

STATE OF MICHIGAN
COURT OF APPEALS

DONNA SOLOMON,

Plaintiff-Appellant,

v

NEWCASTLE HOTELS, LLC, doing business as
YPSILANTI MARRIOTT AT EAGLE CREST
and TINA HICKS, also known as LISA HICKS,

Defendants-Appellees.

UNPUBLISHED

March 13, 2003

No. 234975

Washtenaw Circuit Court

LC No. 00-000814-CZ

Before: Donofrio, P.J., and Saad and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendants' motion for summary disposition under MCR 2.116(C)(10). This case arose when plaintiff, an African American, sued defendants for racial discrimination under Michigan's Civil Rights Act (CRA), MCL 37.2101 *et seq.*, after she and several guests were asked to leave the hotel in which she was holding a birthday party for her eight-year-old son. We affirm.

The CRA states in relevant part: "Except where permitted by law, a person shall not . . . [d]eny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service because of . . . race . . ." MCL 37.2302(a). Claims of racial discrimination in public accommodations are subject to the same analysis as discrimination claims under other sections of the CRA. *Clarke v K-mart Corp*, 197 Mich App 541, 545; 495 NW2d 820 (1992).

Plaintiff argues that summary disposition was improperly granted because she established a prima facie case of either intentional racial discrimination or discrimination through disparate treatment. We review the trial court's decision on a motion for summary disposition under MCR 2.116(C)(10) de novo, considering the evidence submitted by the parties in a light most favorable to the non-moving party. *Maiden v Rozwood*, 461 Mich 109, 118, 120; 597 NW2d 817 (1999).

To establish a prima facie case of racial discrimination under a disparate treatment theory, a plaintiff must show that he or she was a member of a protected class and treated differently than a person of a different race for the same or similar conduct. See *Reisman v Regents of Wayne State University*, 188 Mich App 526, 538; 470 NW2d 678 (1991). Here, although plaintiff presented testimony that white guests were sometimes given two or three

verbal warnings before being asked to leave the hotel, the uncontested evidence indicated that plaintiff was also given at least two warnings that her conduct (or that of her guests) was violating defendants' policies before she was asked to leave. Further, the evidence regarding defendant's treatment of white guests was extremely vague, and fell well short of establishing that they were engaged in the same or similar conduct. Accordingly, we do not believe that plaintiff met her burden of establishing a prima facie case of disparate treatment. *Id.*

To establish a prima facie case of intentional discrimination, a plaintiff must show that he or she was a member of a protected class and experienced an adverse action, and that the defendant was predisposed to discriminate against persons of that protected class and actually acted on that predisposition in taking the adverse action. See *Reisman, supra* at 538. Here, there is no dispute that plaintiff is a member of a protected class. However, with the exception of vague assertions to the contrary, the evidence strongly suggested that defendant was merely enforcing its policies, and that the policies were not enforced in a manner suggesting a discriminatory intent.¹

Further, although plaintiff offered proof that one of the hotel's former employees once made a racially offensive remark, the evidence also showed that this employee was promptly terminated as a result. If anything, this indicates that defendants did not tolerate racist comments. Regardless, we are not persuaded that one employee's comments on one occasion are sufficient to indicate a predisposition to discriminate. *Reisman, supra* at 538. Consequently, we conclude that the trial court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Pat M. Donofrio
/s/ Henry William Saad
/s/ Donald S. Owens

¹ We caution that we do not blindly accept defendant's contention that it applied its policies even-handedly. However, plaintiff did not even provide the names of white guests who were purportedly allowed to hold birthday parties at the hotel, much less introduce deposition testimony confirming the assertion. Similarly, although defendant's security officer testified that he "would say" that he was personally familiar with situations where white guests were given more than three warnings about noise, he could not recall a specific instance where that happened. Again, it was plaintiff's burden to demonstrate a prima facie case of discrimination. We simply conclude that reasonable minds could not differ in concluding that plaintiff failed to satisfy her burden.