STATE OF MICHIGAN

COURT OF APPEALS

FRED DRANKOSKI,

Plaintiff-Appellant,

v

VOLKSWAGEN OF AMERICA,

Defendant-Appellee.

UNPUBLISHED
December 20, 1996

No. 188303
Oakland County
LC No. 93-467205

Before: McDonald, P.J., and Murphy and J.D. Payant,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting a directed verdict to defendant on his claims of age discrimination and wrongful discharge, which was based on a just cause contract allegedly created by plaintiff's legitimate expectations that he could only be terminated for cause. We affirm.

First, plaintiff claims that a directed verdict on his age discrimination claim was improper because he met his prima facie case under *Barnell v Taubman Co, Inc*, 203 Mich App 110, 120-121; 512 NW2d 13 (1993), which requires that an employee prove that he was a member of a protected class, that he was discharged, that he was qualified for the position, and that he was replaced by a younger worker. However, plaintiff failed to offer any evidence that age was a factor in the decision to terminate him. Such evidence is crucial to the success of the claim and must be offered in order for the case to proceed to the jury. *Id.* at 121-122; *Plieth v St Raymond Church*, 210 Mich App 568, 572-574; 534 NW2d 16 (1995). In fact, plaintiff testified that age was never mentioned to him, that no one had ever said anything that led him to believe age was a factor, that he never saw any writings that led him to believe age was a factor, and that no witnesses or coworker has ever told him they thought he was fired because of age discrimination. The only evidence offered was that he was replaced by a younger worker. This Court has explicitly stated that proof that plaintiff was replaced by a younger employee without more, is insufficient to support a claim of age discrimination. *Barnell, supra*. Plaintiff

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

did not proffer evidence that could lead a reasonable jury to determine that there was age discrimination. Therefore, the trial court correctly directed a verdict to defendant on that issue.

Plaintiff next contends that he offered a prima facie case of age discrimination because he testified that defendant had a policy of giving exit interviews to terminated employees and that he did not receive such an interview. Plaintiff concludes that the fact that he did not receive an exit interview is evidence of discrimination. While it is true that an employee may make a prima facie case for discrimination by showing that he was treated differently than other employees with regard to the same or similar conduct, *id.* at 120-121, plaintiff did not make the necessary showing. He did not offer any evidence that other employees, young or old, actually received exit interviews. Nor did he demonstrate that the policy of giving exit interviews was applied differently to him or that he was treated differently for the same or similar conduct. Therefore, plaintiff has presented no evidence upon which a reasonable jury could determine that he was treated differently with regard to policies and that differential treatment was a result of his age. The trial court correctly granted a directed verdict on the age claim.

Plaintiff next complains that the trial court should not have granted a directed verdict on his wrongful discharge claim. Plaintiff claims he had a legitimate expectation that his employment could only be terminated for cause because there was a corporate policy that involuntary terminations should be made when there is cause, such as in cases of misconduct. Plaintiff, however, was not aware of this policy prior to his termination. Plaintiff was only aware that the employee handbook had an at-will clause and also contained a clause that stated:

> If any information in the Handbook seems to differ from established Corporate Policies and Procedures or benefits' Summary Plan Descriptions, the official written Corporate policies or plans will govern. Many of these can be found in your supervisor's Corporate Procedures manual, which will be made available to you upon your request.

Plaintiff never requested to see the corporate policies until after his termination. Nevertheless, he claims that he had a legitimate expectation based on them because the handbook said they were controlling.

While the corporate policy at issue may be interpreted as a promise of involuntary termination only for cause, this policy could not have created a legitimate expectation in plaintiff. Plaintiff never knew about the policy and the trial court correctly observed that one cannot "derive any expectations, legitimate or otherwise, from policies of which he knew nothing and did not become aware of until after his discharge." Because plaintiff never saw the policy and was never told of its contents prior to his termination, we find that he could not have derived an expectation that he could only be terminated for cause. *Prysak v RL Polk Co*, 193 Mich App 1, 7; 483 NW2d 629 (1992). The only objective, legitimate expectation plaintiff could have had while employed was that he could be terminated at any time, with or without cause, as stated in his

employee handbook. Therefore, the trial court properly directed a verdict on plaintiff's wrongful termination claim.

Affirmed.

/s/ Gary R. McDonald
/s/ William B. Murphy
/s/ John D. Payant