

WELLER v. TITANIUM METALS CORPORATION ET AL.

[Cite as *Weller v. Titanium Metals Corp.*, 102 Ohio St.3d 8, 2004-Ohio-1775.]

*Employment — Age discrimination — R.C. 4112.14(A) — Judgment decided on the authority of *Coryell v. Bank One Trust Co. N.A.**

(No. 2003-0426 — Submitted October 21, 2003 — Decided April 21, 2004.)

ON ORDER from the United States District Court for the Southern District of Ohio, Eastern Division, Certifying a Question of State Law, No. C:202290.

{¶1} We answer the certified question by citing the syllabus in *Coryell v. Bank One Trust Co., N.A.*, 101 Ohio St.3d 175, 2004-Ohio-723, 803 N.E.2d 781:

{¶2} “1. Absent direct evidence of age discrimination, in order to establish a prima facie case of a violation of R.C. 4112.14(A) in an employment discharge action, a plaintiff-employee must demonstrate that he or she (1) was a member of the statutorily protected class, (2) was discharged, (3) was qualified for the position, and (4) was replaced by, or the discharge permitted the retention of, a person of substantially younger age. (*Kohmescher v. Kroger Co.* [1991], 61 Ohio St.3d 501, 575 N.E.2d 439, syllabus, modified and explained.)

{¶3} “2. The term ‘substantially younger’ as applied to age discrimination in employment cases defies an absolute definition and is best determined after considering the particular circumstances of each case.

{¶4} “3. A plaintiff may plead a prima facie case of age discrimination by pleading ‘a short and plain statement of the claim showing that the party is entitled to relief.’ (Civ.R. 8[A][1], applied.)”

MOYER, C.J., RESNICK, F.E. SWEENEY, PFEIFER and O’CONNOR, JJ., concur.

LUNDBERG STRATTON, J., dissents.

SUPREME COURT OF OHIO

O'DONNELL, J., dissents.

LUNDBERG STRATTON, J., dissenting.

I respectfully dissent for the reasons set forth in my dissenting opinion in *Coryell v. Bank One Trust Co. N.A.*, 101 Ohio St.3d 175, 2004-Ohio-723, 803 N.E.2d 781, ¶ 28-30.

Tisone & Associates Co., L.P.A., and Raymond J. Tisone, for petitioner.

Frost Brown Todd, L.L.C., and George Yund, for respondents.

Gittes & Schulte and Frederick M. Gittes, for amici curiae AARP, Ohio Academy of Trial Lawyers, Ohio Employment Lawyers Association, and Ohio Civil Rights Commission.
