

STATE OF MICHIGAN
COURT OF APPEALS

NANCY G. ROLLINSON,

Plaintiff–Appellant,

v

FARMINGTON PUBLIC SCHOOLS,

Defendant–Appellee,

and

FARMINGTON EDUCATION ASSOCIATION,

Defendant.

UNPUBLISHED
October 29, 1996

No. 170919
LC No. 92-441645-CZ

Before: Taylor, P.J., and Markey and N. O. Holowka,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court’s order granting summary disposition of her race discrimination claim against her employer, Farmington Public Schools. We affirm.

The Civil Rights Act precludes discrimination in employment on the basis of race. MCL 37.2202; MSA 3.548(202). Under the act, a prima facie case of race discrimination can be made by showing either intentional discrimination or disparate treatment. *Reisman v Wayne State University Bd of Regents*, 188 Mich App 526, 538; 470 NW2d 678 (1991). Plaintiff alleged only a disparate treatment claim. In order to show disparate treatment in a race discrimination action, a plaintiff must show that she is a member of a class entitled to protection under the act and that, for the same or similar conduct, she was treated differently than one who was a member of a different race. *Betty v Brooks & Perkins*, 446 Mich 270, 281; 521 NW2d 518 (1994). However, in a work force reduction situation, a plaintiff has a greater burden of proof and must present sufficient evidence to establish that race was a *determining* factor, not just one factor, in the adverse employment action. *Reisman, supra* at 540-

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

541. If the plaintiff succeeds in establishing a prima facie case, the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the adverse employment action. If the defendant carries this burden, the plaintiff must then present evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination. *Sisson v University of Michigan Bd of Regents*, 174 Mich App 742, 746; 436 NW2d 747 (1989). In the context of a summary disposition motion, the plaintiff must establish a genuine issue of material fact regarding the existence of a prima facie case and whether the defendant's proffered reasons are a pretext. *Lytle v Malady*, 209 Mich App 179, 184-185; 530 NW2d 135 (1995), lv granted 451 Mich 920 (1996).

Plaintiff presented evidence suggesting that defendant deviated from its standard practice under the collective bargaining agreement of choosing the least senior staff member for reduction in force. Although viewing the evidence in a light most favorable to plaintiff, reasonable jurors could honestly reach different conclusions about whether plaintiff's race was a determining factor in the decision to reassign her rather than the other counselor with less seniority, we find that plaintiff failed to present evidence to rebut defendant's legitimate nondiscriminatory reason for reassigning plaintiff.

Due to a millage cut, defendant was forced to reduce personnel in all areas, including counseling. Defendant established that, under the collective bargaining agreement, involuntary transfers, i.e., the moving of teachers from school to school, were to be avoided whenever possible. Defendant also showed that, had it undertaken to reduce its counseling staff by reassigning the less senior counselor, rather than plaintiff, to the only teaching position in which the less senior counselor was certified (home economics), a teacher with higher seniority would necessarily have been laidoff or involuntarily transferred, and would have had a meritorious grievance under the terms of the collective bargaining agreement. In contrast, defendant showed the reassignment of plaintiff from her counseling position to a classroom position teaching French, for which she was certified, was permissible under the agreement. This evidence makes it apparent that plaintiff's race did not play a role, let alone a determining role, in defendant's decision to reassign her. The trial court properly found that plaintiff failed to present evidence that would raise a genuine issue of material fact to rebut this legitimate, nondiscriminatory reason for reassigning her to the classroom.

Finally, because the trial court correctly found that plaintiff had not shown a genuine issue of material fact that defendant's proffered reason for reassigning plaintiff was a pretext, it is unnecessary for us to address the issue regarding damages is unnecessary for us to address.

Affirmed.

/s/ Clifford W. Taylor

/s/ Jane E. Markey

/s/ Nick O. Holowka