[Cite as *Ceglia v. Youngstown State Univ.*, 2014-Ohio-5977.]

Court of Claims of Ohio
The Ohio Judicial Center
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NICKOLA CEGLIA

Plaintiff

v.

YOUNGSTOWN STATE UNIVERSITY

Defendant

Case No. 2013-00454

Judge Patrick M. McGrath
Magistrate Holly True Shaver

DECISION

{¶1} On July 28, 2014, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). With leave of court, on August 22, 2014, plaintiff filed a response. On September 5, 2014, defendant filed a reply.

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." *See also Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶4} Plaintiff began working as an adjunct faculty instructor in defendant's Department of Social Work in 1982. Plaintiff taught a variety of both bachelor and master's level classes over multiple semesters from 1982-1989, 1994-1998, and 2009-2013. In 2006, plaintiff was diagnosed with multiple sclerosis and Parkinson's disease. Plaintiff has openly discussed his health conditions with faculty in the social work department, including Dennis Morawski, PhD, and Shirley Keller, PhD.

{¶5} In November 2012, a position for a full-time instructor/assistant professor was posted in the Department of Social Work. Plaintiff applied for the position but was not interviewed. Plaintiff asserts that when he inquired about the status of the interviewing process, Dr. Morawski told him that defendant's hiring committee was focused on "mid-career" candidates. Plaintiff was 58 years old when he applied for the position.

{¶6} On April 25, 2013, plaintiff learned that defendant had hired a substantially younger candidate, Tami Holcomb-Hathy, who was 44 years old. Plaintiff asserts that Holcomb-Hathy did not meet the minimum qualifications for the position in that she did not have "demonstrated successful teaching experience." In May 2013, plaintiff asked why a younger candidate was chosen, and Dr. Morawski allegedly told him that the hiring committee did not want someone "who had been around for a long time."

{¶7} Plaintiff asserts claims of employment discrimination on the basis of age, disability, and perceived disability, in violation of R.C. 4112.02.

{¶8} R.C. 4112.02 provides, in pertinent part, that: "It shall be an unlawful discriminatory practice: (A) For any employer, because of the * * * disability, [or] age * * * of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment." In Ohio, "federal case law interpreting Title VII of the Civil Rights Act of 1964, Section 2000(e) et seq., Title 42, U.S. Code, is generally applicable to cases involving alleged violations of R.C. Chapter 4112." *Plumbers & Steamfitters Joint Apprenticeship Commt. v. Ohio Civ. Rights Comm.*, 66 Ohio St.2d 192,196 (1981).

{¶9} A plaintiff may establish a prima facie case of discrimination either by direct evidence or by the indirect method established by the United States Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). "Direct evidence of discrimination occurs when either the decision-maker or an employee who influenced

the decision-maker made discriminatory comments related to the employment action in question." *Chitwood v. Dunbar Armored, Inc.*, 267 F. Supp.2d 751, 754 (S.D. Ohio 2003). Further, '"direct evidence is that evidence which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the employer's actions.'" *Johnson v. Kroger Co.*, 319 F.3d 858, 865 (6th Cir. 2003), quoting *Jacklyn v. Schering-Plough Healthcare Prods. Sales Corp.*, 176 F.3d 921, 926 (6th Cir. 1999). "Consistent with this definition, direct evidence of discrimination does not require a factfinder to draw any inferences in order to conclude that the challenged employment action was motivated at least in part by prejudice against members of the protected group." *Id*. citing *Nguyen v. City of Cleveland*, 229 F.3d 559, 563 (6th Cir. 2000).

{¶10} In order for a statement to be evidence of an unlawful employment decision, plaintiff must show a "nexus between the improper motive and the decision making process or personnel. Accordingly, courts consider (1) whether the comments were made by a decision maker; (2) whether the comments were related to the decision making process; (3) whether they were more than vague, isolated, or ambiguous; and (4) whether they were proximate in time to the act of alleged discrimination." *Birch v. Cuyahoga Cty. Probate Court*, 173 Ohio App.3d 696, 705, 2007-Ohio-6189, ¶ 23 (8th Dist.). However, where allegedly discriminatory comments are merely "stray remarks," unrelated to the decision-making process, such comments are not actionable. *See Bogdas v. Ohio Department of Rehabilitation and Correction*, 10th Dist. Franklin No. 09AP-466, 2009-Ohio-6327 citing *Brewer v. Cleveland Schools Bd. of Edn.*, 122 Ohio App.3d 378, 384 (8th Dist.1997); *Smith v. Firestone Tire and Rubber Co.*, 875 F.2d 1325, 1330 (C.A.7, 1989).

{¶11} In plaintiff's affidavit, he states the following regarding comments made by Dr. Morawski:

{¶12} "On or about April 3, 2013, I inquired with Dr. Morawski as to my interview status for the position, and Dr. Morawski responded that the hiring committee was focused on the 'mid-career' candidates. At this point, I realized that I was not being considered for the position since I was a 58-year old, late-career professional who had been working in the field of social work for more than 30 years.

{¶13} "In early May 2013, I was in the social work department when I again inquired with Dr. Morawski about the position being given to a much younger candidate, and he reiterated that the hiring committee was focused on a 'mid-career candidate'

and informed me that the hiring committee 'did not want someone who had been around for a long time.'" (Plaintiff's Exhibit 1, paragraphs 23-24.)

{¶14} Plaintiff alleges that Dr. Morawski's comments stating that the committee was interested in "mid-career" candidates, and that defendant did not want someone who had been around a long time, constitute direct evidence of age discrimination. In his affidavit, Dr. Morawski explains his comments as follows:

{¶15} "During the spring of 2013, Nick Ceglia did ask me about the status of the search and how it was progressing. I informed him that we had received applications from many highly qualified mid-career candidates. I used the phrase mid-career to emphasize the fact that the candidates that we were considering all had substantial social work experience. I did not use mid-career in a context to denote age, but rather to convey that the other applicants had qualifications similar to his, and I was including Mr. Ceglia within the umbrella of mid-career candidates. I never told Mr. Ceglia that the search committee 'did not want someone who had been around for a long time' and certainly no member of the search committee made any statements of that nature during any of our meetings or discussions. I did not feel comfortable discussing the reasoning of the search committee with Nick Ceglia, who was an applicant for the position. Nick Ceglia's age never had any impact on my willingness to hire him for a position, as is evident from the many adjunct courses that he has taught for YSU." (Defendant's Exhibit C, ¶ 17.)

{¶16} With regard to the mid-career comment, construing the evidence most strongly in plaintiff's favor that comment requires a factfinder to draw an inference to conclude that the committee's decision not to hire plaintiff was motivated at least in part by prejudice against plaintiff's age. The comment "mid-career" does not require the conclusion that unlawful discrimination was a motivating factor in defendant's failure to hire plaintiff, inasmuch as plaintiff could also be included in the "mid-career" category. Therefore, that comment does not constitute direct evidence of age discrimination.

{¶17} With regard to Dr. Morawski's alleged comment that the committee did not want someone who had been around for a long time, although the alleged comment was made by a decision maker and was related to plaintiff's inquiry about the decision making process, this comment was ambiguous in that it does not require the conclusion that age discrimination was a motivating factor in the decision not to hire plaintiff. Indeed, the comment could be construed as an indication that defendant was seeking

an applicant who was new to the university, not necessarily someone who was of a certain age. The only reasonable conclusion is that neither comment constitutes direct evidence of age discrimination.

{¶18} In order to state a prima facie case of age discrimination by indirect evidence, under *McDonnell Douglas*, plaintiff first has "the burden of proving by the preponderance of the evidence a prima facie case of discrimination. Second, if the plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant 'to articulate some legitimate, nondiscriminatory reason for the employee's rejection.' * * * Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination." *Texas Dept. of Comm. Affairs v. Burdine*, 450 U.S. 248, 252-253 (1981), quoting *McDonnell Douglas*, at 802, 804.

{¶19} An inference of discriminatory intent may be drawn where plaintiff establishes that he: 1) was at least 40 years old at the time of the alleged discrimination; 2) was subjected to an adverse employment action; 3) was otherwise qualified for the position; and 4) that after plaintiff was rejected, a substantially younger applicant was selected. *Coryell v. Bank One Trust Co., N.A.*, 101 Ohio St 3d 175, 2004-Ohio-723, paragraph 1 of the syllabus. Plaintiff has established that he was 58 years old at the time that he was not selected for the position that he was qualified for the position, and that Tami Holcomb-Hathy, who was 44 years old at the time that she was selected, is substantially younger than plaintiff. Defendant does not dispute that plaintiff has stated a prima facie case of age discrimination.

{¶20} "If the plaintiff establishes a prima facie case, then the burden of production shifts to the employer to present evidence of 'a legitimate, nondiscriminatory reason' for the employer's rejection of the employee." *Williams v. City of Akron*, 107 Ohio St.3d 203, 2005-Ohio-6268, ¶ 12. "If the employer meets its burden of production, 'the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination.'" *Id*. at ¶ 14, quoting *Burdine, supra*, at 253. "To establish pretext, a plaintiff must demonstrate that the proffered reason (1) has no basis in fact, (2) did not actually motivate the employer's challenged conduct, or (3) was insufficient to warrant the challenged conduct. Regardless of which option is

chosen, the plaintiff must produce sufficient evidence from which the trier of fact could reasonably reject the employer's explanation and infer that the employer intentionally discriminated against him. A reason cannot be proved to be a pretext for discrimination unless it is shown both that the reason was false, and that discrimination was the real reason." (Internal citations omitted.) *Knepper v. Ohio State Univ.*, 10th Dist. Franklin No. 10AP-1155, 2011-Ohio-6054, ¶ 12. "The ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff." *Burdine, supra*, at 253.

{¶21} The hiring committee included Drs. Morawski and Keller, Melody Hyppolite, PhD., and Karla Wyant, LISW-S. According to Dr. Keller, after applications were submitted, the committee went through the list of minimum qualifications and separated the applicants' resumes into two piles: those who met the minimum qualifications and those who did not. Plaintiff was one of six applicants who met the minimum qualifications. The applicants who did not meet the minimum qualifications were not considered further.

{¶22} Once the pool was narrowed to six applicants, the committee was assigned to contact the applicants' references for telephone interviews. Dr. Hyppolite was assigned to contact plaintiff's references, and she successfully contacted two of his three references. According to Dr. Hyppolite, one of plaintiff's references stated that plaintiff was "not the best at paperwork." When this comment was shared with the committee, the committee was concerned because the position entailed keeping up with paperwork for the students, and assigning students to certain local agencies. Wyant testified that the position that was being filled was very similar to her own, and in her opinion, it required excellent organizational skills because a lot of paperwork was required.

{¶23} Another of plaintiff's references stated in his telephone interview that plaintiff had "health issues." Dr. Hyppolite stated that she mentioned "health issues" at the committee meeting simply because that was what was reported by the reference. Drs. Keller and Morawski also knew that plaintiff suffered from MS and Parkinson's disease because they were acquainted with plaintiff and he had disclosed this information to them on occasion. The committee testified that age and disability status were not discussed regarding any of the applicants, and that plaintiff's health problems did not interfere with plaintiff's adjunct teaching abilities in the past.

{¶24} According to the committee members' depositions, after discussing the six candidates, plaintiff was not ranked in the top three for the following reasons: Wyant and Dr. Keller had concerns that plaintiff had crossed boundaries with students by taking them out to a restaurant and by socializing with them. Wyant was also concerned about whether plaintiff was appropriate for the position because of complaints that she had received from former students of plaintiff who informed her that he had not required a mandatory writing assignment in his research methods class. According to Wyant, she felt that plaintiff did not require a writing assignment that was intensive or lengthy enough, and that once plaintiff's students reached her class, she was forced to "re-teach" the students how to write a research paper. As a result of that incident, Wyant reported her complaints about plaintiff to her academic chairperson in 2010. In addition, Wyant testified that plaintiff's professionalism and his follow-through abilities were concerns to her. Wyant added that plaintiff's reference who stated that plaintiff was not the best at paperwork concerned her, and that the reference's comment affected plaintiff's ranking for the position. In contrast, Wyant testified that she felt that Holcomb-Hathy had a more well-rounded resume than plaintiff.

{¶25} Dr. Keller, who was 66 years old at the time of the posting, testified that she and plaintiff have been professional colleagues for 20 or 25 years and that she has served as a professional reference for him in the past. Dr. Keller testified that her students complained to her at various times that plaintiff gave out easy grades, and that he let them out of class early. According to Dr. Keller, Holcomb-Hathy had more field education experience than plaintiff, and her references described her as organized and effective as a leader. Dr. Keller concluded that Holcomb-Hathy was a better fit for the position than plaintiff.

{¶26} Dr. Morawski, who was 57 years old at the time of the posting, has known plaintiff for approximately 10 years. According to Dr. Morawski, Wyant's experience with her students being unprepared after taking plaintiff's research methods course played a factor in why plaintiff was not ranked as one of the top three candidates.

{¶27} Dean Joseph Mosca testified that he felt that Holcomb-Hathy was more qualified for the position than plaintiff because of her familiarity with agency settings. According to Dean Mosca, the position required teaching, coordination and oversight of internships, communication with field instructors, conducting evaluations, advising students, and completing administrative tasks. Although Mosca has known plaintiff for

many years, his opinion was that plaintiff was not a good fit for the position. Based upon the evidence submitted in support of its motion, the court finds that defendant has presented evidence of legitimate, nondiscriminatory reasons for defendant's failure to hire plaintiff for the position.

{¶28} The committee interviewed Holcomb-Hathy, Michael Madry, and Mark Woods. After the interviews, the committee decided to offer the position to Madry, who declined it based upon the salary. Holcomb-Hathy was then offered the position and she accepted it.

{¶29} Plaintiff asserts that Holcomb-Hathy was not qualified for the position, because she did not have "demonstrated successful teaching experience" as required in the job posting. However, with regard to that allegation, Dr. Morawski states in his affidavit:

{¶30} "* * * Ms. Holcomb-Hathy-Hathy fulfilled all of our posted requirements by having a Master in Social Science Administration ("MSSA"), which is the equivalent to a MSW, by having well over five years' experience as a social worker after receiving her MSSA, by having extensive experience as a field instructor, and had demonstrated successful teaching experiences for YSU in her first semester as an adjunct instructor. We also were particularly pleased with the contacts that she already had with various agencies in the Lakeland Community College area that would assist her in finding and establishing field sites for our social work students." (Defendant's Exhibit C, ¶ 16.)

{¶31} The court concludes defendant has presented evidence that Holcomb-Hathy met the minimum qualifications for the position.

{¶32} The burden now shifts to plaintiff to demonstrate that defendant's proffered reasons have no basis in fact, did not actually motivate defendant's conduct, or were insufficient to warrant his rejection. *See Knepper, supra*.

{¶33} In plaintiff's affidavit, he disputes defendant's allegations that he gives "easy grades," denies that he has issues with paperwork, denies that he has ever inappropriately socialized with students outside of class, although he acknowledges that he hosts an end-of-the-year celebration with students at a local pizza restaurant, denies that he has a habit of letting classes out early, and denies that he cut a research paper out of the syllabus for his research methods course. (Plaintiff's Exhibit 1.)

{¶34} However, plaintiff's disagreement with the facts discussed during the committee meeting does not create a genuine issue of material fact that would defeat

summary judgment as long as defendant "has an honest belief in its proffered nondiscriminatory reason. The key inquiry in assessing whether an employer holds such an honest belief is 'whether the employer made a reasonably informed and considered decision before taking' the complained-of action. An employer has an honest belief in its rationale when it 'reasonably relied on the particularized facts that were before it at the time the decision was made. We do not require that the decisional process used by the employer be optimal or that it left no stone unturned." (Internal citations omitted.) *Michael v. Caterpillar Fin. Servs. Corp.*, 496 F.3d 584, 598-599 (6th Cir.2007).

{¶35} Indeed, Wyant's personal experience with plaintiff's former students being inadequately prepared to perform research, coupled with plaintiff's own reference stating that plaintiff was not the best at paperwork, do not tend to show that defendant's stated reasons for its actions toward plaintiff were false, and that discrimination was the real reason. The only reasonable conclusion is that defendant's reasons for not selecting plaintiff were not pretextual. Accordingly, the court concludes that defendant is entitled to judgment as a matter of law on plaintiff's claim of age discrimination.

{¶36} Under Ohio law, an individual has a "disability" if he or she has "a physical or mental impairment that substantially limits one or more major life activities" of such individual. R.C. 4112.01(A)(13). To establish a prima facie case of disability discrimination pursuant to R.C.4112.02, plaintiff must demonstrate: "(1) that he or she was disabled; (2) that an adverse employment action was taken by an employer, at least in part, because the individual was disabled, and; (3) that the person, though disabled, can safely and substantially perform the essential the essential functions of the job in question." *Hazlett v. Martin Chevrolet, Inc.*, 25 Ohio St.3d 279, 281 (1986). Then, the burden-shifting analysis of *McDonnell Douglas* begins. *See Hood v. Diamond Prods.*, 74 Ohio St.3d 298, 302, 1996-Ohio-259.

{¶37} In plaintiff's affidavit, he states that he suffers from Parkinson's disease and multiple sclerosis and that "[d]espite these disabilities, I have always been able to perform all essential functions of my job as an instructor at YSU." (Plaintiff's Exhibit 1, ¶ 17.) For purposes of argument, plaintiff states a prima facie claim of disability discrimination.

{¶38} However, inasmuch as the evidence shows that defendant's legitimate, nondiscriminatory reasons for not selecting plaintiff for the position were not a pretext

for discrimination, plaintiff's disability discrimination claims fail as well. The evidence presented in connection with the motion for summary judgment does not permit a factfinder to reasonably conclude that defendant's actions of hiring Holcomb-Hathy for the position would not have occurred if not for plaintiff's disabilities. For the foregoing reasons, the court concludes that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law. Accordingly, defendant's motion for summary judgment shall be granted and judgment shall be rendered in favor of defendant.

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PATRICK M. MCGRATH
Judge

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JUDGMENT ENTRY

{¶39} A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. All previously scheduled events are VACATED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

_____

PATRICK M. MCGRATH
Judge

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