

{¶5} Jackson quickly began to “down-size” the Home by reducing staff and shifting responsibilities to other positions. Plaintiff was asked to assume the duties of certain employees who were no longer with the Home. Specifically, plaintiff assumed the responsibilities of the security chief and the maintenance chief in addition to his own duties. Nevertheless, plaintiff and Jackson began to have personality conflicts soon after Jackson became superintendent. According to plaintiff, Jackson was “different” from the superintendents he had worked with in the past. Plaintiff testified that Jackson was hot tempered and unpredictable; that she had an abrasive personality and frequently used profanity.

{¶6} Under Jackson’s reorganization plan, a consultant by the name of George Oliver was hired to draft an employee handbook and a new organizational chart. Plaintiff testified that he was not happy with the new title, Deputy of Indirect Services, and job duties for which he was slated under the reorganization scheme. In addition, plaintiff was very displeased with the job description for the new position, and he was also unhappy with the fact that the position was on the third tier of the organizational chart. Plaintiff stated that he no longer felt that he was a part of the inner circle.

{¶7} Jackson testified that she was originally sent to the home to conduct a feasibility study and make a report and that she was then put in the position of superintendent. Her goals as superintendent were to obtain licensure for the Home and to improve the quality of services delivered to the children (direct services). Jackson believed that the direct services side of the organization was a priority. Jackson testified that she wanted plaintiff to assume more responsibility under the indirect services side of the organization. On September 24, 1993, plaintiff was terminated from his position upon Jackson’s recommendation.

{¶8} The employee has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. *Basinger v. Pilarczyk* (2000), 137 Ohio App.3d 325, 328; *Miller v. Premier Indus. Corp.* (2000), 130 Ohio App.3d 662, 672. Absent direct evidence of age discrimination by the employer, it must be shown that the employee was: 1) a member of a protected class; 2) discharged; 3) qualified for the position; and, 4) replaced by, or the employee’s discharge permitted the retention of, a person not belonging to the protected class. *Ahern v. Ameritech Corp.* (2000), 137 Ohio App.3d 754, 769-770. If a prima facie case is presented, the employer must articulate some legitimate, nondiscriminatory reason for the employee’s discharge. *Basinger, supra*

at 328. The burden then shifts back to the employee to prove that the employer's articulated reason is merely a pretext; that age discrimination is the true reason for the discharge. *Id.*

{¶9} Plaintiff claims that he was replaced by Richard McDonie, who eventually assumed the position of deputy of indirect services. McDonie is under forty years of age. Defendant argues that plaintiff's former position was assumed by two older employees. Upon review of the evidence, the court finds that plaintiff's position was, in fact, filled by McDonie and that plaintiff has satisfied his burden of proof under the first and fourth elements of his prima facie case. There is also no great dispute that plaintiff was qualified for the position of deputy of indirect services. Indeed, that was the position earmarked for plaintiff under the new organizational scheme.

{¶10} However, plaintiff did not present any direct evidence that his discharge was motivated by age discrimination. Consequently, he relied upon circumstantial evidence to establish his claim.

{¶11} According to plaintiff, twenty-eight employees were terminated after Jackson arrived and, on average, the employees hired were ten years younger. The court notes that some of the employees terminated by Jackson were under forty and some of the new hires were older than forty. Consequently, this evidence does not provide a great deal of support for plaintiff's claim of age discrimination.

{¶12} With respect to the second part of the test, the evidence establishes that plaintiff was eventually terminated by defendant. However, plaintiff testified at trial that he is not sure whether he would have accepted the position of deputy of indirect services if it had been offered to him. Additionally, plaintiff admitted that he discussed the position with Jackson and Oliver and expressed his displeasure. Nevertheless, even if the court were to find that plaintiff set forth a prima facie claim for age discrimination, defendant has clearly established a legitimate nondiscriminatory reason for plaintiff's discharge.

{¶13} Jackson was hired to completely reorganize the Home during a time of extreme financial pressure and in the face of dwindling support from the State. Jackson determined that the emphasis should be on the direct services side of the organization. Plaintiff admits that his background is financial. Additionally, plaintiff was accustomed to a structured military environment and was asked to work for a supervisor whose methods were unconventional at best. Finally,

plaintiff demonstrated a reluctance to relinquish his control over the financial aspects of the Home and to assume the position of deputy of indirect services, which involved management of the more mundane areas of the Home's business, such as security and building maintenance.

{¶14} Moreover, there is virtually no persuasive evidence that plaintiff's termination was related to his age. Although plaintiff testified that Jackson once told him he "looked good for his age," this alleged statement is clearly susceptible to an innocent interpretation and the court does not find it to be persuasive evidence of Jackson's discriminatory intent. Additionally, plaintiff concedes that George Oliver was retained in an upper-level management position and that Oliver is over the age of forty.

{¶15} In the final analysis, it is simply not reasonable to infer from the circumstantial evidence presented that plaintiff's termination was motivated by age discrimination. In fact, the court finds that plaintiff's discharge was primarily caused by plaintiff's incompatibility with new management and with the new structure of the Home. The court further finds that the changes were necessitated by the extreme financial hardship faced by the Home rather than some scheme or plan to rid the Home of older employees.

{¶16} For the foregoing reasons, plaintiff has failed to prove his claim of age discrimination. Judgment shall be rendered in favor of defendant.

FRED J. SHOEMAKER
Judge

Entry cc:

Michael Liss Attorney for Plaintiff
Fifth Third Center, Suite 950
110 North Main Street
Dayton, Ohio 45402-1769

James P. Dinsmore
65 East State St., 16th Fl.
Columbus, Ohio 43215

Assistant Attorney General

LP/cmd
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