

STATE OF MICHIGAN
COURT OF APPEALS

GERALD T. OSELETT,

Plaintiff-Appellant,

v

THE MICHIGAN CATHOLIC COMPANY and
THE ARCHDIOCESE OF DETROIT,

Defendants-Appellees.

UNPUBLISHED

December 4, 1998

No. 201775

Wayne Circuit Court

LC No. 95-523937 CL

Before: O’Connell, P.J., and Gribbs and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff was demoted from a managerial position to a sales position. On appeal, he argues that the trial court erred in determining that there was no genuine issue of material fact as to whether defendants demoted plaintiff as a result of age discrimination in contravention of the Elliot-Larsen Civil Rights Act, MCL 37.2101, *et seq.*; MSA 3.548(101) *et seq.* We disagree.

We review de novo a trial court’s decision to grant a motion for summary disposition. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). A motion for summary disposition brought pursuant to MCR 2.116(C)(10) tests the factual basis of the underlying a claim. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). When reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(10), this Court must consider the pleadings, affidavits, admissions, depositions, and any other documentary evidence available to it in a light most favorable to the nonmoving party. *Eerdmans v Maki*, 226 Mich App 360, 363; 573 NW2d 329 (1997). Summary disposition may be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Foster v Cone-Blanchard Machine Co*, 221 Mich App 43, 48; 560 NW2d 664 (1997).

In this case, plaintiff established a prima facie case of age discrimination. This created an initial presumption of discrimination. Defendants “disposed of” this presumption by articulating, and

presenting evidence of, several legitimate, nondiscriminatory reasons for plaintiff's demotion. See *Lytle v Malady (On Rehearing)*, 458 Mich 153, 172-174; 579 NW2d 906 (1998). Accordingly, in order to overcome defendants' motion for summary disposition, plaintiff was required "to show, by a preponderance of direct or circumstantial evidence, that there was a triable issue that the employer's proffered reasons were not true reasons, but were a mere pretext for discrimination." See *id.* at 174-176. Plaintiff has not done so.

Plaintiff sought to establish that defendants' proffered reasons for the demotion were pretextual by attempting to demonstrate that the proffered reasons were either not the actual factors compelling the decision, or that they were insufficient to justify the decision. See *Dubey v Stroh Brewery Co*, 185 Mich App 561, 565-566; 462 NW2d 758 (1990). However, in so doing, plaintiff failed to present any evidence that age was a "motivating factor for the adverse action taken by the employer toward the plaintiff." See *Lytle, supra* at 176. In the absence of such evidence, defendants were entitled to summary disposition. *Id.*

In particular, plaintiff's conclusory assumption that his demotion "must have been based on age" because he was replaced by a much younger person is insufficient. The mere fact that he was replaced by a younger person cannot support a claim of age discrimination. See *Barnell v Taubman Co*, 203 Mich App 110, 121-122; 512 NW2d 13 (1993). Moreover, plaintiff's suggestions that his department had completed its best year ever in terms of revenue immediately before his demotion, and that his replacement was under-qualified to take his position, are insufficient because they simply impugn the soundness of defendants' business judgment, see *Dubey, supra* at 566, without addressing defendants' motives. Finally, the fact that plaintiff's supervisor may have opined that he needed "new blood and new thinking" in the department does not indicate age bias, because the statement, if made, was neutral with respect to age. The supervisor's alleged observations that another older employee was "too slow" and "would not adapt to new ways" were similarly neutral with respect to age. In contrast, defendants' proffered legitimate, nondiscriminatory reasons for plaintiff's demotion were supported by ample documentary evidence. Accordingly, plaintiff is not entitled to relief on appeal. *Lytle, supra* at 174-176.

Affirmed.

/s/ Peter D. O'Connell

/s/ Roman S. Gribbs

/s/ Michael J. Talbot