

STATE OF MICHIGAN
COURT OF APPEALS

ANTHONY O. WILSON,

Plaintiff-Appellant,

v

GENESEE COUNTY,

Defendant-Appellee.

UNPUBLISHED

April 3, 2008

No. 276533

Genesee Circuit Court

LC No. 06-085164-CD

Before: Kelly, P.J., and Owens and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court orders granting defendant's motion for summary disposition and denying plaintiff's motion for reconsideration. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On April 26, 2006, plaintiff completed an application for a license enforcement position with defendant. The temporary position, which paid \$9 per hour and did not include benefits, was with the animal control department relating to counting dogs, issuing tickets, and selling delinquent dog licenses.

Plaintiff received a letter in June stating that he was not offered the position because other applicants were found to be more suitable. The following January, defendant's director of human resources stated in an affidavit that plaintiff's name was not on the list of successful applicants for human resources to call for an interview because his application materials were misplaced after their initial receipt and review.

Defendant ultimately offered the position to eight individuals, including three African Americans, one multi-racial individual, and four Caucasians. Seven of those people accepted the positions, with one African American declining the job.

Plaintiff argued to the trial court that his law degree, and licensing as an attorney in Texas, made him more qualified than the others for the position because he is trained to apply law to facts. Plaintiff also contended that defendant's stated reasons for not hiring him were not believable.

The trial court found that plaintiff's law degree had nothing to do with the position, and therefore did not make him more qualified for the job. The trial court also found that defendant's

proffered reasons for not hiring plaintiff were legitimate and nondiscriminatory. The trial court granted summary disposition in favor of defendant.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Hazle v Ford Motor Co*, 464 Mich 456, 461; 628 NW2d 515 (2001). A summary disposition motion brought under MCR 2.116(C)(10) is reviewed in the light most favorable to the nonmoving party and tests the factual support of a claim. *Id.* The moving party is entitled to judgment as a matter of law if there is no genuine issue concerning any material fact. *Id.*

Michigan's Elliot-Larsen Civil Rights Act provides, in part, that an employer shall not:

[f]ail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status. [MCL 37.2202(1)(a).]

When there is no direct evidence of discrimination consisting of "evidence which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the employer's actions" then plaintiff must present a prima facie case of discrimination. *Hazle, supra*, 462. A rebuttable prima facie case of discrimination is made when the following four elements are shown: (1) the plaintiff belongs to a protected class, (2) the plaintiff suffered an adverse employment action, (3) the plaintiff was qualified for the position, and (4) "the job was given to another person giving rise to an inference of unlawful discrimination." *Id.* A defendant may rebut that presumption of discrimination by articulating a legitimate, nondiscriminatory reason for its employment decision. *Id.*, 465. The focus is not on the wisdom of the defendant's decision, but rather on whether the decision was motivated by a discriminatory animus. *Id.* If the defendant presents legitimate nondiscriminatory reasons for its decision then plaintiff must demonstrate that the evidence is sufficient for a reasonable trier of fact to conclude that discrimination was a motivating factor in defendant's adverse employment decision. *Id.* The plaintiff must not show merely that the defendant's employment decision was a pretext, but rather that it was a pretext for unlawful discrimination. *Id.*, 465-466. In other words, the plaintiff must show that reasonable minds could differ as to whether consideration of the protected characteristic made a difference in the adverse employment decision. *Id.*

In this case, plaintiff is African-American and was not hired by defendant for the position of license enforcement officer. Therefore, the first two elements creating plaintiff's rebuttable prima facie case were established. The third element regarding qualification for the position was also met based on the posted minimum requirements for the job (i.e., a high school diploma or equivalent, Michigan driver's license, valid automobile insurance, and use of a vehicle during working hours). There is no dispute that plaintiff met the minimum qualifications.

The fourth element of the prima facie case requires that the job be given to another person under circumstances giving rise to an inference of unlawful discrimination. *Hazle, supra*, 463. The open positions for this job were offered to three African Americans, one person of mixed race, and four Caucasians. Even though it is difficult to see how these circumstances could give rise to an inference of unlawful discrimination, when taken in the light most favorable to plaintiff, it is possible that plaintiff could have demonstrated the four elements to establish a rebuttable prima facie case.

The burden then shifted to defendant to articulate a legitimate nondiscriminatory reason for its decision to not hire plaintiff. *Hazle, supra*, 464. Defendant's stated reasons for not hiring plaintiff were that others were more qualified for the position, and plaintiff's application materials were misplaced such that he did not receive a call for an oral interview. Both of those reasons are unrelated to plaintiff's race, and therefore satisfy defendant's burden. Consequently, the burden once again shifted back to plaintiff to show that those reasons were a mere pretext, and that consideration of plaintiff's race, a protected characteristic, was a motivating factor and made a difference in defendant's decision. *Id.*, 466.

Plaintiff has not presented any evidence showing that defendant's reasons were a pretext for defendant to consider his race when deciding to not hire him.

Accordingly, the presumption of discrimination dropped away when defendant made a sufficient showing of legitimate nondiscriminatory reasons for not hiring plaintiff. Plaintiff has not met his burden of production to show that unlawful discrimination was a motivating factor in defendant's decision to not hire him.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Donald S. Owens
/s/ Bill Schuette