STATE OF MICHIGAN

COURT OF APPEALS

ERNEST WINGATE, III,

Plaintiff-Appellee,

v

COUNTY OF GENESEE and GENESEE COUNTY PROSECUTOR,

Defendants-Appellants.

UNPUBLISHED
August 13, 1996

No. 175590
LC No. 92-012391-NO

Before: White, P.J., and Smolenski and R.R. Lamb,* JJ.

PER CURIAM.

In this race discrimination action, defendants appeal as of right from a jury verdict in favor of plaintiff. We reverse.

Plaintiff, an African American male, was hired by the Genesee County Prosecutor's Office as a social services worker in the Victims Assistance Program ("VAP"). He was fired from that position less than one year later. Plaintiff filed a complaint against defendants, alleging race discrimination in violation of the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.* In his complaint, plaintiff claimed that he was hired as a token to appease members of the African American community and that he was denied training which would have enabled him to succeed. At the close of plaintiff's proofs, defendant moved for a directed verdict on the theory that plaintiff had failed to establish a prima facie case of race discrimination. After the trial court denied the motion, the jury found for plaintiff and awarded him $25,000 in damages. Following trial, the court denied defendants' motion for judgment notwithstanding the verdict.On appeal, defendants argue that the trial court abused its discretion in denying their motions for directed verdict and judgment notwithstanding the verdict. In reviewing a trial court's denial of a motion for directed verdict or judgment notwithstanding the verdict, this Court examines the testimony and all legitimate inferences that may be drawn in a light most favorable to the nonmoving party. *Zander v Ogihara Corp,* 213 Mich App 438, 441; 540 NW2d 702 (1995). If reasonable jurors could have reached different conclusions, neither the trial court nor this Court may substitute its judgment for that of the jury. *Thorin v Bloomfield Hills Bd of Ed,* 203 Mich App 692, 696; 513 NW2d 230 (1994).

A plaintiff may set forth a prima facie case of disparate treatment by showing that he was a member of a class entitled to protection under the act and was treated differently from members of a different class for the same or similar conduct. *Betty v Brooks & Perkins*, 446 Mich 270, 281; 521 NW2d 518 (1994). Under Michigan law, a prima facie case of discrimination may also be established upon proof that plaintiff was a member of a protected class, that he suffered an adverse employment consequence, that the defendant was predisposed to discriminate against persons in the class, and that the defendant acted upon that disposition when it took the action that adversely affected the plaintiff. *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 651; 513 NW2d 441 (1994).

After reviewing the record, we find no facts from which reasonable minds could conclude that plaintiff was discriminated against on the basis of race. Plaintiff claims that he established a prima facie case of race discrimination under the predisposition theory by showing that defendants hired him as part of an affirmative action plan and then intentionally failed to provide him with the training necessary to perform the job. In support of this contention, plaintiff relies on *Long v Ford Motor Co*, 352 F Supp 135 (ED Mich, 1972), aff'd in part, rev'd in part 496 F2d 500 (CA 6, 1974). Although the district court in *Long* concluded that evidence of inadequate job training may be sufficient to prove racial discrimination, *Long, supra*, 352 F Supp 140, the United States Court of Appeals for the Sixth Circuit held to the contrary. According to the United States Court of Appeals for the Sixth Circuit, an employer may not be liable for a failure to train "absent a showing that [the] failure constituted either dissimilar treatment from the training whites received or treatment similar on its face but dissimilar in its effects upon racial minorities and unfounded on business necessity." *Long, supra*, 496 F2d 505. See also *Brunson v E & L Transport Co*, 177 Mich App 95, 101; 441 NW2d 48 (1989).

Here, plaintiff's theory was that defendants discriminated against him by failing to provide remedial training in reading and writing. Yet, plaintiff offered no evidence establishing that Stanette Amy, the other VAP social worker, was given such training. Although there was testimony indicating that plaintiff and Amy were assigned different tasks, plaintiff failed to prove that Amy was afforded superior training. See *Mitchell v Toledo Hospital*, 964 F2d 577, 582 (CA 6, 1992) (to establish a prima facie case of employment discrimination, plaintiff must show that a comparable non-protected person was treated better). The fact that Amy was allowed to skip the "subpoena by mail" program, the traditional method by which new employees were trained, indicates that she was actually given less instruction than plaintiff. Moreover, testimony established that Amy's background and qualifications made her placement in the "subpoena by mail" program unnecessary. Nothing in the record indicates that plaintiff had similar experience or expertise. In fact, the unrebutted testimony of Lucille Bigelow established that plaintiff was unable to learn the "subpoena by mail" program. Thus, we find that plaintiff failed to prove that he was treated differently than similarly situated white employees.

Plaintiff argues that the appellate decision in *Long* requiring proof of disparate treatment is inapplicable here because that case was decided under federal law and, thus, without benefit of the predisposition theory. This argument is without merit. See *Civil Rights Comm v Chrysler Corp*, 80 Mich App 368, 374, n 3, 376; 263 NW2d 376 (1977) (citing both the predisposition theory and the *Long* decision with approval).

We also reject plaintiff's contention that the evidence introduced at trial created an inference that plaintiff was hired as a "token". The fact that plaintiff might have been hired for the purpose of silencing critics of the Genesee County Prosecutor's Office in no way indicates that defendants were predisposed to discriminate against African Americans, nor does it create an inference that defendants "intentionally programmed" plaintiff to fail. That plaintiff was ultimately replaced by another African American also strongly negates a finding that defendants hired plaintiff with the intention that he fail.

Finally, plaintiff argues that a question of fact existed as to whether defendants were liable for discrimination under a racial "harassment" theory. Plaintiff cites no case law in support of this contention, nor does he indicate in his brief the facts upon which this harassment theory is based. Although plaintiff testified that he was repeatedly reprimanded by Lucille Bigelow, there was no evidence introduced at trial establishing that other employees were treated differently for the same or similar conduct.

Viewed in a light most favorable to plaintiff, we conclude that reasonable jurors could not find that plaintiff was discriminated against on the basis of race. Accordingly, we find that the trial court abused its discretion in denying defendants' motions for directed verdict and judgment notwithstanding the verdict. We will not address the remaining issues that defendant raises on appeal as those issues have been rendered moot by our ruling herein.

Reversed.

/s/ Michael R. Smolenski
/s/ Richard R. Lamb