STATE OF MICHIGAN

COURT OF APPEALS

ROBERT L. WHITE,

Plaintiff-Appellant,

v

SGS AUTOMOTIVE SERVICES, INC., f/k/a INTERMODAL TRANSPORTATION SERVICES, INC.,

Defendant-Appellee.

UNPUBLISHED
July 25, 2006

No. 266895
Oakland Circuit Court
LC No. 04-059449-CL

Before: Neff, P.J., and Bandstra and Zahra, JJ.

PER CURIAM.

Plaintiff appeals by right from an order granting summary disposition to defendant pursuant to MCL 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews the grant of a motion for summary disposition de novo. In that review, the Court gives the non-moving party, here the plaintiff, the benefit of every logical inference from the evidence in determining whether there is a genuine issue of fact. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999); *Bertrand v Alan Ford, Inc*, 449 Mich 606, 618; 537 NW2d 185 (1995).

At the age of 60, plaintiff was the Senior Vice President for Marketing and Sales for the defendant corporation when defendant determined to downsize its operations. After one round of layoffs, defendant decided to merge the Marketing and Sales Department with the Operations Department. As a result, plaintiff's job was eliminated. Plaintiff has alleged that his age was a motivating factor in defendant's decision to terminate his employment, and that the defendant's action violated Michigan's Civil Rights law, MCL 37.2202 (1)(a).

McDonnell Douglas Corp v Green, 411 US 792, 802-803; 93 S Ct 1817; 36 L Ed 2d 668 (1973), adopted as Michigan's analytical framework for deciding age discrimination claims, requires that a plaintiff make a prima facie case of discrimination before trial to avoid summary disposition. *Lytle* v *Malady (On Rehearing)*, 458 Mich 153, 172-173; 579 NW2d 906 (1998). To make a prima facie case in an age discrimination claim, a plaintiff must plead and prove that (1) he is a member of a protected class, (2) he has suffered an adverse employment decision, (3)

he was qualified for his job, and (4) he was replaced by a younger employee. *Lytle*, *supra* at 177.

Evidence before us makes it plain that this plaintiff was a member of a protected class because of his age. We also find that plaintiff suffered an adverse employment decision by his employer and that plaintiff was well qualified for his job. However, plaintiff was not "replaced" by a younger employee.

In its ruling in *Lytle*, our Supreme Court adopted federal Sixth Circuit precedent concerning whether employees are "replaced" when a reduction in force occurs and age discrimination is alleged. A work force reduction occurs when business considerations cause an employer to eliminate one or more positions within a company. A person is not "replaced" when another employee is assigned to perform the plaintiff's duties in addition to other duties, or when the work is redistributed to other existing employees already performing related work. An employee is "replaced" only when another employee is hired or assigned to perform plaintiff's duties. *Lytle*, *supra* at 177-178, n 27; *Barnes v GenCorp, Inc*, 896 F2d 1457, 1465 (CA 6 1990).

Proofs in this case showed that plaintiff was not replaced by younger employees but that his duties had been divided and that those who continued working for the defendant took on other additional duties.

Because plaintiff's prima facie case failed, summary disposition was proper. It is not necessary for this Court to proceed with the burden-shifting analysis set forth in *McDonnell Douglas* and *Lytle*.

Affirmed.

/s/ Janet T. Neff
/s/ Richard A. Bandstra
/s/ Brian K. Zahra