

STATE OF MICHIGAN
COURT OF APPEALS

LAWRENCE E. MARTIN,

Plaintiff–Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant–Appellee.

UNPUBLISHED

October 4, 1996

No. 182046

LC No. 93-66426-NZ

Before: MacKenzie, P.J. and Marilyn Kelly and Ernst*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the grant of summary disposition for defendant Michigan Department of Corrections [MDOC]. We affirm.

Plaintiff, a maintenance worker at the State Prison of Southern Michigan, claimed that the MDOC violated the Americans with Disabilities Act [ADA], 42 USC 12112(b)(5)(a), and the Michigan Handicappers' Civil Rights Act [MHCRA], MCL 37.1102; MSA 3.550(102), when it allegedly refused to make a reasonable accommodation for his disability by providing closer parking. The parties do not dispute that plaintiff qualified as a handicapper under the applicable law or that the MDOC provided plaintiff with a leveled and graveled-over area immediately adjacent to his working area in response to plaintiff's request for an accommodation in August 1992. In October 1992 plaintiff indicated in writing that the parking space accommodation was satisfactory. Plaintiff's complaint to the Equal Employment Opportunity Commission [EEOC] a short time later undoubtedly constituted notice to the MDOC that plaintiff had changed his mind with regard to the suitability of the accommodation, allegedly due to the accumulation of ice and mud in the winter; however, the EEOC concluded that the MDOC had made a reasonable accommodation and that plaintiff's claims were unfounded. Furthermore, plaintiff's own testimony revealed that he had a paved route from the parking space to the maintenance building. Consequently, plaintiff has not met his initial burden of proof with regard to the MDOC's alleged failure to accommodate under either the ADA or the MHCRA. *Ennis v National Ass'n of Business & Educational Radio, Inc*, 53 F3d 55, 58 (CA 4, 1995); MCL 37.1210(1); MSA 3.550(210)(1).

In addition, plaintiff claimed that the MDOC violated the anti-retaliation and antidiscrimination provisions of the ADA, 42 USC 12203, and the MHCRA, MCL 37.1602; MSA 3.550(602), when the MDOC allegedly denied plaintiff a promotion for which he was eligible and transferred him to job duties that required substantial walking. Plaintiff contends that he was singled out for temporary reassignment in retaliation for his filing of a complaint with the EEOC. Plaintiff has produced no evidence to show a causal link between the temporary reassignment and his EEOC claim. *Wrenn v Gould*, 808 F2d 493, 500 (CA 6, 1987); *Kocenda v Detroit Edison Co*, 139 Mich App 721, 726; 363 NW2d 20 (1984). Deposition testimony indicated that all maintenance employees took turns in the central prison complex on a rotating basis. Moreover, plaintiff admitted in deposition testimony that he did not believe defendant retaliated against him. Thus, the trial court did not err when it determined that this claim was unfounded.

Nor has plaintiff provided any evidence to show that he was discriminatorily denied a promotion because of his handicap. Although plaintiff submitted into evidence a civil service eligibility list that did not contain the name of the person eventually hired, plaintiff did not show that the eventual hiree's name was not on a subsequently issued list. The unrefuted testimony of the prison personnel management analyst indicated that Civil Service rules and procedures with regard to hiring were followed. Even if plaintiff had proved a prima facie case of discrimination, the MDOC met its burden of demonstrating that it had legitimate reasons for preferring the candidate who was hired. *Ennis, supra* at 57; *Crittenden v Chrysler Corp*, 178 Mich App 324, 331; 443 NW2d 412 (1989). The lower court accurately characterized plaintiff's claim that he was denied a promotion because of his handicap as an unsupported conclusory allegation. Consequently, defendants were entitled to summary disposition.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Marilyn J. Kelly

/s/ J. Richard Ernst