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Employment Law - Racial Discrimination - Circumstantial Evidence of Racial Discrimination May Be Introduced to Raise a Genuine Issue of Material Fact

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EMPLOYMENT LAW – RACIAL DISCRIMINATION – CIRCUMSTANTIAL EVIDENCE OF RACIAL DISCRIMINATION MAY BE INTRODUCED TO RAISE A GENUINE ISSUE OF MATERIAL FACT. *Hopson v. DaimlerChrysler Corp.*, 306 F.3d 427 (6th Cir. 2002).

I. INTRODUCTION

In *Hopson v. DaimlerChrysler*,[1] the United States Court of Appeals for the Sixth Circuit decided whether summary judgment was appropriate for the defendant on racial discrimination claims based on violations of Title VII, 42 United States Code § 2000e-2000e-17 (2000) and the Elliott-Larsen Civil Rights Act, Michigan Compiled Laws Annotated 37.2101 (West 2001).[2] The plaintiff in *Hopson*, an African-American male, was initially hired by DaimlerChrysler as an assembly line worker in 1968. Three months later he became a security guard.[3] In 1978, the plaintiff was promoted within the security department to a salaried supervisory position.[4] While still employed with the company, the plaintiff "earned an associate's degree in security and loss prevention, a bachelor's degree in safety management, and a master's degree in administration."[5] In 1987, the company reduced its workforce and demoted the plaintiff to a non-salaried guard position.[6] In response to that action, the plaintiff and others filed suit, alleging racial discrimination as the cause of their demotions.[7] The company settled the lawsuit and re-promoted the plaintiff to a salaried supervisory position at one of its assembly plants.[8]

Between 1989 and 1997, the company promoted the plaintiff to three different positions within that plant, including Complex Administrator.[9] In this role, one of his responsibilities was to substitute for the Complex Security Manager in his absence.[10] Beginning in mid-1998, the plaintiff applied for seven internal employment positions, but was rejected in favor of a white employee

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1. 306 F.3d 427 (6th Cir. 2002).
2. *Id.* at 428, 431.
3. *Id.* at 429.
4. *Id.*
5. *Id.*
6. *Id.*
7. *Hopson*, 306 F.3d at 429.
8. *Id.*
9. *Id.*
10. *Id.*

each time.[11] Although the company conceded that the plaintiff met the requisite qualifications for each of the positions, and in some cases possessed a higher degree than the chosen employee, it claimed that the employees it chose were "most qualified" and "rated more highly than Mr. Hopson in his annual evaluations."[12]

II. BACKGROUND

The United States District Court for the Eastern District of Michigan granted summary judgment for DaimlerChrysler, concluding that the plaintiff did not raise a genuine issue of material fact with regard to whether the company's stated reasons for its employment decisions were pretextual.[13] The court's reasons for its decision were as follows: first, the testimony from one of the plaintiff's supervisors that he believed race was a factor in the hiring decision was not probative because the supervisor was not involved in the questionable hiring decisions. Second, the plaintiff's claim that the job requirements were "tailor-made" to fit the person hired was not "supported by evidence." Third, the statistics that showed an under-representation of African-American employees were incomplete.[14]

III. ANALYSIS

A. Majority Opinion

1. Circumstantial Evidence of Discrimination May Be Introduced to Raise a Genuine Issue of Material Fact in a Title VII Claim

The *Hopson* court recognized that under Title VII, a plaintiff may establish a case of employment discrimination by presenting direct evidence[15] of the defendant's discrimination. However, a Title VII

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11. *Id.* Hopson abandoned his claims on two of the employment positions so only five were considered on appeal. The five positions applied for are as follows: Security Manager of Mopar Parts Division, Training Administrator, Support Services Analyst, Security Management position at Detroit complex, and Manager of Out of State Plants. *Id.* at 429-30.

12. *Hopson*, 306 F.3d at 429-30. During oral argument, the defense counsel conceded that the plaintiff had "excellent" annual evaluations. *Id.* at 435.

13. *Id.* at 431.

14. *Id.* at 431-32. The statistics showed an under-representation of African-Americans in management and supervisory positions as compared to the number of African-Americans in the general workforce. However, the district court referred to the statistics as incomplete because they failed to indicate "the number of African-American applicants for those jobs or their qualifications." *Id.* at 432.

15. Direct evidence is "evidence which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the employer's actions." *Id.* at 433 (quoting Jacklyn v. Scherring-Plough, 176 F.3d 921, 926 (6th Cir. 1999)).

claim may also be successful in the absence of direct evidence.[16] Once the plaintiff sets forth a *prima facie* case,[17] the defendant has the burden to show a "legitimate, non-discriminatory" reason for the adverse employment decision.[18] If the defendant meets this burden, then the burden of production shifts back to the plaintiff to demonstrate that the proffered reason is pretextual.[19] The plaintiff is not required to produce conclusive evidence that the company's reasons for its actions are false – only sufficient evidence.[20] The court concluded that based on the evidence presented, a reasonable trier of fact could find that the plaintiff was the victim of racial discrimination.[21] The court found it illogical to believe that the chosen individuals were so much more qualified than the plaintiff as to not even grant him an interview.[22] The court also found the defendant's reasons vague, as it failed to specify in what respect the others were more qualified or the differences in the annual evaluations.[23]

2. Applying the Elliot-Larsen Civil Rights Act

In Michigan, once the defendant presents a legitimate, non-discriminatory reason for its employment decisions, the plaintiff must show not only that the employer's reason is pretextual, but also that the reason is a pretext for discrimination.[24] Notwithstanding this higher burden of proof, the court found that the race statistics along with the supervisor's testimony espouse racial discrimination as the only logical pretext.[25]

B. Judge Daughtrey's Dissenting Opinion

Judge Daughtrey, while agreeing with the majority's interpretation of the federal and state laws at issue, found fault with

16. *Hopson*, 306 F.3d at 433.

17. To establish a *prima facie* case under Title VII, the plaintiff must show: "(1) that he is a member of a protected class; (2) that he was qualified for the job; (3) that he suffered an adverse employment decision; and (4) that the job was given to a person outside his protected class." *Id.*

18. *Id.*

19. *Id.* Pretext may be demonstrated by showing that the company's reason "(1) has no basis in fact, (2) did not actually motivate the defendant's challenged conduct, or (3) was insufficient to warrant the challenged conduct." *Id.* at 434 (quoting Dews v. A.B. Dick Co., 231 F.3d 1016, 1021 (6th Cir. 2000)).

20. *Id.* at 434.

21. *Hopson*, 306 F.3d at 434.

22. *Id.* at 434-35.

23. *Id.* at 436.

24. *Id.* at 438.

25. *Id.* at 439.

the majority's application of the law. She stated that the defendant's reason for not promoting the plaintiff – that other applicants were better qualified for the position – was a legitimate, nondiscriminatory reason.[26]

Therefore, she concluded that the burden shifted back to the plaintiff to show pretext with regard to that reason.[27] Judge Daughtrey opined that the plaintiff did not meet his burden by merely providing his supervisor's testimony and the statistical data.[28] Her determination was based upon the district court's findings that the supervisor's testimony had no basis and the statistical data was incomplete.[29] Further, Judge Daughtrey stated that the majority incorrectly placed the burden on the defendant to show a non-pretextual reason for its decision, contrary to prior case law.[30]

IV. CONCLUSION

Racial discrimination in the employment sector is not a new phenomenon, but rather an evolving aberration. Large corporations are able to mask their illegal actions through innovative, subtle techniques. Defendants seldom leave blatant paper trails of their discriminatory acts. The Sixth Circuit, in holding that circumstantial evidence of discrimination may be sufficient to avoid a summary judgment motion, recognized that it is not for the court to try an entire case on a summary judgment motion. It is enough that there exists evidence upon which a trier of fact could reasonably render judgment for the non-moving party. If the dissent's analysis was to be adopted as the majority approach, it would be impossible to ever present evidence of an employer's racial discrimination to a jury.

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26. *Id.* (Daughtrey, J., dissenting).

27. *Hopson*, 306 F.3d at 439 (Daughtrey, J., dissenting).

28. *Id.* at 440 (Daughtrey, J., dissenting).

29. *Id.* (Daughtrey, J., dissenting).

30. *Id.* (Daughtrey, J., dissenting) (citing McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)).