STATE OF MICHIGAN

COURT OF APPEALS

CLEO ALFRED WILLIAMS,

Plaintiff-Appellant,

v

FORD VISTEON MOTOR COMPANY,

Defendant-Appellee,

and

PAUL NOWICKI,

Defendant.

UNPUBLISHED
June 21, 2005

No. 253979
Macomb Circuit Court
LC No. 2002-005599-CD

Before: Sawyer, P.J., and Markey and Murray, JJ.

PER CURIAM.

Plaintiff, acting in propria persona, appeals as of right from the trial court's order granting defendant "Ford Visteon Motor Company's" motion for summary disposition pursuant to MCR 2.116(C)(10) in this case alleging race discrimination action under the Michigan Civil Rights Act, MCL 37.2101 *et seq.* We affirm.

Plaintiff was employed by defendant Ford Motor Company for approximately 18-1/2 years until he was convicted of murdering his wife in 1982. Following his conviction, he was incarcerated in prison for approximately 17-1/2 years. After he was released from prison, plaintiff unsuccessfully attempted to get his job back with defendant. Plaintiff, who is black, thereafter commenced this action, alleging that defendant refused to rehire him because of his race. Defendant moved for summary disposition under MCR 2.116(C)(10). The trial court granted defendant's motion.[1]

[1] Defendant Paul Nowicki was dismissed by stipulation in the trial court, and is not involved in this appeal.

This Court reviews the trial court's grant or denial of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim. The motion should be granted if the evidence demonstrates that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001).

Proof of discriminatory treatment in violation of the Civil Rights Act may be established by direct evidence or by indirect or circumstantial evidence. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 132; 666 NW2d 186 (2003). Here, plaintiff claims that he established a prima facie case of race discrimination by indirect evidence, and that he also presented direct evidence of defendant's discriminatory animus sufficient to avoid summary disposition.

As a general rule, to establish a prima facie case of discrimination by indirect or circumstantial evidence, a plaintiff must provide "enough evidence to create a rebuttable presumption of discrimination." *Harrison v Olde Financial Corp*, 225 Mich App 601, 607-608; 572 NW2d 679 (1997). To establish a prima facie case of discrimination based on race, plaintiff must show (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of his qualifications, or was given to another person under circumstances giving rise to an inference of unlawful discrimination. *Hazle v Ford Motor Co*, 464 Mich 456, 467; 628 NW2d 515 (2001); *Harrison*, *supra* at 607 n 6.

A prima facie case is not necessarily enough to get a plaintiff's case to the jury, however. *Id* at 608. If a plaintiff is able to establish a prima facie case of discrimination, "the court then examines whether the defendant has articulated a legitimate, nondiscriminatory reason for its action." *Id*. If the defendant is able to articulate such a reason, "the court next considers whether the plaintiff has proved by a preponderance of the evidence that the reason offered by the defendant was a mere pretext for discrimination." *Id.*

Here, plaintiff claims that he presented indirect evidence of discrimination by showing that defendant rehired another employee after he had been incarcerated, Dennis Kranick, who is white. We disagree. The evidence showed that plaintiff and Kranick were not similarly situated. Although plaintiff acknowledged at his deposition that he did not know the circumstances surrounding Kranick's termination or reinstatement, defendant submitted evidence showing that Kranick was imprisoned in the county jail for less than a year for a much less serious offense. Additionally, Paul Nowicki, the person who declined to rehire plaintiff, was not involved in the decision to rehire Kranick, and, unlike plaintiff, Kranick retained his union membership during his incarceration and was still a member of the union when he was rehired. Because plaintiff and Kranick were not similarly situated, the evidence of Kranick's reinstatement does not give rise to an inference that defendant discriminated against plaintiff based on his race when it declined to rehire plaintiff. *Mitchell v Toledo Hosp*, 964 F2d 577, 582-583 (CA 6, 1992). Further, defendant provided a legitimate, nondiscriminatory reason for its decision not to rehire plaintiff, i.e., that plaintiff was convicted of murder and had been incarcerated for more than seventeen years, and plaintiff has not shown that this reason was a pretext for unlawful discrimination.

Plaintiff also claims that he presented direct evidence of defendant's discriminatory animus, that being a remark allegedly made by Nowicki to the effect that "a lot of you black guys always seem to end up in prison." "'Direct evidence' has been defined as evidence that, if believed, 'requires the conclusion that unlawful discrimination was at least a motivating factor.'" *Harrison*, *supra* at 610 (citations omitted). Where there is direct evidence of discriminatory animus, "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." *Id.* at 613.

Nowicki's alleged statement does not relate to the subject of plaintiff's employment and, therefore, does not rise to the level of direct evidence that would "require the conclusion that unlawful discrimination was at least a motivating factor" in the decision not to rehire plaintiff. *Id.* at 610 (citations omitted). Furthermore, even if the remark could be considered direct evidence of discriminatory animus, because defendant's decision could have been based on permissible reasons, i.e., plaintiff's murder conviction and incarceration for 17-1/2 years, plaintiff would be required to show that defendant's discriminatory animus "was more likely than not a 'substantial' or 'motivating' factor in the decision." *Sniecinski*, *supra* at 133. Considering the isolated nature of the statement and the fact that it was not directed at the subject of plaintiff's employment, together with the undisputed facts of plaintiff's murder conviction, lengthy period of incarceration and lack of union membership, plaintiff cannot show that the statement was more likely than not a factor in the decision not to rehire plaintiff.

Plaintiff also argues that the trial court violated his right to due process by denying his motions to compel discovery, ordering him to pay $250 in sanctions for filing a frivolous motion for summary disposition, and by limiting his argument in response to defendant's motion for summary disposition. We find no merit to these arguments.

First, the record discloses that defendant responded to all discovery requests concerning matters and items within its control. When defendant was unable to respond to some requests because it did not have possession of the requested items, plaintiff was given advice and an opportunity to pursue discovery of the items from the proper parties, but failed to do so. The trial court did not abuse its discretion in denying plaintiff's motion to compel. *Reed Dairy Farm Co v Consumers Power Co*, 227 Mich App 614, 616; 576 NW2d 709 (1998).

Second, where plaintiff filed a motion for summary disposition in which he questioned the character of defense counsel, repeated virtually his entire complaint, and simply announced that defendant's defenses were frivolous, but failed to make any legal argument in support of his motion, the trial court did not err in assessing a sanction of $250 for filing a frivolous motion. MCL 600.2591; *In re Costs & Attorney Fees*, 250 Mich App 89, 94, 104; 645 NW2d 697 (2002); *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 266; 548 NW2d 698 (1996).

Finally, the trial court did not improperly limit plaintiff's argument. MCR 2.119(E)(3) (granting trial court discretion to limit oral argument). The court merely prevented plaintiff from reading material that had already been presented to the court in plaintiff's pleadings. Plaintiff was given ample opportunity to develop his argument and, because plaintiff only sought to read material that had already been presented to the court, his right to due process was not violated.

Affirmed.

/s/ David H. Sawyer
/s/ Jane E. Markey
/s/ Christopher M. Murray