

STATE OF MICHIGAN
COURT OF APPEALS

JIM JOHNSON and ROBERT M. LOVETT III,

Plaintiffs-Appellants,

v

MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED

August 2, 1996

No. 169907

LC No. 91-068583

JIM JOHNSON and ROBERT M. LOVETT III,

v

JAMES CRAIGIE, DEAN PRATT, RICHARD
ANTHONY, JOHN McKOWSKI, KURT JONES,
STATE OF MICHIGAN, and DOUG HOUGHTON,

Defendants-Appellees.

No. 170454

LC No. 92-071684-NZ

Before: Michael J. Kelly, P.J., and Bandstra and S.B. Miller,* JJ.

PER CURIAM.

Plaintiffs appeal as of right orders of the circuit court that granted summary disposition to defendants and denied their motion for new trial/reconsideration/relief from judgment or order and to amend their complaint. We affirm.

With respect to the summary disposition orders, the circuit court found that plaintiffs had failed to establish a prima facie case of racial discrimination and that plaintiffs had merely pled "conclusory, inconsistent accusations of an alleged policy of racial harassment and discrimination." Our review of the

* Circuit judge, sitting on the Court of Appeals by assignment.

record convinces us that, although plaintiffs had the burden to respond with “specific facts showing that there [was] a genuine issue for trial,” plaintiffs responded with only “conclusory allegations.” *Quinto v Cross and Peters Co*, 451 Mich 358, 370; 547 NW2d 314 (1996). The trial court did not err in granting summary disposition to defendants.

To the extent that the appealed order denied plaintiffs' motion to amend their pleadings, the circuit court properly concluded that it had discretion to grant or deny the motion. MCR 2.118(A)(2). Although under MCR 2.118(A)(2), leave to amend "shall be freely given when justice so requires," the purposes of justice would not have been advanced by granting plaintiffs' motion in this case. Plaintiffs had ample time to demonstrate that their claims against defendants were founded upon specific instances of racial discrimination and to develop a factual record in support of their allegations prior to or in response to defendants' motion for summary disposition. The circuit court properly determined that justice did not require that plaintiffs be permitted to file an amended complaint attempting to cure this defect after summary disposition had been granted to defendants.

Finally, plaintiffs argue that the circuit court abused its discretion in granting attorney fees to defendants. There is no record that plaintiffs ever appealed the attorney fees order. In any event, we conclude there was no abuse of discretion. Attorney fees were granted, following mediation, as required by MCR 2.403(O). Although plaintiffs complain because defendants waited until after mediation to file their motion for summary disposition, that approach is clearly permissible under the court rule. MCR 2.403(O)(2)(c). Plaintiffs' arguments that the amount of attorney fees awarded was excessive are not supported by citation to any authority or factual record, and we do not conclude that the circuit court abused its discretion in its award of attorney fees to defendants.

We affirm. Defendants may tax costs. MCR 7.219(F).

/s/ Michael J. Kelly
/s/ Richard A. Bandstra
/s/ Stephen B. Miller