STATE OF MICHIGAN

COURT OF APPEALS

KENNETH ZEEFF,

Plaintiff-Appellant,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

UNPUBLISHED
October 18, 1996

No. 188360
LC No. 94-001266-NZ

Before: Neff, P.J., and Hoekstra and G. D. Lostracco,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order that granted summary disposition to defendant pursuant to MCR 2.116(C)(8) and (C)(10). We affirm.

I

This case arises from defendant's termination of plaintiff's employment on June 30, 1992. Plaintiff was an electrical engineer with defendant at its AC Rochester Products plant in Grand Rapids. Plaintiff began his career with defendant in 1968. Prior to his termination, defendant had twice been placed on a performance improvement plan ("PIP"), once in 1979 and again in 1983. Plaintiff's last performance review prior to his termination classified plaintiff's performance as satisfactory. However, the review also noted that plaintiff had to improve his time management.

As a salaried employee with defendant, plaintiff was on a formal month to month employment basis with defendant. He acknowledged that he read and possessed the pamphlet "Working with General Motors." Plaintiff also acknowledged that he signed the "Compensation Statement," which, when signed and accepted, becomes part of the employee's employment agreement with defendant and reaffirms the employee's status as month to month. Defendant provided testimony that it had to downsize and reduce its head count by about ten percent, and that eight employees, including plaintiff,

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

were discussed. Roger Dunkle testified that plaintiff was selected for performance review because he was the poorest performer in his area.

On May 6, 1992, plaintiff met with four of defendant's supervisors to discuss plaintiff's performance. Defendant provided testimony that plaintiff was simply put on notice that his performance had to improve and that no decision had been made to terminate plaintiff. Plaintiff, on the other hand, testified that he was told he would be terminated as of June 1, 1992, and that he was forced to seek the external opportunities procedure. Plaintiff's performance did not improve in the month of May. On May 29, 1992, plaintiff was called in to another meeting, instructed on specific areas in which he needed to improve, and given additional time to improve. Plaintiff's performance failed to improve and he was terminated on June 30, 1992. The lower court granted summary disposition in favor of defendant based on MCR 2.116(C)(8) for the contractual claims, and MCR 2.116(C)(10) on the age discrimination claim.

II

Plaintiff claims that the trial court erred by granting summary disposition in favor of defendant as to the wrongful discharge claim. Plaintiff argues that the trial court failed to consider the pleadings, affidavits, deposition testimony, and documentary evidence in considering defendant's motion for summary disposition. We disagree.

A

In other cases involving similar facts and employment documents, this Court has evaluated the employment status of salaried employees of General Motors. Plaintiff's employment was terminable at will and plaintiff had no legitimate expectation of a just-cause termination, except for a one-month notice period. *Ferrett v General Motors Corp*, 438 Mich 235, 236-244; 475 NW2d 243 (1991); *Singal v General Motors Corp*, 179 Mich App 497, 504-505; 447 NW2d 152 (1989); *Taylor v General Motors Corp*, 826 F2d 452, 458 (CA 6, 1987). None of the sections of the employee handbook created a legitimate expectation of termination only for just cause.

B

Plaintiff also claims that defendant failed to follow its own policies and procedures relating to the unsatisfactory performance of an employee, and therefore breached its express/implied agreement to do so. An employer can promulgate disciplinary procedures without altering the at-will status of its employees. *Biggs v Hilton Hotel Corp*, 194 Mich App 239, 241-242; 486 NW2d 61 (1992). See also *Stopczynski v Ford Motor Co*, 200 Mich App 190, 195; 503 NW2d 912 (1993). Therefore, because plaintiff's employment was at-will, the trial court did not err in granting summary disposition in favor of defendant on the claims of wrongful discharge and breach of employment agreement. Plaintiff failed to state a claim upon which relief could be granted. MCR 2.116(C)(8).

III

Plaintiff next argues that the trial court committed error mandating reversal in granting defendant's motion for summary disposition of plaintiff's age discrimination claim under MCR 2.116(C)(10) because he was discharged and replaced by a younger engineer. Plaintiff contends that there was a factual question raised as to the age discrimination claim. We disagree.

A

A prima facie case of age discrimination can be made by proving either disparate impact or disparate treatment. *Lytle v Malady*, 209 Mich App 179, 184-185; 530 NW2d 135 (1995). In this case, plaintiff relied on an intentional discrimination theory, which is one method of proving disparate treatment.

Where, as here, the employer argues that the discharge was economically motivated, plaintiff must show that (1) he was a member of the protected class, (2) he was discharged, and (3) age was a determining factor in defendant's decision to discharge him. *Id* at 185-186. For plaintiff to survive a summary disposition motion, he need only tender specific factual evidence that could lead a reasonable jury to conclude that defendant's proffered reasons are a pretext for age discrimination. *Id.* at 188. In other words, plaintiff must establish, either directly or indirectly, the existence of a genuine issue of material fact that defendant's proffered reasons are unworthy of credence, and that illegal age discrimination was more likely defendant's true motivation in discharging or demoting him. *Id.*

B

Plaintiff did not provide any evidence that age was a determining factor in his discharge. Testimony was given by many of defendant's supervisors that plaintiff needed to improve his work performance and that defendant needed to downsize the number of employees. An employer reserves the right to set its own standards of performance. *Touissant v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 623; 292 NW2d 880 (1980). As mentioned above, defendant had legitimate, non-discriminatory reasons for its decision to terminate plaintiff from employment. Plaintiff failed to present any evidence that his age was a determining factor for his discharge. Plaintiff's replacement by a younger employee, without more, is insufficient to support a claim of age discrimination. *Barnell v Taubman Co, Inc*, 203 Mich App 110, 121-122; 512 NW2d 13 (1993). Therefore, the trial court correctly granted summary disposition on the age discrimination claim in favor of defendant because there was no issue of a material fact. MCR 2.116(C)(10).

Affirmed.

/s/ Janet T. Neff
/s/ Joel P. Hoekstra
/s/ Gerald D. Lostracco