

STATE OF MICHIGAN
COURT OF CLAIMS

PARKER JOHN SURBROOK,

Plaintiff,

v

MICHIGAN STATE POLICE, JOSEPH GASPER,
and JAMES GRADY,

Defendants.
_____ /

OPINION AND ORDER

Case No. 24-000068-MZ

Hon. Sima G. Patel

**OPINION AND ORDER GRANTING DEFENDANTS' JULY 12, 2024 MOTION FOR
SUMMARY DISPOSITION**

Before the Court is defendants' July 12, 2024 motion for summary disposition of plaintiff's discrimination and retaliation claims. Some of plaintiff's claims are barred by a lack of timely notice and failure to bring them within the statute of limitations and others lack factual or legal support. Accordingly, the Court GRANTS defendants' motion for summary disposition and DISMISSES plaintiff's claims with prejudice.

I. BACKGROUND

As defendants seek summary disposition in part under MCR 2.116(C)(8), the Court summarizes the background of this case accepting as true the allegations pled in plaintiff's complaint.

Plaintiff was a Michigan State Police (MSP) trooper and canine handler. On November 13, 2020, plaintiff engaged in a high-speed chase with a vehicle carrying two armed-robbery suspects. The suspects' vehicle crashed into a tree, they jumped out, and fled on foot. Plaintiff directed his canine to stop Suspect A while another trooper stopped Suspect B. As the canine stopped Suspect A, the other trooper shouted that he observed a gun near Suspect B. Plaintiff shifted his attention to securing the gun. For the next four minutes while awaiting backup, plaintiff continued to give his canine orders to stay engaged with Suspect A. Plaintiff alleges that his superior officers, Lieutenant Ryan Maki and Lieutenant Brian Bahlau, reviewed the dash-cam footage of the stop and determined his use of force was justified.

In the following days, MSP Lieutenant Michael Dillon instigated a criminal investigation of plaintiff's conduct and ordered plaintiff to surrender his canine. On December 8, 2020, the MSP suspended plaintiff with pay. In February 2021, Canine Sergeant David Yount reviewed the dash-cam footage. Plaintiff alleges that Yount found no evidence that he violated MSP canine protocol. Plaintiff further alleges that "Defendants" ignored the opinions of his superior officers and sought the imposition of felony charges against him. On March 4, 2021, the Ingham County Prosecutor charged plaintiff with felony assault with a deadly weapon (his canine). The following day, the MSP uploaded the dash-cam footage from the November 13, 2020 incident to YouTube and issued a press release, stating that "care and concern for human life should always be at the forefront of any police officer's actions," and that "[t]his makes Trooper Surbrook's disregard of the driver's pleas for help totally unacceptable." Plaintiff alleged that he and his family members received death threats as a result of the publication. That day, March 5, 2021, MSP changed plaintiff's suspension to unpaid status pending the resolution of the criminal case against him.

Plaintiff remained on suspension without pay during his criminal proceedings. The 54-A District Court conducted his preliminary examination and bound plaintiff over for trial. The circuit court subsequently denied plaintiff's motion to quash the bind-over. A jury ultimately acquitted plaintiff on August 8, 2023.

Plaintiff complains that he was not immediately rehired following his acquittal. On October 12, 2023, "Defendants" recommended plaintiff receive 10 days off without pay. On November 27, 2023, defendant Colonel James Grady discussed the November 2020 incident with Sergeant Yount, allegedly stating that plaintiff's actions reminded him of police brutality against black citizens during the civil rights movement in the 1960s.

Plaintiff filed his notice of intent to file suit on November 22, 2023. Defense counsel responded by asking plaintiff to issue a demand letter with an amount he would accept to settle the case. Plaintiff complied. Defendants then ordered plaintiff to return to work on December 19, 2023. The MSP placed plaintiff in a civilian role in the E-Applications Unit, conducting administrative tasks. Plaintiff alleged that defendants failed to provide any assistance in navigating through the MCOLES recertification process to regain his position as a trooper. He then filed suit against the MSP and several individual command officers on March 15, 2024. Given the ongoing nature of the acts he describes as retaliatory, plaintiff filed a second notice of intent to file suit in May 2024. On June 11, 2024, the parties entered a stipulated order dismissing the claims against the majority of the individual defendants with prejudice and against the state of Michigan without prejudice. Plaintiff filed an amended complaint alleging racial discrimination and retaliation in violation of the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2202 *et seq.* against the MSP, Colonel Grady and Colonel Joseph Gasper

It should be noted that defendant Colonel Gasper has since retired from the MSP. The only allegation in plaintiff's complaint against Gasper is that in October 2019, he addressed a group of MSP command officers at a Battle Creek conference and stated that the MSP is "way too white and way too male." It should also be noted that plaintiff has since resigned from the MSP.

II. ANALYSIS

Defendants seek summary disposition under MCR 2.116(C)(7), contending that plaintiff's claims accrued when he was placed on indefinite suspension on December 8, 2020, or at the latest, on March 4, 2021, when the prosecutor charged plaintiff with a felony. Accordingly, defendants contend that plaintiff did not file timely notice of his claims under the Court of Claims Act (COCA), MCL 600.6431. Defendants further assert that the three-year statute of limitations in MCL 600.5805(2) expired before plaintiff filed suit. Finally, although they cite both MCR 2.116(C)(8) and (C)(10), defendants contend that plaintiff failed to state a viable claim for either discrimination or retaliation under the ELCRA, a challenge arising under (C)(8).

A. TIMELINESS

Summary disposition is warranted under MCR 2.116(C)(7) when an action is barred by the statute of limitations. In reviewing a motion to dismiss under (C)(7), the Court must consider the evidence in the light most favorable to the nonmoving party, here plaintiff. *Citizens Ins Co of America v Univ Physician Group*, 319 Mich App 642, 648; 902 NW2d 896 (2017).

For purposes of statutory limitation periods, a claim is deemed accrued when each element of the claim, including damages, exists. *Mays v Governor of Michigan*, 506 Mich 157, 182; 954

NW2d 139 (2020). Plaintiff alleges that defendants suspended him indefinitely without pay on March 5, 2021, and his claim of racial discrimination accrued on that date.

MCL 600.6431(1) and (3) of the COCA require a plaintiff to file a notice of intent to file a claim against the state with the clerk of the Court of Claims within six months of the event giving rise to the claim in a case of personal injury or property damage, and within a year of the claim accruing for all other actions. Plaintiff's discrimination claims sound in personal injury, but giving plaintiff every advantage, the Court will apply the one-year notice COCA notice period. Any claim of discrimination connected to events culminating in plaintiff's March 5, 2021 suspension had to be included in a notice of intent to file a claim by March 5, 2022. Plaintiff did not file his initial notice of intent until November 2023. Timely notice is a condition precedent to filing suit in the Court of Claims. *Fairley v Dep't of Corrections*, 497 Mich 290, 298; 871 NW2d 129 (2015). Absent this notice, the jurisdiction of the Court of Claims is not triggered and the action must be dismissed. *Elia Cos, LLC v Univ of Mich Regents*, 511 Mich 66, 68; 993 NW2d 392 (2023). Accordingly, the Court dismisses plaintiff's claims arising from the time period before March 5, 2021.

These claims are also barred by the three-year statute of limitations prescribed by MCL 600.5005(2). As noted, plaintiff's claim of racial discrimination accrued on March 5, 2021. To preserve his challenge to discriminatory acts arising on or before March 5, 2021, plaintiff was required to file his complaint by March 5, 2024. Plaintiff filed his initial complaint on March 15, 2024, 10 days after the expiration of that period. This belated filing further supports dismissal of plaintiff's claims arising from the events leading up to his March 5, 2021 suspension.

The events underlying plaintiff's retaliation claim, however, did not begin until *after* he filed his initial notice of intent. Defendants received timely notice of those claims when plaintiff filed his lawsuit on March 15, 2024. Summary disposition is not warranted for claims connected to these events under MCR 2.116(C)(7).

B. FAILURE TO STATE A CLAIM/CREATE QUESTION OF FACT

“A motion under MCR 2.116(C)(8) tests the *legal sufficiency* of a claim based on the factual allegations in the complaint.” *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). When deciding a motion under (C)(8), the Court “must accept all factual allegations as true, deciding the motion on the pleadings alone” and may dismiss an action only “when a claim is so clearly unenforceable that no factual development could possibly justify recovery.” *Id.* at 160. “A motion under MCR 2.116(C)(10), on the other hand, tests the *factual sufficiency* of a claim.” *Id.* The Court must view the evidence in the light most favorable to the nonmoving party to determine if there remain any triable questions of material fact and whether the moving party is entitled to judgment as a matter of law. *Id.*

Plaintiff failed to state a viable claim of racial discrimination or retaliation against defendant Gasper, supporting summary disposition of the claims against him under MCR 2.116(C)(8). He also failed to overcome the evidence presented by defendants, supporting summary disposition under (C)(10). The only allegation against this defendant relates to a statement he made in 2019. Plaintiff does not allege that Gasper played any role in his suspension or that Gasper's 2019 statement about the demographics of the MSP was in any way connected to his suspension and reassignment upon his return to work. Plaintiff does not allege that any of the superior officers who reviewed the dash-cam footage or played a role in the decision to investigate

or suspend him shared Gasper's thought. There must be some connection between the statement and an outcome for the statement to have relevance. That connection is absent in this case and the Court dismisses the claims against defendant Gasper.

The Court now turns to plaintiff's claims of racial discrimination and retaliation for alleged actions arising only after his jury-trial acquittal and carried out by defendants MSP or Grady.

MCL 37.2202(1)(a) prohibits employers from discriminating on the basis of race by "[f]ail[ing] or refus[ing] to hire or recruit, discharg[ing], or otherwise discriminat[ing] against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of . . . race. . . ." A retaliation claim must be based on an employer's retaliation against an employee for engaging in a protected activity, such as opposing the employer's violation of the ELCRA. *White v Dep't of Transp*, 334 Mich App 98, 114; 964 NW2d 88 (2020). MCL 37.2701(a) specifically prohibits an employer from retaliating or discriminating an employee who has "filed a complaint" under the ELCRA. *Id.* at 115.

A plaintiff may establish a discrimination claim with either direct or indirect evidence. Direct evidence is "evidence which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the employer's actions." *Hazle v Ford Motor Co*, 464 Mich 456, 462; 628 NW2d 515 (2001) (cleaned up). An example of direct evidence includes "racial slurs by a decision maker." *Downey v Charlevoix Co Bd of Rd Comm'rs*, 227 Mich App 621, 633; 576 NW2d 712 (1998). Where there is direct evidence of discrimination, a plaintiff "can go forward and prove unlawful discrimination in the same manner as a plaintiff would prove any other civil case." *Hazle*, 464 Mich at 462. To support his claim, plaintiff must

establish (1) defendants acted with illegal discriminatory animus; (2) plaintiff was qualified for the position for which he suffered discriminatory animus; and (3) causation.

Plaintiff suggests that Grady provided direct evidence of discrimination when he described to Yount that the dash-cam footage of plaintiff's actions was reminiscent of police brutality against black protesters during the 1960s civil rights movement. Arguably, there is a direct correlation between Grady's statement and racial animus. Grady compared plaintiff's actions to the racist actions of white, male officers who employed violence against black citizens. For purposes of this case, the Court will treat this statement as direct evidence.

However, plaintiff failed to adequately allege and support that he was qualified for the position of MSP trooper or that discrimination caused him to be ineligible for a trooper position. Plaintiff was suspended from service on March 5, 2021, and did not return to work until December 19, 2023, 30 months or 2½ years later. Plaintiff alleges that he "retained the position of trooper within the" MSP throughout his suspension and should not have been required to be recertified through the Michigan Commission of Law Enforcement Standards (MCOLES) before retaking his position. The limitation of plaintiff's duties upon his return to work were not caused by any potential discriminatory or retaliatory animus by defendants; MCOLES has the sole authority to license law enforcement officers and plaintiff was not licensed at that time.

MCL 28.609(1) provides that the MCOLES act "applies to all law enforcement officers" absent a handful of inapplicable exceptions and states that the employment of law enforcement officers "is subject to the licensing requirements and procedures" of the act. MCOLES alone sets standards for licensure and training, including for officers who experience a break in service. See MCL 28.609(2); Mich Admin Code, R 28.14401 *et seq.* Plaintiff complains that the MSP provided

no guidance on how to achieve recertification through MCOLES, but this information is discoverable in the statutes and administrative rules governing MCOLES and could be requested from MCOLES directly. Simply put, defendants were not authorized to relicense or recertify plaintiff and therefore cannot be liable for failing to do so. Summary disposition is thereby warranted under MCR 2.116(C)(10).

IT IS ORDERED:

1. Defendants' motion for summary disposition is GRANTED.
2. Plaintiff's complaint is DISMISSED with prejudice.
3. This is a final order resolving all issues in this case.

Date: April 8, 2025



Sima G. Patel
Judge, Court of Claims

