

Copeland v. Lockheed Martin Corp.
221 F.3d 1334

NOTICE: THIS IS AN UNPUBLISHED OPINION.
(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA6 Rule 28 and FI CTA6 IOP 206 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Sixth Circuit.

Gerald Lynn COPELAND, Plaintiff-Appellant,
v.
LOCKHEED MARTIN CORPORATION; Lockheed Martin Energy Systems, Inc.,
Defendants-Appellees.

No. 99-5788.
June 30, 2000.

Before KEITH, MERRITT, and COLE, Circuit Judges.

ORDER

Gerald L. Copeland, proceeding pro se, appeals a district court order granting summary judgment in favor of his former employer and dismissing his age discrimination complaint filed pursuant to the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 621, et seq. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R.App. P. 34(a).

On March 16, 1987, Copeland began working as a Senior Laboratory Analyst for Lockheed Martin Energy Systems, Incorporated ("LMES"). Copeland was employed in the Analytical Laboratories Division ("ALD"), one of four divisions of the Analytical Services Organization ("ASO"). On January 4, 1996, Copeland, a fifty-four year old white male, received notice that his position was being eliminated effective March 6, 1996, due to the implementation of a reduction in force ("RIF"). Copeland contends, however, that his employment termination was based upon his age.

On January 29, 1997, seeking monetary and injunctive relief, Copeland filed a complaint in the United States District Court for the Eastern District of Tennessee alleging that LMES discriminated against him based upon his age in violation of the ADEA, and the Tennessee Human Rights Act ("THRA"), Tenn.Code Ann. §§ 4-21-101, et seq, when it terminated his employment. He also asserted a state law negligence claim. The district court granted LMES's motion for summary judgment and dismissed Copeland's action in a memorandum and order filed February 22, 1999. The court dismissed the THRA and state law negligence claims on the ground that they were barred by the applicable statute of limitations.

Copeland has filed a timely appeal. His pro se, rambling brief has been construed as arguing those claims which he raised before the district court. It is clear from the pro se

appellate brief that Copeland does not challenge the district court's decision regarding the THRA or state law negligence claims.

This court reviews an order granting summary judgment de novo. *See EEOC v. Prevo's Family Mkt., Inc.*, 135 F.3d 1089, 1093 (6th Cir.1998). Claims alleging age discrimination involve the same burden-shifting analysis as espoused in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). *See Manzer v. Diamond Shamrock Chems. Co.*, 29 F.3d 1078, 1081 (6th Cir.1994). In such cases, the plaintiff must first prove a prima facie case of discrimination. *See Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 252-53 (1981); *McDonnell Douglas*, 411 U.S. at 802; *Manzer*, 29 F.3d at 1081. If the plaintiff establishes a prima facie case, the burden then shifts to the defendant "to articulate some legitimate, nondiscriminatory reason for the employee's rejection." *Burdine*, 450 U.S. at 253 (quoting *McDonnell Douglas*, 411 U.S. at 802); *LaPointe v. UAW, Local 600*, 8 F.3d 376, 379 (6th Cir.1993) (quoting *McDonnell Douglas*, 411 U.S. at 802). If the defendant carries this burden and presents a nondiscriminatory reason for terminating the plaintiff, the plaintiff must prove that the reasons proffered by the defendant were a pretext for discrimination. *See Burdine*, 450 U.S. at 253 (citing *McDonnell Douglas*, 411 U.S. at 804); *LaPointe*, 8 F.3d at 379.

Upon review, we conclude that the district court properly granted summary judgment in favor of LMES. *See Fed.R.Civ.P. 56(c)*. The Defendants have submitted numerous exhibits, testimony and affidavits to support their legitimate and non-discriminatory reasons for terminating Copeland's employment with LMES. In particular, the "1996 Layoff Comparison Form" is very instructive and puts the individuals who were retained and laid off in perspective. This exhibit demonstrates that there were other individuals whose evaluations and scores were better than Copeland's scores; that three employees over the age of 40 with longer years of service were retained during the RIF based on their scores; and that Copeland was in fact treated no differently during the RIF scoring process than other employees. Copeland presented no evidence beyond the bare bones prima facie case of age discrimination to refute the Defendants' evidence showing that there was a legitimate and non-discriminatory reason for the termination. *See McDonnell Douglas*, 411 U.S. at 802. Accordingly, summary judgment for the Defendants was proper.

Finally, Copeland contends that the district court judge should have recused himself because one of the counsel for LMES, Patricia L. McNutt, was one of the judge's former law clerks. A thorough review of the district court record and docket sheet shows that Copeland never filed an affidavit accusing District Court Judge Hull of bias and seeking his recusal. Unless exceptional circumstances exist, this court normally will not address an issue not first raised in the district court. *See Enertech Elec., Inc. v. Mahoning County Comm'rs*, 85 F.3d 257, 261 (6th Cir.1996). This general rule bars an appellate court from considering a recusal issue that was not first raised in the trial court. *See American Imaging Servs., Inc. v. Eagle-Picher Indus., Inc. (In re Eagle-Picher Indus., Inc.)*, 963 F.2d 855, 862-63 (6th Cir.1992). As no exceptional circumstances exist in this case, we decline to consider the issue.

Accordingly, the district court's order is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.