STATE OF MICHIGAN

COURT OF APPEALS

MARY MITCHELL,

Plaintiff-Appellant,

v

FLINT SCHOOL DISTRICT,

Defendant-Appellee.

UNPUBLISHED
August 23, 1996

No. 159046
LC No. 90-001143-NZ

Before: MacKenzie, P.J. and Saad and Youngblood,* JJ

PER CURIAM.

Plaintiff appeals from (1) an order of summary disposition against her on her race and sex employment discrimination claims, and (2) a jury's general verdict for defendant on her age discrimination claim. Finding no error, we affirm on all grounds.

I. Race and Gender Discrimination

Plaintiffs' first series of arguments challenge the trial court's entry of summary disposition against her and the denial of her motion for relief from judgment, on her claims of race and sex discrimination. Defendant presented unrebutted evidence to the circuit court that plaintiff was laid off along with one hundred and twenty-six other people as part of an economically-necessitated reduction-in-force (RIF). The requisites for a prima facie case involving a RIF differ from the ordinary employment discrimination case. See *Matras v Amoco Oil Co,* 424 Mich 675, 685; 385 NW2d 586 (1986).

> Where . . . a plaintiff is discharged as a result of an employer's economically motivated reduction in force (RIF), a prima facie case of disparate treatment requires an initial showing, by a preponderance of the evidence, that (1) the plaintiff was within the protected class and was discharged or demoted, (2) the plaintiff was qualified to assume another position at the time of discharge or demotion, and (3) age [or race or gender] was "a determining factor" in the employer's decision to discharge or demote

---

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

the plaintiff. *Lytle v Malady*, 209 Mich App 179, 185-186; 530 NW2d 135 (1995), lv granted.

We carefully reviewed the record and find that plaintiff indeed failed to present a prima facie case of discrimination based upon race or sex sufficient to withstand defendant's motion for summary disposition. *Id.*, 209 Mich App at 187; 530 NW2d 135. Plaintiff admitted in deposition that her only vocational certification was for a course entitled "Office." She was therefore not *qualified* to assume any other position that became available. Furthermore, viewed in the light most favorable to plaintiff, she failed to present any evidence in response to defendant's motion,[1] that either her race or gender was "a determining factor" in defendant's decision to terminate her or to not transfer her to another position.

II. Age Discrimination

Although plaintiff's age discrimination claim went to the jury, the jury returned a no cause verdict in under half an hour. Plaintiff argues on appeal that the trial court erred by giving the relevant standard jury instructions on employment discrimination (see SJI2d 105.01 - 105.41), and in refusing to instruct the jury on pretext, as requested by plaintiff. A trial court may give a jury instruction not covered by the standard instructions as long as the charge accurately states the law and is understandable, concise, conversational and nonargumentative. MCR 2.516(D)(4); *Bordeaux v Celotex Corp*, 203 Mich App 158, 169; 511 NW2d 899 (1993). The determination whether an instruction is applicable and accurate is within the trial court's discretion. *Rice v ISI Mfg, Inc*, 207 Mich App 634, 637; 525 NW2d 533 (1994). A supplemental instruction need not be given if it would add nothing to an otherwise balanced and fair jury charge and would not enhance the jury's ability to decide the case intelligently and fairly. *Mull v Equitable Life Assurance Soc*, 196 Mich App 411, 422-423; 493 NW2d 447 (1992).

Although Michigan courts routinely consider federal law in employment discrimination cases, the SJI committee expressly declined to adopt a jury instruction reflecting the *McDonnell-Douglas*[2] shifting burdens of proof. According to the introduction to the SJI2d chapter on employment discrimination:

> It was precisely because the *McDonnell Douglas* formulation would "add little to the juror's understanding of the case and, even worse, may lead jurors to abandon their own judgment and to seize upon poorly understood legalisms to decide the ultimate issue of discrimination" that the Committee decided not to develop its instructions around the *McDonnell Douglas* model. [SJI2d p 17-5.]

When the SJI committee recommends that no instruction be given on a particular matter, the trial court should not give an instruction on the matter unless it specifically finds that: (i) the instruction is necessary to state the applicable law accurately, and (ii) the matter is not adequately covered by other pertinent standard jury instructions. MCR 2.516(D)(3). The trial court's decision regarding the necessity of supplemental instructions will not be reversed unless failure to vacate the verdict would be inconsistent with substantial justice. *Johnson v Corbet*, 423 Mich 304, 326; 377 NW2d 713 (1985); *Niemi v Upper Peninsula Orthopedic Associates, Ltd*, 173 Mich App 326, 328-329; 433 NW2d 363 (1988).

After reviewing the record, we find that the instructions given accurately stated the applicable law. There was no abuse of discretion and no error.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Henry William Saad
/s/ Carole F. Youngblood

[1] The evidence cited by plaintiff in her brief on appeal as establishing pretext was derived from the *trial* of her *age* discrimination claim, and thus cannot be considered in reviewing the circuit court's decision granting summary disposition on her *race* and *gender* claims.

[2] *McDonnell Douglas v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 668 (1973).