TITLE AT THE RELEVANT TIME.”

{¶5} In his sole assignment of error, Koski argues that the trial court erred by granting Willowwood’s motion for a directed verdict. We disagree.

{¶6} We review de novo the trial court’s grant of a directed verdict. *Schafer v. RMS Realty* (2000), 138 Ohio App.3d 244, 257. Directed verdict motions are governed by Civ.R. 50(A)(4), which provides:

“When a motion for a directed verdict has been properly made, and the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party, the court shall sustain the motion and direct a verdict for the moving party as to that issue.”

{¶7} A motion for a directed verdict tests the sufficiency of the evidence, not the weight of the evidence or the credibility of witnesses. *Wagner v. Roche Laboratories* (1996), 77 Ohio St.3d 116, 119. Where there is substantial evidence upon which reasonable minds may reach different conclusions, the motion must be denied. *Posin v. A.B.C. Motor Court Hotel, Inc.* (1976), 45 Ohio St.2d 271, 275. However, when the party opposing the motion has failed to produce any evidence

on one or more of the essential elements of a claim, a directed verdict is appropriate. *Hargrove v. Tanner* (1990), 66 Ohio App.3d 693, 695.

{¶8} During his tenure with Willowwood, Koski began dating one of his co-workers, Linda Talpas. Talpas was a nurse at the nursing facility where Koski was an administrator. The two eventually became engaged, and are now married. The owner of Willowwood, Edward Telle, first became aware of the relationship during a Caribbean cruise he took with several Willowwood employees, including Koski and Talpas. After the group returned to Ohio, Telle directed Koski to meet with him and the company's counsel, Geoffrey Webster, at Webster's office in Columbus.

{¶9} At the meeting, Telle and Webster advised Koski that his relationship with Talpas had created a problem, and that Koski needed to remedy it. Soon after the meeting, Koski was suspended for two weeks without pay, pending an investigation of the situation. After the investigation was completed, Koski received a letter from Webster informing him that, as a result of the investigation, he would be demoted to the position of assistant administrator, and that his pay would be cut from \$55,000 per year to \$38,000 per year. Koski did not return to his position at Willowwood after receiving the letter.

{¶10} Koski maintains that he was constructively discharged as punishment for dating one of his co-workers. In contrast, as Koski points out, that co-worker, Linda Talpas, was not disciplined at all for engaging in the very same

conduct. Koski presents this contrast as the foundation of his gender discrimination claim.

{¶11} It is an unlawful discriminatory practice for any employer to “discharge without just cause, to refuse to hire, or otherwise discriminate against [a] person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment,” on the basis of, among other things, gender. R.C. 4112.02(A). The Ohio Supreme Court has held that federal case law construing Title VII of the Civil Rights Act of 1964 is generally applicable to cases involving alleged violations of R.C. 4112. *Plumbers & Steamfitters Comm. v. Ohio Civil Rights Comm.* (1981), 66 Ohio St.2d 192, 196.

{¶12} Plaintiffs may show that they were the victims of a discriminatory practice by either direct evidence or indirect evidence; Koski has pursued the latter route. Ohio courts analyze R.C. 4112 discrimination claims which are based upon indirect evidence under the framework provided by *McDonnell Douglas v. Green* (1973), 411 U.S. 792.

{¶13} Under *McDonnell Douglas*, a plaintiff may make a prima facie showing of discrimination by establishing that he: (1) was a member of a protected class; (2) suffered an adverse employment action; (3) was qualified for the position; and that (4) a comparable non-protected person received better treatment. See *Mitchell v. Toledo Hospital* (1992), 964 F.2d 577, 581, 582. Koski attempted to make out his prima facie case under this “disparate treatment” formula.

{¶14} Koski maintains that, as a male, he is a member of a protected class; that he suffered adverse employment action in the form of a constructive discharge; that he was qualified for his position at Willowwood; and that Talpas is a comparable non-protected person, and received better treatment. The trial court based its directed verdict upon its finding that Koski failed to establish the fourth prong of his prima facie case, by failing to show that Talpas is a comparable non-protected person.

{¶15} In order to establish that a comparable non-protected person received better treatment, the plaintiff must show, at a minimum, that “for the same or similar conduct he was treated differently than similarly-situated non-minority employees.” *Mitchell v. Toledo Hospital* (1992), 964 F.2d 577, 581, 582. In *Mitchell*, the Sixth Circuit Court of Appeals delineated a series of affinities ordinarily essential to a showing that employees were “similarly-situated” to one another: “the individuals with whom the plaintiff seeks to compare his/her treatment must have dealt with the same supervisor, have been subject to the same standards and have engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer’s treatment of them for it.” *Id.* at 583. However, the Sixth Circuit later cautioned against a narrow construction of the *Mitchell* case, explaining that “we simply require that the plaintiff demonstrate that he or she is similarly-situated to the non-protected employee in all *relevant* respects.” *Ercegovich v. Goodyear Tire & Rubber Co.* (1998), 154 F.3d 344, 353.

{¶16} It is undisputed that Koski was a supervisor at Willowood, and that Talpas was not. Koski maintains that, notwithstanding this disparity in their authority, he and Talpas were indeed similarly-situated in all relevant respects. Specifically, Koski argues that, if Willowood did have an anti-dating policy in place at the time of the disciplinary action against him, it applied to all employees equally. Koski maintains that because the policy, if it indeed existed, did not distinguish between employees based upon their rank within the company, such a distinction is not relevant to a determination of whether or not he and Talpas were similarly-situated. We disagree.

{¶17} In practical terms, two employees are not similarly-situated in all relevant respects if there is a meaningful distinction between them which explains their employer's differential treatment of them. See *Ercegovich*, 154 F.3d at 353. In determining whether or not such a distinction exists, we are not limited to the letter of the company policy (if any) underlying the disciplinary action against the discrimination claimant. The record in this case illuminates several reasons why an employer might distinguish between a supervisor and a non-supervisor who have embarked on a romantic relationship, and why the employer might choose to punish the supervisor more harshly. For example, in his deposition, Telle expressed fears that Koski's actions could expose the company to lawsuits, and explained that Koski's conduct threatened the morale of those employees under his supervision.

{¶18} Koski’s position of authority within the company created a meaningful distinction between himself and Talpas, and explains Willowwood’s differential treatment of the two. Therefore, Koski and Talpas were not similarly-situated in all relevant respects. Because Koski failed to establish this fourth prong of his prima facie case of discrimination, the trial court properly granted Willowwood’s motion for a directed verdict. Appellant’s assignment of error is overruled.

Appellee’s Assignment of Error

“THE TRIAL COURT ERRED IN FAILING TO SUSTAIN WILLOWWOOD’S MOTION FOR SUMMARY JUDGMENT ON APPELLANT’S GENDER DISCRIMINATION CLAIM. (SEE, JOURNAL ENTRY DENYING SUMMARY JUDGMENT FILED 9/24/02[.].)”

{¶19} In its assignment of error, raised pursuant to App.R. 3(C)(2), Willowwood maintains that the trial court’s judgment may be affirmed on the alternative ground that the trial court erred by overruling its motion for summary judgment. Given our disposition of Koski’s assignment of error, Willowwood’s assignment of error is rendered moot, and we decline to address it. See App.R. 12(A)(1)(c).

III.

{¶20} Appellant’s assignment of error is overruled. Appellee’s assignment of error is rendered moot, and we decline to address it. The judgment of the Medina County Court of Common Pleas is affirmed.

Judgment affirmed.

WILLIAM R. BAIRD
FOR THE COURT

CARR, P. J.
SLABY, J.
CONCUR

APPEARANCES:

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