

STATE OF MICHIGAN  
COURT OF APPEALS

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CURTIS COOPER,

Plaintiff-Appellant,

v

ABB PAINT FINISHING, BINKS  
MANUFACTURING COMPANY,  
CARDEN METAL FABRICATORS, DURR  
INDUSTRIES, INC., GALLAGHER-KAISER  
CORP., GIFFEN INTERNATIONAL, HADEN-  
SCHWEITZER CORP., GEORGE KOCH &  
SONS, INC., A B MYR SHEET METAL  
INDUSTRIES, INC., STANBURY COMPANY,  
TRI-MARK METAL CORP., VENDERBUSH  
INDUSTRIAL CORP.,

Defendants-Appellees,

and

SHEET METAL WORKERS INTERNATIONAL  
ASSOCIATION and LOCAL UNION NO. 292,  
Defendants.

UNPUBLISHED  
September 17, 1996

No. 177747  
LC No. 93-316536

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Before: Marilyn Kelly, P.J., and Gribbs, and W. E. Collette,\* JJ.

PER CURIAM.

Plaintiff appeals the circuit court order granting defendants' motion for summary disposition. We affirm.

Plaintiff, a journeyman sheet metal worker and an African-American, brought this action for racial discrimination against defendants, sheet metal companies and union organizations. Specifically, plaintiff claimed that defendants hired African-Americans last and laid them off first, that defendants

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

denied African-Americans the opportunity to work in “lay-out”, to work as bosses, to work as stewards and/or to work in the suburbs of Detroit, and that defendants tolerated the racial harassment of African-Americans by other members of the union.

In response to defendants first motion for summary disposition in this matter, the trial court denied the motion and ordered plaintiff to file an amended complaint. Plaintiff failed to amend his complaint, and defendants filed a motion to dismiss for failure to comply with the court order. MCR 2.504. During a hearing on the motion to dismiss, plaintiff’s attorney indicated, as a matter of strategy, that he wanted the trial court to grant summary disposition of his claim rather than dismiss it for failure to comply. A grant of summary disposition, plaintiff’s counsel reasoned, would preserve the substantive issues for review by the Court of Appeals. The trial court “accommodated” plaintiff by entering the order of summary disposition.

Plaintiff has waived his allegation of error on appeal because he requested and stipulated to its dismissal. Rather than file an amended complaint, plaintiff chose to request that the trial court grant defendants’ motion for summary disposition on the merits in an attempt to gain review by this Court. A party cannot seek reversal on the basis of an error that the party caused either by plan or by negligence. *Detroit v Larned Associates*, 199 Mich App 36, 38; 501 NW2d 189 (1993).

Moreover, summary disposition was appropriate in this case. Michigan law prohibits an employer from rejecting qualified applicants on the basis of unlawful discrimination. To survive a motion for summary disposition, a plaintiff must demonstrate the existence of a genuine issue of material fact regarding whether a prima facie case of discrimination exists. *York v 50<sup>th</sup> Dist Court*, 212 Mich App 345, 349; 536 NW2d 891 (1995). As part of a prima facie case of intentional discrimination, a plaintiff must show that he or she is a member of a protected class, was qualified for an available position, applied for the position, and was rejected under circumstances giving rise to an inference of unlawful discrimination. *Id.*

A plaintiff can also show a prima facie case of discrimination by showing disparate treatment. A plaintiff can show disparate treatment by showing that he or she was a member of a protected class, and that he or she was treated differently than persons of a different class for the same or similar conduct. *Reisman v Regents of Wayne State University*, 188 Mich App 526, 538-539; 470 NW2d 678 (1991). Plaintiff can show the effect of disparate treatment by showing that an apparently neutral employment practice burdens a member of a protected class more harshly than others. *Id.*

In this case, plaintiff failed to present a prima facie case under any of the alternative theories. Plaintiff failed to show that he applied for and was denied a position with the defendant companies. Plaintiff actually worked for three of the defendant companies, and he admitted at deposition that he never had any contact with nine of the defendant companies. Plaintiff has not shown that he was rejected or discriminated against by any of the defendants. Nor has he shown that he was treated differently than someone in another class, either by the companies he worked for or during the application process, and he refused to amend his pleadings even when ordered to do so by the trial court. It is not enough for plaintiff to allege that all African-American sheet metal workers are

discriminated against. Michigan law requires that plaintiff show that he was personally affected by the alleged discriminatory practices before he can bring a claim. *York*,

supra at 349; *Reisman*, Id. Plaintiff failed to do so and summary disposition was properly granted.

Affirmed.

/s/ Marilyn Kelly

/s/ Roman S. Gibbs

/s/ William E. Collette