STATE OF MICHIGAN

COURT OF APPEALS

MAKRAM MIKHAIL,

Plaintiff-Appellant,

v

THORN APPLE VALLEY, INC.,

Defendant-Appellee.

UNPUBLISHED
March 27, 1998

No. 196517
Wayne Circuit Court
LC No. 95-529617-CZ

Before: Gage, P.J., and Reilly and Jansen, JJ.

PER CURIAM.

In this discrimination action, plaintiff appeals by right the order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm.

Defendant employed plaintiff, an Egyptian-American, from August 1990 until May 1995. On the afternoon of May 12, 1995, defendant's safety manager allegedly observed plaintiff sleeping on the job and reported the incident to plaintiff's supervisor. Plaintiff denied the allegation when confronted by his supervisor. Defendant discharged plaintiff when he failed to report as directed to the personnel office the next day. Plaintiff thereafter commenced this action under the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*, for national origin discrimination under a hostile work environment theory.

Plaintiff argues that that the trial court erred in granting summary disposition under MCR 2.116(C)(10) because he proved a prima facie case of discrimination based on hostile work environment. We disagree. This Court reviews de novo a trial court's ruling on a motion for summary disposition. *Omnicom of Michigan v Giannetti Investment Co*, 221 Mich App 341, 344; 561 NW2d 138 (1997). A motion for summary disposition under 2.116(C)(10) tests the factual basis underlying a plaintiff's claim and permits summary disposition when, except as to the amount of damages, no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. When deciding the motion, the court considers the pleadings, affidavits, depositions, admissions and other documentary evidence available to it in a light most favorable to the opposing party. *Id.*

Harassment based on national origin and hostile work environment are forms of discrimination actionable under the Elliott-Larsen Civil Rights Act. *Downey v Charlevoix Co Bd of Rd Comm'rs*, __ Mich App __; __ NW2d __ (Docket No. 192948; issued 2/3/98) slip op pp 2-3; *Malan v General Dynamics Land Systems, Inc*, 212 Mich App 585, 587; 538 NW2d 76 (1995). To establish a prima facie case of hostile work environment, a plaintiff must prove:

> (1) the employee belonged to a protected group; (2) the employee was subjected to communication or conduct on the basis of [. . . protected status]; (3) the employee was subjected to unwelcome . . . conduct or communication [involving . . . protected status]; (4) the unwelcome . . . conduct was intended to or in fact did substantially interfere with the employee's employment or created an intimidating, hostile, or offensive work environment; and (5) respondeat superior. [*Quinto v Cross & Peters Co*, 451 Mich 358, 368-369; 547 NW2d 314 (1996), quoting *Radtke v Everett*, 442 Mich 368, 382-383; 501 NW2d 155 (1993).]

In this case, no genuine issue of fact exists whether plaintiff was subjected to unwelcome conduct involving his national origin that substantially interfered with his employment. Plaintiff failed to support his allegations that (i) his supervisor did not like Egyptians, as purportedly evidenced by his decision to suspend a Lebanese employee, (ii) defendant did not provide Arab employees with medical insurance, (iii) defendant gave Egyptian employees unfavorable job assignments, (iv) defendant assigned an Egyptian employee to work in a cold area of the plant contrary to his medical restrictions, (v) defendant paid Egyptian employees less than non-Egyptian employees, (vi) another Egyptian employee had filed a discrimination action, and (vii) plaintiff's supervisor criticized the job performance of Egyptian employees. Furthermore, plaintiff is bound by his clear and unequivocal deposition testimony that his supervisor never stated that he did not want members of plaintiff's church working for defendant.[1] *Stefan v White*, 76 Mich App 654, 659-660; 257 NW2d 206 (1977).

Plaintiff's remaining evidence does not establish conduct of the type and severity that a reasonable person would find to create a hostile work environment. Evidence of plaintiff's supervisor's overt frustration with Egyptian employees' language skills, plaintiff's alleged unfavorable work assignment, and isolated insensitive remarks and jokes in the workplace do not support an issue for the trier of fact because a reasonable person would not find that defendant was responsible for creating an intimidating or offensive work environment or substantially interfering with plaintiff's employment. See *Quinto, supra* at 371-372. Accordingly, the trial court properly granted defendant's motion for summary disposition under MCR 2.116(C)(10) because no genuine issue of material fact existed and defendant was entitled to judgment as a matter of law.

Affirmed.

/s/ Hilda R. Gage
/s/ Maureen Pulte Reilly
/s/ Kathleen Jansen

[1] The following exchange occurred at plaintiff's deposition:

Q: He did not say anything about church?

A: No.

Q: Just I don't want anybody from your people?

A: Yes.