

STATE OF MICHIGAN
COURT OF APPEALS

JEFFREY T. BLAND,

Plaintiff-Appellant,

v

COMPREHENSIVE LOGISTICS CO., INC.,

Defendant-Appellee.

UNPUBLISHED

May 14, 2013

No. 310608

Eaton Circuit Court

LC No. 10-001302-CD

Before: FORT HOOD, P.J., and FITZGERALD and O'CONNELL, JJ.

PER CURIAM.

In this action for wrongful discharge from employment, plaintiff appeals as of right the trial court's grant of summary disposition in favor of defendant. We affirm, on two grounds: plaintiff failed to present direct evidence of age discrimination, and plaintiff failed to state a claim for wrongful discharge in violation of public policy.

Plaintiff's complaint arose when defendant discharged him at age 51, after he had worked for defendant as an at-will member of defendant's sales team for more than 25 years. Defendant's primary customers during many of those years were General Motors (GM) and Ford Motor Company (Ford). In late 2008 and early 2009, when GM and Ford faced severe financial challenges, defendant impelled its sales team to generate new, nonautomotive business. Plaintiff alleges that at a December 2008 sales meeting, defendant's vice president made comments about needing a younger, more aggressive sales force. Several months later, in July of 2009, the vice president made another statement to the effect that defendant wanted to hire younger people who were aggressive for commission.

The same month, defendant reassigned plaintiff to a different working location and gave him different responsibilities. Defendant informed plaintiff that the reassignment would revamp his compensation and would make him eligible for commissions. In an email, defendant advised plaintiff, "it is imperative that all Sales resources are aggressively engaged in finding new business, as opposed to the maintenance of existing business." Plaintiff opposed the relocation and reassignment. Defendant informed plaintiff that plaintiff's performance had been lackluster. In addition, defendant advised plaintiff that he must attend an upcoming sales meeting.

Plaintiff did not attend the sales meeting. Instead, plaintiff came to the meeting location and handed the vice president a letter, which stated that plaintiff was immediately taking accrued vacation time to deal with a mold issue in a property he owned. Defendant subsequently

discharged plaintiff, citing repeated insubordination and violation of company policies. Plaintiff sued defendant, alleging counts of age discrimination and discharge in violation of public policy. Defendant moved for summary disposition on both counts. The trial court granted defendant's motion.

This Court reviews de novo the trial court's ruling on the summary disposition motion. *DeBrow v Century 21 Great Lakes, Inc (After Remand)*, 463 Mich 534, 536; 620 NW2d 836 (2001). "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). The Court considers the pleadings and the other relevant record evidence in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial. *Dancey v Travelers Prop Cas Co*, 288 Mich App 1, 7; 792 NW2d 372 (2010).

MCL 37.2202(1)(a) of the Michigan's Civil Rights Act (CRA) prohibits an employer from discharging a person because of his or her age. Proof of discrimination in violation of the CRA may be established either by direct evidence or by circumstantial evidence. *Sniecinski v Blue Cross & Blue Shield of Mich*, 469 Mich 124, 132; 666 NW2d 186 (2003). "In cases involving direct evidence of discrimination, a plaintiff may prove unlawful discrimination in the same manner as a plaintiff would prove any other civil case." *Id.* Direct evidence is evidence that, if believed, requires a conclusion that discrimination was a motivating factor in the adverse employment action. *DeBrow*, 463 Mich at 539-540.

In this case, plaintiff asserts that he presented direct evidence of age discrimination (plaintiff does not rely on an indirect evidence theory). Plaintiff argues that defendant's vice president's statements concerning a younger, more aggressive workforce were sufficient direct evidence of age discrimination to withstand defendant's motion for summary disposition. The trial court rejected plaintiff's assertions. The court concluded that even if the vice president had referred to defendant's need for "younger" salespeople, the reference would be insufficient to support plaintiff's assertion of direct evidence of age discrimination.

We agree with the trial court. Taking the evidence in the light most favorable to plaintiff, the vice president's statements establish a general company plan to alter the sales compensation system by shifting commission. The statements do not demonstrate that the vice president or others in the company had a discriminatory motive with regard to age. Moreover, the statements were made on two temporally distinct occasions, unrelated to the conversations and emails surrounding plaintiff's discharge. Cf. *DeBrow*, 463 Mich at 540 ("[B]ecause [the discriminatory remark] was allegedly made in the context of the discussion in which plaintiff was informed that he was being removed as president, it bears directly on the intent with which his employer acted in choosing to demote him.") *Id.* at 540.

Plaintiff's claim for discharge in violation of public policy is similarly flawed. Plaintiff contends that defendant discharged him for alerting plaintiff's supervisors that defendant had overbilled a client approximately one million dollars during a three-year time span. This contention is insufficient to support plaintiff's claim. Our Supreme Court explained the public policy exception to at-will employment decisions as follows:

In general, in the absence of a contractual basis for holding otherwise, either party to an employment contract for an indefinite term may terminate it at any time for any, or no, reason. However, an exception has been recognized to that rule, based on the principle that some grounds for discharging an employee are so contrary to public policy as to be actionable. Most often these proscriptions are found in explicit legislative statements prohibiting the discharge, discipline, or other adverse treatment of employees who act in accordance with a statutory right or duty. *Suchodolski v Mich Consol Gas Co*, 412 Mich 692, 694-695; 316 NW2d 710 (1982) (citations omitted).

To state a claim for a discharge in violation of public policy, plaintiff in this case was required to allege that he engaged in protected activity. See *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 453-454; 750 NW2d 615 (2008) (public policy claims are analogous to claims under the Whistleblowers' Protection Act, MCL 15.362, which require proof of protected activity). Plaintiff failed to assert or present evidence that he engaged in protected activity; he also failed to present any evidence that defendant instructed, suggested, or encouraged him to violate any law.

Affirmed.

/s/ Karen M. Fort Hood
/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell