

STATE OF MICHIGAN
COURT OF APPEALS

ERIC JORGE,

Plaintiff-Appellant,

v

DEPARTMENT OF STATE POLICE,

Defendant-Appellee.

UNPUBLISHED
November 27, 2012

No. 308283
Saint Joseph Circuit Court
LC No. 11-000085-CD

Before: CAVANAGH, P.J., and HOEKSTRA and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff challenges the trial court's ruling that he failed to show that a genuine issue of material fact existed regarding whether there was direct evidence that racism was a motivating factor in defendant's termination of plaintiff's employment.¹ We affirm because even if plaintiff can show racism by his superior officer, he cannot show that such racism caused plaintiff to be fired.

A trial court's grant of summary disposition is reviewed de novo. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Summary disposition of all or part of a claim or defense may be granted when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10).

The Civil Rights Act (CRA), provides in pertinent part that:

(1) An employer shall not do any of the following:

¹ Before the trial court, plaintiff also argued that there was sufficient indirect evidence under the steps set forth in *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973). However, on appeal, plaintiff does not address any indirect evidence of discrimination under *McDonnell Douglas*, and his failure to address the merits of that issue on appeal constitutes an abandonment of the issue. *Houghton ex rel Johnson v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003).

(a) Fail 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 . . . race, [MCL 37.2202(1).]

A plaintiff may use either direct or indirect evidence to establish a case of unlawful discrimination under the CRA. *Hazle v Ford Motor Co*, 464 Mich 456, 462; 628 NW2d 515 (2001). In this case, plaintiff alleges five acts or statements that he claims are direct evidence of racial discrimination by Michael Risko, his post commander.

However, “[u]nder the direct evidence test, a plaintiff must present direct proof that the discriminatory animus was causally related to the adverse employment decision.” *Sniecinski v Blue Cross & Blue Shield of Mich*, 469 Mich 124, 135; 666 NW2d 186 (2003). Here, plaintiff’s employment was terminated based on a complaint from a fellow trooper, Matt Lackey, that plaintiff threatened him. Defendant’s policy mandates that threats of violence, regardless of whether the threat is feared or believed, must be reported to supervisors and that those reports must ultimately be reported to the Michigan State Police Human Resources Division in a timely manner. Accordingly, when Lackey and his supervisor reported the threat to Risko, he forwarded that complaint to his superiors as required by defendant’s policy. After an internal investigation in which Risko did not participate, plaintiff’s employment was terminated based on a decision made by Lieutenant Colonel Eddie Washington.² Thus, even if plaintiff’s evidence showed that Risko was racially biased, plaintiff provides no evidence that any bias on Risko’s part was causally related to Washington’s decision to terminate plaintiff. *Id.* Accordingly, because there is no genuine issue as to any material fact and defendant is entitled to judgment as a matter of law, the circuit court did not err in granting summary disposition to defendant pursuant to MCR 2.116(C)(10). *Latham*, 480 Mich at 111.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra
/s/ Douglas B. Shapiro

² Plaintiff had previously accepted a ten day suspension for making a threat against Risko’s life.