STATE OF MICHIGAN

COURT OF APPEALS

VENONIA J. HILLS,

Plaintiff-Appellee,

v

FORD MOTOR COMPANY,

Defendant,

and

FORD NEW HOLLAND, INC.,

Defendant-Appellant.

UNPUBLISHED
August 6, 1996

No. 180120
LC No. 93-459863

Before: Griffin, P.J., and Bandstra and M. Warshawsky,* JJ.

PER CURIAM.

Defendant Ford New Holland, Inc., appeals by leave granted the circuit court order denying its motion for summary disposition, brought pursuant to MCR 2.116(C)(10), and denying its motion for reconsideration. We reverse.

Plaintiff was laid off by Ford New Holland on November 30, 1989. She was forty-five years old. Plaintiff sued Ford New Holland, alleging that her layoff and denial of relocation constituted a breach of her employment contract and age discrimination in violation of the Civil Rights Act, MCL 37.2202(1)(a); MSA 3.548(202)(1)(a).

When plaintiff was hired, she signed an employment contract that stated that her employment was at-will and that her employment relationship could not be changed unless expressly done in writing by authorized personnel. Plaintiff argued that the following evidence changed her employment relationship with defendant from at-will to just-cause: (1) defendant's layoff policies; (2) questionnaire given to her by her supervisor asking whether she desired to re-locate to Pennsylvania; (3) Richard

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

Penketh's statement that the Troy accounting positions would be moved to Pennsylvania; and (4) Robert Marth's statement that "as long as there were

temporary employees at Ford Motor Company Central Accounting facility, [] the Troy site accounting people could not be laid off."

Furthermore, plaintiff presented the following evidence to establish her claim of age discrimination: (1) testimony of Larry Kusz that Marie Fontanaive, a twenty-five-year-old accountant, was not laid off, but was hired by Ford Motor Company; (2) testimony of Kusz that people told him that Ford Motor Company hired recent college graduates in accounting positions on an ongoing basis; and (3) testimony of Kusz that he trained a "younger person," who was not a new employee, to perform one-fifth of his accounting duties in Pennsylvania.

I

Defendant first argues that the trial court erred in denying its summary disposition motion on plaintiff's breach of employment contract claim because no material disputed fact existed and defendant was entitled to judgment as a matter of law. We agree.

A just-cause employment relationship can arise either by contract or by an employee's legitimate expectation in reliance on company policies. *Nieves v Bell Industries, Inc*, 204 Mich App 459, 462; 517 NW2d 235 (1994). Under the contract theory, a party must present sufficient proof either of a contractual provision for a definite term of employment or of a provision forbidding discharge absent just cause. *Id*. Such provisions may become part of an employment contract as a result of explicit promises or promises implied in fact. *Id*. Oral statements of job security must be clear and unequivocal to overcome the presumption of employment at-will. *Id.* Under the legitimate expectation theory, a party may overcome the presumption of employment at-will by establishing that the employer's policies and procedures have become a legally enforceable part of the employment relationship if such policies and procedures instill legitimate expectations of discharge for cause only. *Id*. at 462-463. The courts must determine whether a promise has been made and whether the promise is reasonably capable of instilling in employees a legitimate expectation of just-cause employment. *Id*. at 463.

The evidence presented by plaintiff could not have changed her employment relationship from at-will to just-cause under either the contract or the legitimate expectation theory. As to the contract theory, a reasonable person could not have found that the evidence presented by plaintiff demonstrated an intent on behalf of defendant to change plaintiff's employment from at-will to just-cause. See *id.* A general statement concerning job security, without further explanation about causes for termination, is insufficient to establish an employer's intent to create a just-cause contract. *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 656; 513 NW 2d 441 (1994).

Defendant's layoff policies, the questionnaire, and Penketh's statement mentioned nothing about causes for termination. Therefore, this evidence could not have altered the express provisions of plaintiff's employment contract. See *id*. With regard to Marth's statement, a reasonable person could not have concluded that plaintiff reasonably believed this statement meant that she could only be fired for good cause. When analyzing oral statements of job security, the meaning that reasonable persons might have given the language under the circumstances governs. *Barnell v Taubman Co, Inc*, 203

Mich App 110, 116; 512 NW 2d 13 (1993). At the same meeting that Marth allegedly made this statement, Marth also stated that layoffs were a possibility. Also, Michael Lynch stated at the meeting that he was not optimistic about defendant placing its employees with Ford Motor Company, and he could not guarantee anything. Furthermore, a few months before the meeting, defendant's president sent a memorandum to all its salaried employees explaining the company's consolidation plans wherein he stated: "We cannot guarantee that layoffs will be avoided entirely since both Ford New Holland and Ford are committed to a substantial reduction in the salaried work force." Moreover, plaintiff's employment contract specifically stated that any modification had to be in writing. Therefore, plaintiff could not have thought that Marth's statement altered her employment contract.

For the same reasons stated above, we further hold that plaintiff's evidence did not change her employment relationship from at-will to just-cause based on the legitimate expectation theory. Given the analysis above, a reasonable person could not have concluded that any of the evidence presented by plaintiff could have instilled in her a legitimate expectation that she would only be discharged for cause. See *Nieves, supra* at 462-463. Therefore, plaintiff's wrongful discharge claim should have been dismissed.

II

Defendant next argues that the trial court erred in denying defendant's summary disposition motion on plaintiff's age discrimination claim because there was no evidence presented establishing that plaintiff was replaced by a younger employee based on her age. We agree.

The Civil Rights Act, MCL 37.2101 *et seq*.; MSA 3.548(101) *et seq*., prohibits, among other things, discharging an employee based on his or her age. See MCL 37.2202(1)(a); MSA 3.548(202)(1)(a). 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 was "a determining factor" in the employer's decision to discharge or demote the plaintiff. *Lytle v Malady*, 209 Mich App 179, 185-186; 530 NW 2d 135 (1995). In a RIF case, it is insufficient for a plaintiff to show merely that the employer retained a younger employee while discharging an older employee. *Id*. at 186.

The evidence presented by plaintiff was insufficient to establish a prima facie case of age discrimination because it did not show that age was a determining factor in defendant's decision to discharge plaintiff. The evidence relating to Ford Motor Company's employment practices was irrelevant to plaintiff's claim that Ford New Holland discriminated against her due to her age because the trial court already determined that Ford Motor Company was not plaintiff's employer. Furthermore, Kusz's testimony that he trained a younger person in Pennsylvania to perform accounting functions, alone, does not show that age was a determining factor in defendant's decision not to relocate plaintiff because, "[i]n a RIF case, it is insufficient for a plaintiff to show merely that the employer retained a younger employee while discharging an older employee." *Id.*

Moreover, plaintiff never told defendant that she wanted to relocate to Pennsylvania. Accordingly, the trial court should have dismissed this claim.

We reverse.

/s/ Richard Allen Griffin
/s/ Richard A. Bandstra
/s/ Meyer Warshawsky