STATE OF MICHIGAN

COURT OF APPEALS

MARSHA GOIN,

Plaintiff-Appellant,

v

IRONWOOD BOARD OF EDUCATION and IRONWOOD AREA SCHOOLS,

Defendants-Appellees.

UNPUBLISHED
October 25, 1996

No. 188310
LC No. 93-000196-NZ

Before: Gribbs, P.J., and MacKenzie and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court order granting summary disposition for defendants. We affirm.

Defendants hired plaintiff as a probationary teacher for the 1991-1992 school year. She was laid off for economic reasons for the 1992-1993 school year. Thereafter, plaintiff was notified that her employment was being terminated due to unsatisfactory performance. Prior to the start of the 1993-1994 school year, plaintiff filed suit seeking a writ of mandamus ordering defendants to reemploy her. Further, plaintiff's complaint alleged that she was terminated in violation of the Elliott-Larsen Civil Rights Act, MCL 37.201 *et seq.*; MSA 3.548(101) *et seq*., and the constitution. Each claim was based on the allegation that defendants' actions were motivated out of a bias against plaintiff's religion and her comments criticizing defendants' actions. The circuit court granted summary disposition in favor of defendants.

Plaintiff first contends that the lower court erred in ruling that a writ of mandamus was not warranted. We disagree. Our review of discretionary decisions of school boards is limited to whether the board acted arbitrarily or unreasonably. *Caddell* v *Ecorse Bd of Ed*, 17 Mich App 632, 636; 170 NW2d 277 (1969). Under the teachers' tenure act, MCL 38.71 *et seq.*; MSA 15.1971 *et seq.*, absent valid notice of nonrenewal, defendants were obligated to reemploy plaintiff for the 1993-1994 school year. MCL 38.83; MSA 15.1983. Plaintiff concedes that she was given timely notice of

nonrenewal. Nevertheless, plaintiff claims that the notice was invalid because defendants allegedly abused their discretion by arbitrarily and capriciously delaying the notification until the end of plaintiff's lay off. We disagree and conclude that because defendants acted within the statutory time frame, defendants' conduct was neither arbitrary nor capricious. Compare *Munro v Elk Rapids Schls (On Remand)*, 385 Mich 618; 189 NW2d 224 (1970). Accordingly, the notice of nonrenewal was valid and the circuit court correctly dismissed plaintiff's request for a writ of mandamus. See *Tuscola Co Abstract Co, Inc v Tuscola Co Register of Deeds*, 206 Mich App 508, 510-511; 522 NW2d 686 (1994).

Next, plaintiff argues that the trial court erred in dismissing her claim of employment discrimination pursuant to MCR 2.116(C)(10). We disagree. We review the trial court's ruling on a motion for summary disposition pursuant to MCR 2.116(C)(10) de novo to determine whether the pleadings or the uncontroverted documentary evidence establish that defendant is entitled to judgment as a matter of law. MCR 2.116(I)(1). *Kennedy v Auto Club of Michigan*, 216 Mich App 254, 266; 544 NW2d 750 (1996). The existence of either circumstance merits a grant of summary disposition. *Kennedy, supra* at 266.

Michigan's Elliott-Larsen Civil Rights Act provides that: "An employer shall not . . . discharge . . . an individual . . . because of religion, race, color, national origin, age, sex, height, weight, or marital status." MCL 37.2202(1)(a); MSA 3.548(202)(1)(a). A discrimination claim can be based on two theories: (1) disparate treatment, which requires proof of either a pattern of intentional discrimination against a protected group, or against an individual employee; or (2) disparate impact, which requires a showing that neutral policies have a discriminatory effect on members of a protected class. *Lytle* v *Malady*, 209 Mich App 179, 184-185; 530 NW2d 135 (1995). Here, plaintiff alleges only a claim of disparate treatment.

A claim of disparate treatment can be established with sufficient direct or indirect evidence of intentional discrimination. *Lytle, supra* at 185. The burden of proof in a discrimination claim is as follows: (1) the plaintiff must prove by a preponderance of the evidence that a prima facie case exists; (2) if plaintiff is successful, defendant must rebut the resulting presumption of disparate treatment by articulating a legitimate, nondiscriminatory reason for its actions; (3) if the defendant is successful, the plaintiff must prove by a preponderance of the evidence that defendant's reason was merely a pretext and that illegal discrimination was the true motivation. *Id*. at 186-187; *Manning* v *Hazel Park*, 202 Mich App 685, 696; 509 NW2d 874 (1993). A prima facie case of disparate treatment requires that a plaintiff show that he was a member of a protected class and was treated differently than persons of a different class for the same or similar conduct. *Singal* v *General Motors Corp*, 179 Mich App 497, 503; 447 NW2d 152 (1989).

In the present case, plaintiff presented no factual evidence to support her allegations that she was treated differently than similarly situated non-Jewish employees. Rather, plaintiff offered only speculation and conjecture of a fellow employee that plaintiff was treated differently. As the trial court

observed, such unsupported beliefs do not supplant the requirement for documentary evidence of disparate treatment. Accordingly, the trial court correctly concluded that plaintiff failed to present a prima facie case of discrimination.

Finally, we conclude that the trial court also did not err in granting summary disposition of plaintiff's remaining claims pursuant to MCR 2.116(C)(10). As with her discrimination claim, plaintiff presented no documentary evidence to support her allegation that her poor evaluation and termination were motivated by either her religion or her exercise of freedom of speech.

Affirmed.

/s/ Roman S. Gribbs
/s/ Barbara B. MacKenzie
/s/ Richard Allen Griffin