STATE OF MICHIGAN

COURT OF APPEALS

VERONICA KNIGHT,

Plaintiff-Appellant,

v

FORD MOTOR COMPANY,

Defendant-Appellee.

UNPUBLISHED
November 17, 2009

No. 284996
Wayne Circuit Court
LC No. 07-700243-CZ

Before: Hoekstra, P.J., and Murray and M. J. Kelly, JJ.

PER CURIAM.

In this discrimination suit, plaintiff Veronica Knight appeals as of right the trial court's order granting summary disposition in favor of defendant Ford Motor Company (Ford) under MCR 2.116(C)(10) and dismissing her claims brought under the Elliott-Larsen Civil Rights Act (CRA), MCL 37.2101 *et seq.* Because we conclude that the trial court properly dismissed Knight's claims, we affirm.

Knight is an African-American woman who began working for Ford in 1977. The claims in this lawsuit pertain to her years as a hi-lo driver. She claimed she was denied a hi-lo driver position in a "new building" constructed by Ford and in a buffer work area despite being qualified for the positions. Knight's complaint, which was filed in 2007, asserted that she was denied the positions due to race, gender, and weight discrimination, and in retaliation for grievances she had filed against various supervisors.

Ford filed a motion for summary disposition under MCR 2.116(C)(10), arguing, among other things, that (1) many of Knight's complaints fell outside the statute of limitations, (2) she failed to show direct evidence of race or gender discrimination, (3) she failed to show direct or indirect evidence of weight discrimination, and (4) she was not subject to any adverse employment action because the positions she sought offered the exact same pay, benefits, and opportunities for overtime as her current job. The trial court agreed:

> The problem is, counsel, as I read through all of that, there's one sentence [in] [*Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 363; 597 NW2d 250 (1999)] that make[s] a great deal of sense to me. When you're claiming indirect evidence [of] discrimination, you still have to show an adverse employment action. And the Court stated, there must be some objective basis for

> demoting; the change is adverse because of a plaintiff's subjective impression as to the desirability of one position over another are not controlling.
>
> So far all I've heard you argue as far as facts is that on occasion her hilo was not available, that on one or two times her hours were not correctly calculated and that [a co-worker] got the job in the new building, except that. And those positions fall in the same classification, duties, compensation, benefit, overtime opportunity, as the plaintiff already had in her present position. In addition to that, the job was given to an African American male and a white male, both of whom had more seniority than the plaintiff. I'm looking for something here and I don't see it. It may not have been the most pleasant place to work, but I'm not seeing any activity that demonstrate[s] any discrimination here.

On appeal, Knight claims there were genuine issues of material fact, as established through her deposition testimony and that of three former co-workers, to support her claims of race, gender, and weight discrimination, and for retaliation. This Court reviews de novo a trial court's decision on a motion for summary disposition. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004). Summary disposition under MCR 2.116(C)(10) is appropriate where there is no genuine issue regarding any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Initially, the moving party has the burden of supporting its position with documentary evidence, and, if so supported, the burden then shifts to the opposing party to establish the existence of a genuine issue of disputed fact. *Quinto*, 451 Mich at 362. "Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Id.* If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Id.* at 363. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

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). Direct evidence of discrimination consists of evidence that, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor with respect to the actions of an employer. *Id.* In cases that involve indirect or circumstantial evidence, a plaintiff must proceed by using a burden-shifting approach. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 133-134; 666 NW2d 186 (2003). Under this approach, a plaintiff is permitted to present a rebuttable prima facie case of discrimination on the basis of evidence from which a trier of fact could infer that the plaintiff was the victim of unlawful discrimination. *Id.* at 134.

"To establish a rebuttable prima facie case of discrimination, a plaintiff must present evidence that (1) she belongs to a protected class, (2) she suffered an adverse employment

action, (3) she was qualified for the position, and (4) her failure to obtain the position occurred under circumstances giving rise to an inference of unlawful discrimination." *Sniecinski*, 469 Mich at 134. The fourth element can be shown by evidence that other employees, similarly situated and outside the protected class, were not subject to the employer's adverse conduct. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 178; 579 NW2d 906 (1998).

"Once a plaintiff has presented a prima facie case of discrimination, the burden then shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the adverse employment action." *Sniecinski*, 469 Mich at 134. When a defendant produces evidence of a legitimate, nondiscriminatory basis in support of the adverse employment action, the burden shifts back to the plaintiff to show that the reasons proffered by the defendant were not true, but were merely a pretext for discrimination. *Id.*

In order to establish claims under MCL 37.2202 and 37.2701, the plaintiff must present evidence that he or she suffered an adverse employment action. *Chen v Wayne State Univ*, 284 Mich App 172, 201; 771 NW2d 820 (2009).

> There is no exhaustive list of what constitutes adverse employment actions. *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 312; 660 NW2d 351 (2003). And what might constitute an adverse employment action in one employment context might not be actionable in another employment context. See *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 363; 597 NW2d 250 (1999). Hence, whether Chen suffered an adverse employment action must be ascertained in light of the unique characteristics of his status as a tenured professor at a major state university. Nevertheless, regardless of the employment context, in order to be actionable, an employment action must be materially adverse to the employee—that is, it must be more than a mere inconvenience or minor alteration of job responsibilities. *Meyer v Center Line*, 242 Mich App 560, 569; 619 NW2d 182 (2000). In addition, there must be an objective basis for demonstrating that the employment action is adverse because a plaintiff's subjective impressions are not controlling. *Wilcoxon*, 235 Mich App at 364. Materially adverse employment actions are akin to "'"termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation."'" *Id.* at 363, quoting *Kocsis v Multi-Care Mgt, Inc*, 97 F3d 876, 886 (CA 6, 1996), quoting *Crady v Liberty Nat'l Bank & Trust Co*, 993 F2d 132, 136 (CA 7, 1993). [*Id.* at 201-202.]

For each of her claims, Knight failed to present evidence that she suffered an adverse employment action; none of the employment actions noted by Knight are akin to "termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation."[1] *Chen*, 284 Mich App at 202. Knight acknowledged

[1] In her brief on appeal, Knight stated in passing that she was constructively discharged. (continued…)

in her deposition testimony that the job in the new building paid the same and received the same benefits as her current position. Although the work conditions in the areas where she worked were perceived as less desirable (because there was less down time and more activity), such conditions amounted to mere inconveniences that were subjective in nature. *Id.* Further, the fact that a small hi-lo was not always immediately available for Knight's use does not establish an adverse employment action. Rather, that, too, constitutes a mere inconvenience. The other allegations by Knight, e.g., that no one readily substituted for her when she needed to switch batteries in her hi-lo, that she was mistakenly attributed additional work hours that temporarily caused her to not receive overtime hours, that she had to "clean up messes" left behind by white male drivers (however, there was no indication in the record that she was ordered by management to do this), likewise do not rise to the level of adverse employment actions. *Id.*

Knight also did not establish that her failure to obtain the position of hi-lo driver in the new building when she first requested it (she was ultimately assigned to that location) or the earlier buffer job position occurred under circumstances giving rise to an inference of unlawful discrimination. The buffer job was given to an African-American male with more seniority than Knight. Knight filed a grievance when she was not given the position, but it was unsuccessful. The new building job was given to a white male who, as even Knight conceded, had more seniority than her and was capable of driving the large hi-los. Knight filed a grievance when she was not offered the position, and there was a finding of no discrimination. A journal notation by Knight in November 2005 indicated she also was interested in a "hot stocker" position. But the notation went on to state that it was given to someone with more seniority. Finally, although Knight claimed the drop line was an undesirable job and that she was unfairly assigned there, she also stated she was the only African-American who regularly worked the drop line and the other drivers were primarily white males. That she was the only minority in the drop line and that the other drivers were white males deflates her argument that she was discriminated against because of her race and gender in being placed there.

For theses reasons, we conclude that the trial court did not err when it dismissed Knight's claims against Ford.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Christopher M. Murray
/s/ Michael J. Kelly

(…continued)

However, she does not connect this statement to her argument that she suffered an adverse employment action and does not offer any meaningful analysis of the facts or law concerning constructive discharges. Further, to the extent that such an argument might be inferred from her brief on appeal, we conclude that Knight has abandoned it. See *Chen*, 284 Mich App at 206-207.