

STATE OF MICHIGAN
COURT OF APPEALS

FATHY F. ISHAC, M.D.

Plaintiff-Appellant
Cross-Appellee,

v

ST. MARY HOSPITAL,

Defendant-Appellee
Cross-Appellant,

and

SISTER MARY MODESTA,

Defendant-Appellee.

UNPUBLISHED

September 27, 1996

No. 181446

LC No. 93-300149-CK

Before: White, P.J., and Griffin and D. C. Kolenda,* JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment entered on a jury verdict in favor of defendants, St. Mary Hospital and Sister Mary Modesta, on plaintiff's claims of retaliatory discharge in violation of the Handicapper's Civil Rights Act, MCL 37.1101, *et seq.*; MSA 3.550(101), *et seq.* Defendant St. Mary Hospital has also filed a cross appeal from the trial court's denial of its motions for summary disposition and directed verdict. We affirm.

Plaintiff, a psychiatrist, was granted staff privileges at defendant St. Mary Hospital in 1968. Plaintiff became director for the psychiatric department in 1974 and continued to have staff privileges until the hospital's board of trustees voted in December, 1991, not to renew plaintiff's privileges. The trustees decided not to renew plaintiff's privileges for the stated reason that plaintiff's behavior was disrupting the psychiatric department. At trial, defendants presented evidence that in 1988, defendant Sister Modesta, president and CEO of St. Mary Hospital, investigated the mental health unit at the hospital because of concerns that the department was not performing adequately. As a result of the

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

investigation, defendants hired a management group to assist in the management of the psychiatric department. Witnesses at trial testified that there were problems between plaintiff and the management group stemming from plaintiff's reluctance to relinquish control of the department. Numerous witnesses testified that plaintiff's behavior disrupted the functioning of the psychiatric department.

During 1990, plaintiff complained that cost cutting measures were affecting patient treatment and that the hospital was discriminating with respect to the admission of psychiatric patients. After a review, the hospital determined that plaintiff's complaints had no merit.

In March, 1991, plaintiff was replaced as chairman of the psychiatric department. At that time, problems in the department and plaintiff's disruptive behavior were noted. Later, after plaintiff's disruptive behavior continued, the board of trustees voted unanimously not to renew plaintiff's staff privileges.

In his circuit court complaint, plaintiff alleged that he was denied staff privileges because of his opposition to acts of unlawful discrimination against psychiatric patients. A jury disagreed and returned a verdict in favor of defendants.

On appeal, plaintiff first argues that the trial court committed error requiring reversal by excluding evidence of the hospital's bylaws. Plaintiff contends that the exclusion of such evidence prejudiced his claim that the stated reason for the board's action was a mere pretext for unlawful retaliation.

We review challenges to decisions of the trial court regarding the admission or exclusion of evidence for an abuse of discretion. *Drouillard v Metropolitan Life Ins Co*, 107 Mich App 608, 622; 310 NW2d 15 (1981). We hold that the trial court did not abuse its discretion in refusing to admit the bylaws into evidence. First, the bylaws apply only to physicians who have current staff privileges. In the present case, plaintiff was applying for a renewal of staff privileges and, therefore, the bylaws were not relevant to plaintiff's claim of unlawful discrimination. In any event, we are satisfied from our review of the record that the admission of the evidence would not have affected the outcome.

Plaintiff also asserts that the jury instructions regarding retaliatory discharge were improper in that the instructions required him to prove that his complaints of discrimination were reasonable and that such complaints were a "significant factor" in defendants' decision.

We review jury instructions for harmless error and will not set aside a verdict unless a trial court's failure to give an instruction would be "inconsistent with substantial justice." *Johnson v Corbet*, 423 Mich 304, 326; 377 NW2d 713 (1985). The trial court instructed the jury that plaintiff must prove that his complaints of unlawful discrimination were a significant factor in defendants' decision to take an adverse employment action against plaintiff. In *McLemore v Detroit Receiving Hosp*, 196 Mich App 391; 493 NW2d 441 (1992), this Court applied the "significant factor" standard in a retaliatory discharge case. In addition, in numerous discrimination cases, this Court has reaffirmed the principle that the plaintiff bears the burden of proving that the complained of discrimination was a significant factor in the defendant's adverse employment decision. *Foehr v Republic Automotive Parts*, 212 Mich

App 663; 538 NW2d 420 (1995); *Goins v Ford Motor Co*, 131 Mich App 185; 347 NW2d 184 (1983); see also *Matras v Amoco Oil Co*, 424 Mich 675; 385 NW2d 586 (1986); *Lytte v Malady*, 209 Mich App 179; 530 NW2d 135 (1995). There was no error in the trial court's jury instruction.

The trial court also instructed the jury that plaintiff's belief that defendants were discriminating against psychiatric patients had to be a reasonable, good-faith belief in order for plaintiff's complaints to be protected under the handicapper's act. Plaintiff claims that this instruction was improper but cites no authority to support his position. Where plaintiff cites no authority in support of his argument, we will not consider the issue. *Winiemko v Valenti*, 203 Mich App 411, 415; 513 NW2d 181 (1994).

Finally, plaintiff argues that the trial court erred by granting defendants' motion for summary disposition on plaintiff's defamation claim. We review the trial court's grant of summary disposition de novo. *Plieth v St Raymond Church*, 210 Mich App 568, 571; 534 NW2d 164 (1995). The party opposing summary disposition has the burden of showing that there is a genuine issue of fact. *Sisson v Bd of Regents of Univ of Michigan*, 174 Mich App 742, 745-746; 436 NW2d 747 (1989). In this case, plaintiff responded to defendants' motion for summary disposition by making a conclusory statement that there were material issues of fact regarding defamation and by filing an affidavit restating his conclusory allegations. MCR 2.116(G)(4) provides that an adverse party may not rest on the mere allegations or denials of his pleading but must put forth specific facts showing that there is a genuine issue of material fact for trial. Because plaintiff merely relied on his conclusory allegations in his complaint, summary disposition was appropriate. *Porter v Royal Oak*, 214 Mich App 478, 484; 542 NW2d 905 (1995). Accordingly, the trial court properly granted defendants' motion for summary disposition on plaintiff's claim of defamation.

In light of our disposition, we find it unnecessary to address the issues raised by defendant St. Mary Hospital in its cross appeal.

Affirmed.

/s/ Helene N. White
/s/ Richard Allen Griffin
/s/ Dennis C. Kolenda