

STATE OF MICHIGAN
COURT OF APPEALS

HENRY A. WILLIS

Plaintiff-Appellant,

v

MICHIGAN STATE UNIVERSITY,

Defendant-Appellee.

UNPUBLISHED

July 26, 1996

No. 182479

LC No. 93-075388-CZ

Before: Neff, P.J., and Fitzgerald and C. A. Nelson,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition in this employment discrimination action. We affirm.

I

Plaintiff worked for defendant in its chemistry department from 1968 until he left in 1992. He was a scientific stock handler until June 1991, when defendant eliminated his stock room position and reorganized the chemistry department. At that time, plaintiff was temporarily assigned as a receiving clerk. Plaintiff experienced problems in his position as receiving clerk because he had a weight restriction against lifting over five to ten pounds due to a back problem and bicipital tendinitis. Although plaintiff was sent a lay-off notice in August 1991, he was subsequently permanently assigned as receiving clerk because he expressed an interest in retaining that position. Plaintiff ultimately left his job in March 1992, at the instruction of his doctor because his doctor believed that he was under stress that "could potentially drive him to serious and regrettable actions."

Plaintiff brought an action alleging that defendant discriminated against him on the basis of race and handicap. His claims were brought pursuant to the Elliott-Larsen Civil Rights Act, MCL 37.2101, *et seq.*; MSA 3.548(101) *et seq.*, and the Handicappers' Civil Rights Act, MCL 37.1101 *et seq.*; MSA 3.550(101) *et seq.* The trial court granted defendant's motion for summary disposition pursuant

* Circuit judge, sitting on the Court of Appeals by assignment.

to MCR 2.116(C)(10), stating that there was no genuine issue of material fact that defendant had legitimate reasons for its actions and that plaintiff did not carry his burden of showing that those reasons were a mere pretext.

II

Plaintiff did not establish that there was a genuine issue of material fact that he was discriminated against on the basis of handicap. Section 202 of the Michigan Handicappers' Civil Rights Act prohibits an employer from discharging or taking other discriminatory action against an individual when adaptive devices or aids may be utilized thereby enabling that individual to perform the specific requirements of the job. MCL 37.1202(1)(g); MSA 3.550(202)(1)(g). The HCRA mandates that "except as otherwise provided . . . a person shall accommodate a handicapper for purposes of employment, . . . unless the person demonstrates that the accommodation would impose an undue hardship." MCL 37.1102(2); MSA 3.550(102)(2). Handicapper is defined as an individual who has a handicap. MCL 37.1103(g); MSA 3.550(103)(g). MCL 37.1103(e)(i)(A); MSA 3.550(103)(e)(i)(A) defines handicap, in relevant part, as a determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic substantially limits one or more of the major life activities of that individual and is unrelated to the individual's ability to perform the duties of a particular job or position or substantially limits one or more of the major life activities of that individual and is unrelated to the individual's qualifications for employment or promotion. The 1990 amendment to the HCRA added the definition of "unrelated to the individual's ability" [to mean], with or without accommodation, an individual's handicap does not prevent the individual from . . . performing the duties of a particular job or position." MCL 37.1103(1)(i); MSA 3.550(103)(1)(i).

This Court has stated:

In order to establish a prima facie case of handicap discrimination [under the Michigan handicappers' civil rights act (HCRA)], a plaintiff must establish: (1) the plaintiff is 'handicapped' as defined by the act; (2) the handicap is unrelated to the plaintiff's ability to perform the duties of a particular job; (3) the plaintiff has been discriminated against in one of the ways set forth in sec. 202 of the HCRA, MCL 37.1202; MSA 3.550(202).

Once a plaintiff succeeds in establishing a prima facie case, the burden shifts to the employer to show legitimate, nondiscriminatory reasons for its action. If the employer rebuts the plaintiff's prima facie case, the burden shifts to the plaintiff, who then has to show that the employer's reasons constituted a pretext for discrimination. [*Dzierbowicz v American Seating Company*, 209 Mich App 130, 132; 530 NW2d 158 (1995) (citations omitted).]

Plaintiff, Gerald Babcock, the chemistry department chairperson, and William Hinds, the director of the Michigan Consortium for Enabling Technology, all indicated that plaintiff could perform the duties of receiving clerk with the accommodation of student help for one or two hours a day and a motorized cart. Thus, plaintiff was handicapped within the definition of the HCRA.

Defendant was therefore required to provide student help to plaintiff or a motorized cart if it would not have imposed an undue hardship. MCL 37.1102(2); MSA 3.550(102)(2). We conclude that defendant was in the process of providing accommodation to plaintiff when he left.

Babcock testified that plaintiff was provided with student help. Plaintiff stated that he did receive student help, but that it was sporadic. It is unclear why the student help was sporadic. Plaintiff could not demonstrate that defendant told the student to spend more time on other assignments and less time with plaintiff. Plaintiff also did not rebut the evidence that defendant intended to accommodate him by purchasing a motorized cart. Rather, Babcock and Ruth Ann Matthews testified that the chemistry department was exploring the purchase of a motorized cart and intended to purchase it if plaintiff decided to choose the option of accommodation. The reasons set forth for not having purchased the cart by the time plaintiff left his employment were that the other options of transferring to another position and early retirement were still being examined. In short, plaintiff did not provide any evidence to rebut the evidence that defendant intended to purchase the cart, other than claiming that defendant had not done so as of March 1992, when he resigned. Thus, the evidence shows that defendant was in fact attempting to accommodate plaintiff before he quit.

Since evidence existed that defendant was attempting to accommodate plaintiff when he left, or at the very least still exploring the options with regard to accommodation, we find no genuine issue of material fact that plaintiff was not discriminated against due to his handicap.¹

III

Similarly, plaintiff did not establish that there was a genuine issue of material fact that defendant discriminated against him on the basis of race. The Elliott-Larsen Civil Rights Act provides in relevant part:

- (1) An employer shall not do any of the following:
 - (a) Fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status. [MCL 37.2202; MSA 3.548(202).]

In order to establish a prima facie case of disparate treatment race discrimination, a plaintiff must show that he was a member of the class entitled to protection under the act and that, for the same or similar conduct, he was treated differently than one who was a member of a different race. *Betty v Brooks & Perkins*, 446 Mich 270, 281; 521 NW2d 518 (1994).

Once a plaintiff establishes a prima facie case of discrimination, the burden shifts to the defendant to articulate some nondiscriminatory reasons for the discharge. If the defendant is able to meet this burden, the plaintiff must have the chance to prove that the reasons offered by the defendant were a pretext for discrimination. [*Reisman v Regents of Wayne State University*, 188 Mich App 526, 538-539; 470 NW2d 678 (1991) (citations omitted).]

First, there is no doubt that plaintiff, a black male, is a member of a protected class. *Sisson v Board of Regents of University of Michigan*, 174 Mich App 742, 747; 436 NW2d 747 (1989). Furthermore, plaintiff established a prima facie case of disparate treatment because he alleged that he was the only black employee of the chemistry department and was treated differently than the other employees by being ordered to perform menial tasks and being the only employee whose job was eliminated.

However, defendant articulated legitimate nondiscriminatory reasons for the elimination of plaintiff's stock room position. Defendant asserted that it was required to cut its budget and it reorganized the structure of the chemistry stockrooms. Plaintiff did not present any evidence that this reason was pretextual, as he did not provide any documentation to refute that the position was eliminated for budgetary reasons or to support his assertion that the reorganization was merely an effort to remove him from his job.

Plaintiff provided a letter written by Professor Harry A. Eick of the chemistry department, which questioned the underlying reason for plaintiff's termination. Professor Eick asked chairman Babcock whether the reason that plaintiff was terminated was really budgetary, or whether he, as the only black staff member, was a pawn to apply pressure to the dean for more funding. However, the letter on its own does not establish that defendant's budgetary reasons were a pretext because it merely reflects the opinion and questions of one professor and does not document any facts pertaining to defendant's decision. Also, Babcock explained that plaintiff could not be reassigned to another stock room position on a different floor of the chemistry building because he was not qualified for those positions since the positions required more technical skills than plaintiff possessed.

Similarly, defendant established through the affidavit of Matthews that all receiving clerks were required to perform the tasks that plaintiff claimed were menial, including making coffee and picking up debris from lecture halls. Matthews also testified that training was scheduled for plaintiff but he was not at work on those days. Plaintiff did not produce any evidence to rebut this evidence. Thus, he did not

establish that defendant's legitimate reasons for the elimination of the stock room position, or its subsequent actions, were pretextual.

Because we have found no discrimination against plaintiff existed, we need not address whether plaintiff was constructively discharged. Constructive discharge is not, in and of itself, a cause of action. *Vagts v Perry Drug Stores, Inc.*, 204 Mich App 481, 487; 516 NW2d 102 (1994).

Accordingly, there was no genuine issue of material fact that defendant discriminated against plaintiff. Therefore, the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Janet T. Neff

/s/ E. Thomas Fitzgerald

/s/ Charles A. Nelson

¹ Plaintiff claims that the trial court employed old law in reaching its conclusion. Because we have concluded that the trial court reached the right result, we will not reverse its decision merely because the reasoning employed was faulty. See *Champion v Nationwide Security, Inc.*, 205 Mich App 263, 273; 517 NW2d 777 (1994), overruled on other grounds, 450 Mich 702; 545 NW2d 596 (1996)