

STATE OF MICHIGAN
COURT OF APPEALS

THEODORE GOLUBINSKI,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS, JIMMY
STEAGALL, LOUIS MYERS, LARRY
NUNNERY, and JEANETTE EVANS,

Defendants-Appellees.

UNPUBLISHED

July 1, 2003

No. 238687

Macomb Circuit Court

LC No. 2000-004762-CL

Before: Griffin, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Plaintiff Theodore Golubinski appeals by right from an order granting defendants Michigan Department of Corrections (MDOC), Jimmy Steagall, Louis Myers, Larry Nunnery, and Jeanette Evans summary disposition under MCR 2.116(C)(10). We affirm.

Plaintiff, employed as a corrections officer with MDOC, filed the instant suit alleging reverse racial harassment, reverse racial discrimination, retaliation, and intentional infliction of emotional distress. We review a trial court's grant of summary disposition de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). On reviewing a motion for summary disposition under MCR 2.116(C)(10), a court must decide "whether any genuine issue of material fact exists in order to prevent entering a judgment for the moving party as a matter of law." *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). When deciding a summary disposition motion pursuant to MCR 2.116(C)(10), a court must consider affidavits, together with the pleadings, depositions, admissions, and documentary evidence to the extent that their content would be admissible. MCR 2.116(G)(5) and (6). This Court is liberal in finding a genuine issue of material fact. *Marlo Beauty Supply, Inc v Farmers Ins Group*, 227 Mich App 309, 320; 575 NW2d 324 (1998), modified on other grounds by *Harts v Farmers Ins Exchange*, 461 Mich 1, 10-11; 597 NW2d 47 (1999).

On appeal, plaintiff first contends the trial court erred by finding plaintiff failed to present a prima facie case of reverse racial discrimination. Before the trial court, plaintiff attempted to establish a claim of reverse racial harassment by proving that he was subject to a hostile work environment. Four elements must be satisfied to present a prima facie case of hostile work environment:

(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. [*Downey v Charlevoix County Bd of County Rd Comm'rs*, 227 Mich App 621, 629; 576 NW2d 712 (1998), citing *Radke v Everett*, 442 Mich 368, 382-383; 501 NW2d 155 (1993) and *Quinto v Cross & Peters Co*, 451 Mich 358, 368-369; 547 NW2d 314 (1996).]

To support his claim, plaintiff alleged that one day while he was working, Evans asked him whether he knew of a certain corrections officer. According to plaintiff, Evans described the officer in question as "a white officer, he's kind of clean-cut, he's always – pressed uniform, oh he's about this tall." Plaintiff responded with the name of an officer meeting that description, and Evans said, "Oh, yeah, . . . he's a fine white boy." Plaintiff conceded that he never heard Evans use any racial epithets or slurs.

We conclude the trial court did not err by concluding plaintiff failed to present a prima facie case of reverse racial harassment. The only allegedly hostile statement made directly to plaintiff was Evans' "fine white boy" statement. Plaintiff's letter from James Zelenak may be some evidence regarding Evans' intent, however Evans' statement to Zelenak did not in itself create a hostile work environment for plaintiff. A reasonable person could not find that Evans' questionable statement was sufficient to maintain plaintiff's reverse racial harassment claim. Plaintiff failed "to present documentary evidence to the trial court that a genuine issue existed regarding whether a reasonable person would find that, in the totality of circumstances, [defendant]'s comments to plaintiff were sufficiently severe or pervasive to create a hostile work environment." *Quinto, supra* at 369.

Next, plaintiff claims the trial court erred by finding plaintiff failed to present a prima facie case of reverse racial discrimination. To establish a prima facie case of racial discrimination without any direct evidence, a plaintiff must use the burden-shifting approach explained in *Town v Michigan Bell Telephone Co*, 455 Mich 688, 695; 568 NW2d 64 (1997). There, the Court applied a modified version of the prima facie framework established by the United States Supreme Court in *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973) and held that a

prima facie approach requires an employee to show that the employee was (1) a member of a protected class, (2) subject to an adverse employment action, (3) qualified for the position, and that (4) others, similarly situated and outside the protected class, were unaffected by the employer's adverse conduct. [*Town, supra* at 695.]

According to MDOC's published discipline guide, an employee could be terminated after a first-offense violation of rule 24. Plaintiff concedes his initial termination resulted from a rule 24 violation. Plaintiff submitted no evidence regarding any disciplinary action taken against other employees for rule 24 violations. Thus, plaintiff presented no evidence indicating he was

treated differently than similarly situated employees of other races. Therefore, we conclude the trial court did not err by finding plaintiff failed to establish a prima facie case of reverse racial discrimination.

Plaintiff also argues the trial court erred by concluding plaintiff did not establish a prima facie case of retaliation. Under MCL 37.2701, an employer is prohibited “from retaliating against an employee for making a charge, filing a complaint, testifying, assisting, or participating in an investigation, proceeding, or hearing under the [CRA].” *Feick v Monroe Co*, 229 Mich App 335, 344; 582 NW2d 207 (1998). To establish a prima facie case of retaliation, a plaintiff must show

(1) that he engaged in a protected activity; (2) that this was known by the defendant; (3) that the defendant took an employment action adverse to the plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action. [*DeFlaviis v Lord & Taylor, Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997).]

Before plaintiff was terminated, he had not filed any formal complaints alleging racial discrimination. Plaintiff’s own evidence established that a rule 24 violation was punishable by termination, and he concedes he was fired for a rule 24 violation. We conclude the trial court did not err by holding plaintiff failed to present a prima facie case of retaliation.

Finally, plaintiff contends the trial court erred by concluding plaintiff’s allegations failed to create a claim of intentional infliction of emotional distress. A plaintiff must show the following four elements to establish a prima facie claim for intentional infliction of emotional distress: “(1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress.” *Graham v Ford*, 237 Mich App 670, 674; 604 NW2d 713 (1999). Plaintiff relies on *Ledsinger v Burmeister*, 114 Mich App 12, 20; 318 NW2d 558 (1982), where the defendant, a merchant, called the plaintiff, a customer, a “nigger” while evicting the plaintiff from his store, and the defendant stated he “did not want or need nigger business.” In our decision, we held the plaintiff had established a claim of intentional infliction of emotional distress. *Id.*

However, the allegations in the instant case are clearly distinguishable from the facts in *Ledsinger*, *supra* at 20-21. We hold the trial court did not err by concluding plaintiff’s allegations failed to create a claim of intentional infliction of emotional distress.

Affirmed.

/s/ Richard Allen Griffin
/s/ William B. Murphy
/s/ Kathleen Jansen