

STATE OF MICHIGAN
COURT OF APPEALS

JEFFREY P. SCHULTZ,

Plaintiff-Appellant,

v

LANSING SCHOOL DISTRICT,

Defendant-Appellee.

UNPUBLISHED

December 17, 1996

No. 188369

Ingham Circuit Court

LC No. 94-078211

Before: Fitzgerald, P.J., and Holbrook, Jr., and E.R. Post,* JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10), in this employment discrimination and retaliation case. We affirm.

Plaintiff first argues that evidence was presented to the trial court sufficient to show that a genuine issue of material fact existed with regard to whether defendant made use of discriminatory, racial considerations in hiring and this Court should reverse the trial court's order of summary disposition and remand this matter to the trial court for a trial on the merits. We disagree. We review a trial court's grant of a motion for summary disposition pursuant to MCR 2.116(C)(10) de novo to determine, giving the benefit of doubt to the nonmovant, whether the movant was entitled to summary disposition as a matter of law. *Lytle v Malady*, 209 Mich App 179, 183-184; 530 NW2d 135 (1995), *lv gtd* 451 Mich 920 (1996).

To establish a prima facie case of employment discrimination, the plaintiff must prove that race has been considered in the employer's employment decision. *Victorson v Department of Treasury*, 439 Mich 131, 143; 482 NW2d 685 (1992). A plaintiff must show himself to be a member of a protected class, who was qualified for an available position, and applied for that position, but was rejected under circumstances giving rise to an inference of unlawful discrimination. *York v 50th District Court*, 212 Mich App 345, 350; 536 NW2d 891 (1995). Where, in response to the establishment of

a prima facie case of discrimination, a defendant puts forth a legitimate, nondiscriminatory reason for its actions, a plaintiff has the burden of showing that the proffered reason was merely a pretext. *Id.*

Plaintiff argues that at the time of the alleged discriminatory act, seventy percent of defendant's school safety officers, sixty-six percent of those selected for interviews and one hundred percent of those employed as security supervisors were minorities. Plaintiff contends that this statistical evidence establishes a prima facie case of discrimination in hiring by showing that race was a consideration in defendant's decision not to offer him employment.

The use of statistics may be relevant in establishing the existence of a prima facie case of discrimination or in showing that the proffered reasons for a defendant's conduct are pretextual. *Dixon v W W Grainger, Inc*, 168 Mich App 107, 118; 423 NW2d 580 (1987). However, while such generalizations may be helpful in establishing a prima facie case of discrimination, they should not be in and of themselves controlling as to the justification for an individualized hiring decision, particularly in the presence of an otherwise justifiable reason for refusing to hire. *McDonnell Douglas Corp v Green*, 411 US 792, 805 n 19; 93 S Ct 1817; 36 L Ed 2d 668 (1973). Here, defendant presented nondiscriminatory justification reasons for failing to hire plaintiff, as plaintiff failed to receive as high a rating score as other candidates, including one who shared plaintiff's race. Moreover, plaintiff's educational background was in forensic science and not criminal justice.

The documentary evidence presented below showed that forty-seven candidates applied for two vacant school safety officer positions. Six candidates were interviewed by defendant, two of which were caucasian males. While plaintiff's application was considered prior to selecting interviewees, he was not ultimately selected for interviews both because his civilian security experience was limited and his educational background was based in forensic science and not criminal justice. Those selected to interview for positions as school safety officers were rated by defendant after having completed both a written examination and interview designed to test their respective abilities to perform the duties incident to the position of school safety officer. Natalie Riddle, a black female, earned the highest combined score, followed by Scott Dodderlein, a caucasian male, and Rose Ortiz, a hispanic female. Riddle and Dodderlein were hired. Ultimately, Ortiz was offered full-time employment upon consideration of her previous interview evaluation for that position. No evidence was presented showing that this decision was based upon race.

Where an employer successfully rebuts a prima facie case of employment discrimination, the plaintiff should be afforded the opportunity to show that the employer's articulated, nondiscriminatory reason is mere pretext. *York, supra* at 350; *Victorson, supra* at 143. To avoid summary disposition, the plaintiff must present factual allegations to raise a triable issue of fact as to whether the alleged nondiscriminatory reason was mere pretext. *York, supra* at 350; *Victorson, supra* at 143. Thus, a plaintiff must present factual allegations allowing the inference that the defendant had a discriminatory reason that was more likely its true motivation, or factual allegations showing that the defendant's justification was unbelievable. The plaintiff must set forth specific facts showing that there is a genuine issue for trial; conclusory allegations are insufficient to rebut evidence of nondiscriminatory conduct. *Featherly v Teledyne Industries, Inc*, 194 Mich App 352, 362-363; 486 NW2d 361 (1992).

In response to defendant's contention that it merely hired those candidates who received the highest ratings on the combined interview and written evaluations, plaintiff has failed to present specific factual allegations that show that either the persons hired did not receive the highest ratings, or, alternatively, the rating system favored minority candidates. Plaintiff further fails to explain why, in the face of alleged reverse racial discrimination, defendant hired a caucasian male in lieu of himself. Consequently, plaintiff has failed to set forth specific facts showing a genuine issue for trial and has merely relied upon conclusory allegations to rebut evidence of nondiscriminatory conduct. *Id.* at 362-363.

With regard to plaintiff's additional arguments, plaintiff has failed to cite any authority to support his claims that the trial court erred and, thus, has failed to properly present his remaining issues for review. An appellant may not merely announce its position and leave it to this Court to discover and rationalize the basis for its claims. Moreover, arguments without supporting citation are considered abandoned on appeal. *Check Reporting Systems, Inc v Michigan National Bank-Lansing*, 191 Mich App 614, 628; 478 NW2d 893 (1991). We therefore decline to address plaintiff's remaining issues.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Donald E. Holbrook, Jr.

/s/ Edward R. Post