

STATE OF MICHIGAN
COURT OF APPEALS

BASHAR ABUALI,

Plaintiff-Appellant,

v

STATE OF MICHIGAN,

Defendant-Appellee,

and

GARY HENINGSBURG and ROGER COLLINS,

Defendants.

UNPUBLISHED

December 11, 2001

No. 223054

Washtenaw Circuit Court

LC No. 97-009268-CZ

Before: Hood, P.J., and Whitbeck and Meter, JJ.

WHITBECK, J. (*dissenting*).

I agree with the majority that the trial court erred in granting summary disposition, at least with respect to one claim in plaintiff Bashar AbuAli's complaint. In my view, the trial court erred in summarily disposing of AbuAli's complaint as a whole when it either failed to consider his hostile work environment claim at all, or failed to consider the evidence in the record supporting that claim. However the majority does not address this issue. Additionally, I respectfully dissent from the majority's conclusion that the trial court erred in granting summary disposition to defendants concerning AbuAli's disparate treatment claim. In my view, the majority erroneously blurs the distinction between a lower-level employee and a decisionmaker, thereby setting the stage for imputing discriminatory animus to the decisionmaker. Without evidence that the actual decisionmaker had a discriminatory animus and acted on it, I see no support in the law for concluding that a plaintiff pressing a disparate treatment claim can survive a motion for summary disposition.

I. Basic Facts And Procedural History

AbuAli was a security aide at the state of Michigan's Center for Forensic Psychology in Ypsilanti. While employed there, AbuAli had a documented history of job performance problems. AbuAli had been reprimanded for violating a no-smoking policy, he had engaged in a physical altercation with a supervisor, he had been cited for committing neglect, and he had been suspended for threatening a female patient.

The event that immediately precipitated AbuAli's discharge from employment at the Forensic Center occurred when AbuAli threw an object at a patient who had not responded to his request to step away from a television. The patient immediately attacked AbuAli, striking him with his fists. AbuAli was injured in this assault. However, after other employees restrained the patient, AbuAli struck the patient repeatedly, even injuring a coworker who attempted to shield the patient from AbuAli's blows. The state immediately suspended AbuAli and ultimately fired him on January 28, 1996. In August 1996, AbuAli was tried and convicted by a jury of misdemeanor assault for this incident.

AbuAli sued pursuant to the Civil Rights Act (CRA),¹ alleging that he had been the focus of unlawful discrimination on the basis of his national origin. In the complaint, AbuAli described himself as an "Arabic born person," said that he was the only person of this national origin at the Forensic Center, and alleged that the incident with the patient leading to his discharge aggravated an unspecified emotional condition and caused him "to lose sight in his left eye." The complaint outlined AbuAli's contention that other, non-Arabic employees had committed serious acts of violence against patients or malfeasance but had not been fired. Further, in the complaint, AbuAli claimed that supervisor Gary Heningsburg and other employees called him "racist" names and that he had been denied assistance and rehabilitation following the altercation with the patient. AbuAli contended that

the actions of the Defendant violates this State's Elliott Larsen Civil Rights Act in that they discriminate against the Plaintiff because of his nationality by *creating a negative atmosphere* and *by treating him differently than non-Arabic* personnel resulting eventually in his discharge.^[2]

Though not an example of the utmost clarity, in my view this complaint alleged both hostile work environment and disparate treatment claims.

After the trial court dismissed defendants Heningsburg and Roger Collins from the suit,³ the state moved for summary disposition of AbuAli's suit pursuant to MCR 2.116(C)(8) and (10) without explicitly distinguishing between his two discrimination claims. The state's supporting brief focused exclusively on AbuAli's disparate treatment claim, arguing that he had failed to present evidence of a prima facie case of disparate treatment and that the state had a legitimate, nondiscriminatory reason to fire him. Neither the state's motion nor the attached brief addressed AbuAli's claim that he had been subjected to a "negative atmosphere" in violation of the CRA.

In response to this motion, AbuAli filed an affidavit providing additional factual support for the allegations in his complaint. He asserted that his coworkers and patients had used

¹ MCL 37.2101 *et seq.*

² Emphasis added. AbuAli also claimed that defendants had violated the Handicapper's Civil Rights Act, MCL 37.1101 *et seq.*, which is now called the Persons With Disabilities Civil Rights Act, see 1998 PA 20. However, he later stipulated to dismiss that claim, which is not at issue in this appeal.

³ Their dismissal is not at issue in this appeal.

“discriminatory names” to refer to him, including “camel jockey,” “sand n****r,” and “Ahmed.” Following the bombing of the federal building in Oklahoma City, one of AbuAli’s coworkers reportedly told him that “All Arabs are terrorists.” Collins also talked with AbuAli about being a “born again Christian” and allegedly expressed “how evil Arabs were in that same discussion.” Collins purportedly informed AbuAli that he (AbuAli) “and all those who believed in Islam believed in a fake religion, that the Prophet Muhammad was phoney, and we [Arabs] were all going to hell because we did not accept Jesus.” AbuAli asserted that Heningsburg “once attacked [him] verbally on the basis of [his] nationality in front of coworkers,” and “gave [him] a long lecture that was degrading [to his] race, heritage and history.” Further, AbuAli averred, Heningsburg suggested that Arabs descended “from Nomadic tribes and have no knowledge of heritage or origin,” while also stating that AbuAli “came to America to steal jobs and that [Arabs] were all a bunch of “camel jockeys.” AbuAli also listed instances in which other state employees committed infractions, but were not punished, or at least not fired.⁴

AbuAli’s brief opposing summary disposition, though somewhat artless, also made an argument with respect to both his discrimination claims under the CRA. First, calling the issue “national origin discrimination,” AbuAli very briefly addressed his allegations that he was called offensive names. Implicitly, this referred to his hostile work environment claim. AbuAli spent the bulk of his brief responding to the state’s motion, which did not address hostile work environment, but instead concentrated on disparate treatment. He used evidence of Collins’ and Heningsburg’s slurs toward him as evidence of their predisposition to discriminate.

The trial court granted the motion for summary disposition, reasoning that AbuAli had failed to establish a prima facie case of disparate treatment discrimination. The trial court stated that it was undisputed that AbuAli was a member of a protected class, was qualified for his job, and had suffered from an adverse employment action, but ruled that he had not presented any direct evidence of discrimination. The trial court also stated that AbuAli had not established a disparate treatment claim because he had not demonstrated that other similarly situated employees received better treatment. Though the opinion and order granting the state summary disposition evidently intended to dispose of the suit as a whole, it did not specifically address AbuAli’s hostile work environment claim.

The arguments on appeal are no different than they were in the trial court. AbuAli claims that he presented a prima facie case of what he calls “national origin discrimination.” In making this argument, AbuAli again raises his allegations concerning “ethnic stereotyping and name calling” as well as his argument that he had presented all the evidence necessary for a prima facie case of discrimination by disparate treatment. The state continues to maintain that there was no evidence that AbuAli was treated differently than similarly situated employees or that it

⁴ In actuality, if true, these slurs appear to blend racial (“sand n****r” and “camel jockey”), religious (Islam is a “fake religion”), and national origin discrimination (AbuAli came to the United States to “steal jobs,” Arabs are “evil” and descended from “Nomadic tribes and have no knowledge of heritage or origin”). However, because each of these characteristics are protected under the CRA, MCL 37.2202, and may be coextensive with AbuAli’s self-described national origin, I see no obstacle to using each of them to support a hostile work environment claim.

fired him for any reason than its legitimate disapproval of his conduct on the job, especially the last altercation with the patient.

II. Standard Of Review And Legal Standards

This Court reviews a motion for summary disposition *de novo*.⁵ As the majority opinion correctly notes, it is appropriate to conclude that the trial court granted defendants' motion for summary disposition under MCR 2.116(C10). "A motion for summary disposition under MCR 2.116(C)(10) . . . tests the factual support of a claim" ⁶ MCR 2.116(G)(5) requires the reviewing court to consider "affidavits, together with the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties" The court reviews this documentary evidence in the "light most favorable to the nonmoving party."⁷ However,

an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her.⁸

In other words, summary disposition is appropriate "if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact,⁹ and the moving party is entitled to judgment as a matter of law."¹⁰

III. Hostile Work Environment

A. Addressing The Issue

There is little doubt in my mind that AbuAli claimed that he was subjected to a hostile work environment because of his national origin but that he never addressed this claim with the level of persuasive authority courts not only desire, but require. However, his failure to address this issue fully is also the direct product of the way the state structured and argued its motion for summary disposition; AbuAli simply responded to the state's arguments, which did not address this claim.

⁵ See *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

⁶ *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999).

⁷ See *id.*, quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).

⁸ MCR 2.116(G)(4).

⁹ See *Richardson v Michigan Humane Society*, 221 Mich App 526, 527-528; 561 NW2d 873 (1997) (plaintiff must show genuine issue of material fact regarding each element of prima facie case to survive a motion for summary disposition under MCR 2.116[C][10]).

¹⁰ *Smith, supra* at 454-455, quoting *Quinto, supra*.

The trial court also followed this pattern that the state set. If the trial court never resolved this hostile work environment claim at all, the claim still exists as a cause of action. Consequently, the order granting summary disposition was not a final order¹¹ appealable as of right.¹² Alternatively, if the trial court summarily disposed of this claim in the context of its larger MCR 2.116(C)(10) analysis of without articulating its reasoning or, apparently, considering the evidence in the record, then this Court is faced with a problem with uncertain boundaries. In this situation, though the hostile work environment claim exists, there is virtually no briefing on this issue, which typically constitutes abandonment.¹³

Nevertheless, a number of factors persuade me that the best approach to resolving this appeal entails addressing this issue. The first issue presented in AbuAli's appellate brief refers to prima facie evidence of "national original discrimination," which is an overarching category that can encompass this hostile work environment claim as well his disparate treatment claim. The evidence relevant to this claim is apparent from the record and briefs, and review is de novo, which does not require this court to defer to the trial court's views of this issue to any extent.¹⁴ This Court routinely examines grounds for summary disposition even when not explicitly addressed by the trial court.¹⁵ The majority's decision to reverse and remand this case will likely cause this issue to reemerge, making its consideration at this time efficient.

B. The CRA

Unlike sexual harassment,¹⁶ the CRA does not include any explicit language prohibiting an employer from subjecting an employee to a work environment that is hostile to his national origin. Rather, the CRA has broad admonitions concerning an employer's discriminatory conduct that is unlawful under this legislation.¹⁷ Nevertheless, in *Downey v Charlevoix Co Bd of*

¹¹ See MCR 7.202(7)(a)(i).

¹² See MCR 7.203(A)(1)(a).

¹³ See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959) ("It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow.").

¹⁴ See *Spiek, supra*.

¹⁵ See, generally, *Shirilla v Detroit*, 208 Mich App 434, 437; 528 NW2d 763 (1995) ("An order granting summary disposition under the wrong court rule may be reviewed under the correct rule."); *Paschke v Retool Industries (On Rehearing)*, 198 Mich App 702, 705; 499 NW2d 453 (1993), rev'd on other grounds 445 Mich 502 (1994) ("The court is *obligated* only to review issues that are properly raised and preserved; the court is *empowered*, however, to go beyond the issues raised and address any issue that, in the court's opinion, justice requires be considered and resolved.").

¹⁶ See MCL 37.2103(i).

¹⁷ See MCL 37.2202.

Co Road Comm'rs,¹⁸ this Court interpreted the CRA to permit “a cause of action for a claim of harassment or hostile work environment based on age,” a characteristic protected in MCL 37.2202.¹⁹ In reaching this decision, the *Downey* Court not only applied, but directly approved²⁰ of the reasoning in *Malan v General Dynamics Land Systems, Inc*²¹ “that harassment based on any one of the enumerated classifications [in the CRA] is an actionable offense,” not merely harassment on the basis of sex.²² Notably, *Malan* involved harassment on the basis of the primary plaintiff’s national origin.²³ Consequently, the case law indicates that, with the proper facts, a plaintiff may sue a defendant for a hostile work environment because of the plaintiff’s national origin.

To analyze the merits of a hostile work environment claim, courts apply a test explained in detail in *Radtke v Everett*,²⁴ a sexual harassment case, and later modified to fit the other types of discrimination that the CRA prohibits.

In order 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 the protected status; (3) the employee was subjected to unwelcome conduct or communication on the basis of the protected status; (4) the unwelcome conduct or communication was intended to, or in fact did, interfere substantially with the employee's employment or created an intimidating, hostile, or offensive work environment; and (5) respondeat superior.^[25]

Giving AbuAli the benefit of all reasonable doubts,²⁶ the pleadings and his affidavit demonstrated that a question of fact existed concerning each of these elements. AbuAli was singled out on the basis of his national origin, making him a member of a protected class. He was subjected to communication directed squarely at his national origin and the negative and overtly offensive tone of these comments made them unwelcome. That the comments criticized AbuAli’s motivation for seeking employment in this country and forced him to walk away from Heningsburg to avoid a confrontation on at least one occasion suggests that, even if not intended

¹⁸ *Downey v Charlevoix Co Bd of Co Road Comm'rs*, 227 Mich App 621, 626-627; 576 NW2d 712 (1998).

¹⁹ See also *Koester v Novi*, 458 Mich 1, 11, n 3; 580 NW2d 835 (1998).

²⁰ *Downey*, *supra* at 626.

²¹ *Malan v General Dynamics Land Systems, Inc*, 212 Mich App 585, 587; 538 NW2d 76 (1995).

²² See also *Chambers v Trettco*, 463 Mich 297, 316; 614 NW2d 910 (2000) (absent a change in the statutory language, sexual harassment should be treated like all other forms of discrimination prohibited in the CRA).

²³ *Malan*, *supra* at 586.

²⁴ *Radtke v Everett*, 442 Mich 368, 382-383; 501 NW2d 155 (1993).

²⁵ *Downey*, *supra* at 629, citing *Radtke*, *supra* at 282-283 and *Quinto*, *supra* at 368-369.

²⁶ See *Smith*, *supra* at 454.

to interfere with AbuAli's employment, the comments "created an intimidating, hostile, or offensive work environment[.]"²⁷ Finally with respect to respondeat superior, at least two of the individuals responsible for creating this hostile work environment were AbuAli's supervisors.²⁸ While this evidence may not be convincing to the factfinder at trial, in my view, the evidence was sufficient to defeat the motion for summary disposition with regard to this claim.

IV. Disparate Treatment

A. Overview

As the majority opinion correctly notes, there are two broad categories of claims under § 202 of the CRA: "disparate treatment" and "disparate impact."²⁹ AbuAli's complaint alleged disparate treatment claim involving the state's allegedly mixed motive for dismissing AbuAli.³⁰ In other words, AbuAli claimed that the state used his checkered employment history and most recent assault on a patient to obscure that the real reason it was dismissing him was his national origin. As proof of that the state was acting discriminatorily rather than on the basis of its legitimate concerns associated with operating the Forensic Center, AbuAli gave examples in which, he claimed, the state did not discipline or discharge other employees who were not Arab, but who had also created problems at work.

B. Direct Evidence

In *Harrison v Olde Financial Corp*,³¹ this Court explained that disparate treatment claims are intentional discrimination claims and, therefore, may be proven by "direct or indirect evidence." The Court in *Harrison* noted that the well-known burden-shifting scheme articulated in *McDonnell Douglas Corp v Green*³² was crafted to handle the circumstantial evidence that is

²⁷ *Downey, supra*.

²⁸ Unlike in a disparate treatment claim, case law does not require a plaintiff to suffer an adverse employment decision in order to sue for a hostile work environment. Thus, imputing Collins' and Heningsburg's conduct to the state in this context is different than imputing their conduct to the individuals who made the decision to fire AbuAli in the context of his disparate treatment claim.

²⁹ *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 358; 597 NW2d 250 (1999).

³⁰ In *Wilcoxon*, I distinguished between "mixed motive" and "pretextual" disparate treatment claims on the basis of the principles of proof employed. *Id.* at 359-360. In actuality, as I also suggested in *Wilcoxon, id.* at 359, and reiterate in this opinion, the burden-shifting analysis that relies on presumptions of discrimination is a single progression with three-parts, starting with the prima facie case, moving to the question of mixed motive, and ending with pretext. However, though individual steps of the same analysis, both the mixed motive and pretext steps may be examined by looking at additional factors, making them appear to be separate tests within this single analysis.

³¹ *Harrison v Olde Financial Center*, 225 Mich App 601, 606; 572 NW2d 679 (1997).

³² *McDonnell Douglas Corp v Green*, 411 US 792, 93 S Ct 1817, 36 L Ed 2d 668 (1973).

frequently necessary to prove discrimination indirectly in employment cases.³³ At its best, this burden-shifting analysis culls legitimate reasons for an employment action from discrimination.³⁴ Because *Harrison's* purpose was to pinpoint the cases in which the burden-shifting analysis was not necessary, the Court clarified that “the *McDonnell Douglas* evidentiary framework does not apply when a plaintiff presents *direct evidence* of discriminatory animus.”³⁵ Quoting *Kresnak v Muskegon Heights*,³⁶ *Harrison* defined direct evidence of discrimination as “evidence that, if believed, ‘ ‘requires the conclusion that unlawful discrimination was at least a motivating factor.’ ”³⁷ As an example of this sort of direct evidence, *Harrison* pointed to “slurs by a decisionmaker.”³⁸ Summarizing its detailed examination of the types of proof involved when there is direct evidence of disparate treatment discrimination, *Harrison* held:

First, as with circumstantial discrimination cases, in a case involving direct evidence of discrimination, the plaintiff always bears the burden of persuading the trier of fact that the employer acted with illegal discriminatory animus. Second, whatever the nature of the challenged employment action, the plaintiff must establish evidence of the plaintiff’s qualification (or other eligibility) and direct proof that the discriminatory animus was causally related to the decisionmaker’s action. Upon such a presentation of proofs, an employer may not avoid trial by merely “articulating” a nondiscriminatory reason for its action. Under such circumstances, the case ordinarily must be submitted to the factfinder for a determination whether the plaintiff’s claims are true.

However, and alternatively, in addition to challenging the credibility of the plaintiff’s claims of discrimination, in a case involving direct evidence of discriminatory action, the employer may also assume the burden of persuading the factfinder that, even if the plaintiff’s allegations are true, the employer would have made the same decision without consideration of discriminatory factors. In other words, the employer may assume the burden of persuading the factfinder that consideration of the plaintiff’s protected characteristics was not “a determining factor” in its employment action. . . .^[39]

In this case, the majority rejects the burden-shifting analysis in *McDonnell Douglas* in favor of applying the analysis for claims relying on direct evidence of discrimination as articulated in *Harrison*. In my view, the majority’s error is not in its recitation of the law but in the way it determines that there is direct evidence of discrimination in this case. Simply put, the majority twists the concept of a “decisionmaker” to include those who make recommendations to

³³ *Harrison, supra* at 606-607.

³⁴ *Id.* at 607.

³⁵ *Id.* at 609 (emphasis added).

³⁶ *Kresnak v Muskegon Heights*, 956 F Supp 1327, 1135 (WD Mich, 1997) (citations omitted).

³⁷ *Harrison, supra* at 610.

³⁸ *Id.*

³⁹ *Id.* at 612-613.

a decisionmaker. Again, giving AbuAli the benefit of all reasonable doubts,⁴⁰ there really is no question that some of Collins' and Heningsburg's comments were slurs against him and people of his national origin. However, the state provided evidence that Shari Koeslin, director of human resources, and Ronald Woodson, director of security, made the decision to discharge AbuAli. Though the majority labels this argument "disingenuous," there is absolutely no evidence that these two decisionmakers made any slurs against AbuAli, Arabs generally, or anyone else. Nor is there any evidence that Koeslin or Woodson were predisposed to discriminate against any group or individual or that they chose to accept Collins' recommendation because he had discriminatory attitudes matching their own, much less that they were personally inclined to discriminate on the basis of national origin. In short, the absence of direct evidence that Woodson and Koeslin held discriminatory animus against AbuAli as a member of a protected class makes it impossible for him to establish a question of fact concerning whether they considered his membership in the class, that they acted on their animus in firing him, and, therefore, that their "discriminatory animus was causally related" to the decision to fire him.⁴¹

The majority attempts to avoid this significant absence of direct evidence that Woodson and Koeslin, the decisionmakers in this case, held any form of animus toward AbuAli by noting that Collins recommended to Woodson that AbuAli be fired and that Woodson forwarded that recommendation to Koeslin. The majority thus imputes Collins' discriminatory animus to Woodson and, through Woodson, to Koeslin. In all likelihood, as the majority observes, AbuAli probably did encounter Collins and Heningsburg more frequently than he encountered Woodson and Koeslin, and thus was not exposed to Woodson's and Koeslin's views, whatever they were. However, there is nothing in Collins' recommendation that is remotely discriminatory in nature, making it impossible to assume that Woodson and Koeslin implicitly adopted Collins' discriminatory animus when accepting the recommendation. Further, the decisional hierarchy at the Forensic Center indicates that Collin and Heningsburg were in no position to make a decision to fire AbuAli. That Woodson and Koeslin ultimately arrived at the result Collins and Heningsburg might have preferred – AbuAli's discharge – does not transform Collins and Heningsburg into decisionmakers. Nor does it impute their animus to Woodson and Koeslin.

The majority claims that failing to reverse the trial court's order summarily disposing of this disparate treatment claim would lead to "untenable results:"

Indeed, an employee's direct supervisor could make constant racial slurs and demonstrate a clear discriminatory animus toward the employee, forward to a human resources director a recommendation for dismissal that appears legitimate but is actually based on discrimination and, if a *McDonnell-Douglas* prima facie case cannot be made, be insulated from liability because the human resources

⁴⁰ *Smith, supra* at 454.

⁴¹ *Harrison, supra* at 612-613.

director, while relying on the recommendation to dismiss, did not actually make the racial slurs.^[42]

If this sort of situation existed, the employee would still have a cause of action for hostile work environment. Without evidence that the decisionmaker acted discriminatorily, the CRA's intention "to eliminate the effects of offensive or demeaning stereotypes, prejudices, and biases" is not implicated.⁴³ Thus, rejecting this analysis is not "untenable," it is required.

C. Circumstantial Evidence

In the absence of direct evidence that Woodson or Koeslin discriminated against AbuAli in discharging him, AbuAli has no choice but to pass the burden-shifting analysis to create a presumption of discrimination. This analysis exists in three parts,⁴⁴ only the first of which is germane in light of the evidence in the record.

AbuAli, as the plaintiff, must make out his prima facie case, demonstrating: (1) membership in a protected class, (2) he "suffered an adverse employment action," (3) he was "qualified for the position," but (4) he was "discharged under circumstances that give rise to an inference of unlawful discrimination."⁴⁵ A plaintiff may satisfy this final element by providing evidence that he "was treated differently than persons of a different class for the same or similar conduct."⁴⁶ There is no question that the record supports the first three of these four elements. However, like the trial court, I cannot find evidence in the record demonstrating that AbuAli was treated differently than others "for the same or similar conduct." His allegations concerning conduct by other employees, not all of whom worked at the Forensic Center, are very general. It is impossible to conclude that giving a patient a "black" eye is as serious as the injuries AbuAli inflicted on the patient immediately before he was discharged. There is no question that falling asleep at work or threatening action never undertaken, though potentially serious, are less serious infractions than the assault AbuAli committed. There is no evidence that any these other individuals' assaultive conduct occurred under the very disturbing and serious circumstances here including both provocation and injury to a patient *after* the patient had been restrained. There simply is no evidence that AbuAli has been treated intentionally *differently* than members of other groups because of his national origin.

⁴² Majority, *ante* at p 3.

⁴³ *Miller v CA Muer Corp*, 420 Mich 355, 363; 362 NW2d 650 (1984).

⁴⁴ See *Town v Michigan Bell Telephone Co*, 455 Mich 688, 695-696; 568 NW2d 64 (1997) (the plaintiff must demonstrate the prima facie case, giving rise to an inference of discrimination, after which the burden shifts to the employer to show a legitimate reason for the employment action, which ends the presumption of discrimination, and then the burden shifts back to the plaintiff to demonstrate that that legitimate reason was a pretext for acting on a discriminatory animus); see also *Harrison, supra* at 607-608.

⁴⁵ *Lytle v Malady (On Rehearing)*, 458 Mich 153, 177; 579 NW2d 906 (1998).

⁴⁶ *Meagher v Wayne State University*, 222 Mich App 700, 716; 565 NW2d 401 (1997).

In my view, AbuAli has failed to demonstrate that discrimination played any role in his discharge. Having failed to make out his prima facie case, the additional steps of the burden-shifting analysis are not necessary. Nevertheless, it should be noted that the state has provided compelling documentation of its legitimate need to discharge AbuAli because of his violence toward patients and I see no evidence that this need was a pretext for discrimination. Therefore, I would affirm the trial court's decision to grant the state's motion for summary disposition of this claim.

/s/ William C. Whitbeck