

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

Michael Day,)	
)	
Plaintiff,)	
)	
v.)	No. 14 L 10414
)	
Skokie School District 68,)	
)	
Defendant.)	

RULE 323(C) REPORT OF PROCEEDINGS

The parties to this suit stipulated to a report of proceedings and presented it to this court for certification. This court believes that the stipulated report was insufficient and did not accurately reflect this court’s oral ruling for which neither party provided a court reporter. This court has reviewed its notes prepared for the November 16, 2016 ruling on the defendant’s motion to dismiss the first-amended complaint. This Rule 323(c) report provides a far more complete and accurate description of this court’s ruling.

Facts

This court stated initially that Day’s first-amended complaint did not set out his factual allegations and legal claims in a precise manner. It was, nonetheless, plain that Day alleges the school district discriminated against him by failing to hire him either as a substitute teacher or as a regular math or science teacher.

The court then read to the parties the following timeline of events taken from the first-amended complaint:

- 9/1995 Day went to the school district’s office and filled out an application for employment as a substitute teacher.
- 2002 Day renewed his teacher certificate.

- 2005-06 At some point during this period, Day completed an on-line application for a full-time position with the school district.
- 2007 Day renewed his teacher certificate.
- 2011 Day received an endorsement in math for his certificate.
- 2012 Day renewed his teacher certificate.
- 7/2012 Day completed an on-line application to be a full-time teacher or a substitute teacher with the school district.
- 8-12/2012 The school district did not hire Day. He called the school district and was told that someone would call him, but no one did.
- 2012-13 The school district failed to respond to Day's FOIA requests seeking the names, salaries, and hiring dates for persons the school district hired to teach math and science.
- 1/18/13 This court indicated that the allegations Day attributes to this date must be incorrect because he alleges elsewhere that he did not file a complaint with the Illinois Department of Human Rights (IDHR) until February 5, 2014. Nonetheless, the court indicated that Day alleged that on this date the school district told the IDHR investigator that the school district rejects or screens out some applicants before their applications are given consideration, but that Day was not one of those rejected. The school district also told the IDHR that it keeps applications for two years.
- 2/4/13 Day, again, called the school district for information, but no one called him back.
- 7/12/13 Day completed an on-line application to be a substitute teacher and a regular teacher in math or science.
- 2/5/14 Day filed a complaint with the IDHR, claiming that he had not been hired because of his race.
- 6/13/14 IDHR held a fact-finding meeting with Day and a school district representative. The school district allegedly did not provide records, resumes, transcripts, or other materials that would have tended to show either its racially discriminatory hiring practices or its lack of racially discriminatory hiring practices. Day alleges that

the school district representative said that the hiring process is arbitrary. Day informed the IDHR that he had better qualifications than many of the persons not in his protected class who the school district had hired. Day had served as a substitute teacher for eight years, taught math as a regular teacher, has a master's degree in physical science, and has a teacher certificate.

- 7/9/14 The IDHR issued Day a right-to-sue letter.
- 10/7/14 Day filed his complaint in this lawsuit.
- 2012-14 The school district hired other persons for math and science positions not from Day's protected class and who were not as qualified as Day.
- 5/5/16 Day filed his first-amended complaint.
- 6/29/16 The school district filed its motion to dismiss pursuant to 735 ILCS 5/2-615.

The court included in its factual statement other general allegations taken from the first-amended complaint:

- The school district desires to have a virtually all-white teaching staff. The school district has "various processes" to hide its racial hiring processes "to prevent most persons from knowing that they have been racially discriminated against."
- Day alleges that the school district has racial animus against blacks.
- Day alleges that during the relevant time period the school district also failed to hire blacks for positions as social workers, special-education teachers, and other non-math and non-science teachers.
- Day states that he is bringing his lawsuit pursuant to the Illinois Human Rights Act.
- Day is seeking an order requiring the school district to hire him, pay him \$80,000 in damages, and award punitive damages.

School District's Argument

The court summarized the school district's argument that Day has not and cannot establish directly or indirectly a case of racially discriminatory hiring practices.

Analysis

This court began its analysis by stating that the Illinois Human Rights Act, 775 ILCS 5/1-101, *et seq.*, prohibits “unlawful discrimination,” *i.e.*, discrimination against a person on the basis of race, color, religion, national origin, ancestry, age, sex, marital status, or handicap. *See* 775 ILCS 5/1-102. The Act specifically defines the type of conduct in the employment context that constitutes a civil rights violation:

[f]or any employer to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of unlawful discrimination. . . .

775 ILCS 5/2-102(A). The term “unlawful discrimination” explicitly includes discrimination against a person based on race. *See* 775 ILCS 5/1-103(Q).

This court further noted that the Illinois Supreme Court's decision in *Zaderaka* was particularly useful in laying out the appropriate standard of review. *See Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill. 2d 17 (1989); *see also Board of Ed. v. Cady*, 369 Ill. App. 3d 486 (1st Dist. 2006). In *Zaderaka*, the court recognized that in cases claiming violations of the Illinois Human Rights Act, the IDHR and Illinois appellate courts employ the test used by federal courts when considering employment discrimination claims brought under title VII of the Civil Rights Act. *See id.* at 178-79. The United States Supreme Court first articulated that test in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).

This court noted that a plaintiff may establish racial discrimination using a direct or indirect method of proof. *See Scaife v. Cook Cty.*, 446 F.3d 735, 739 (7th Cir. 2006), *citing McDonnell Douglas*. The direct method, “essentially requires an admission by the decision-maker that his actions were based on the prohibited animus.” *Radue v. Kimberly-Clark Corp.*, 219 F.3d 612, 616 (7th Cir. 2000), *citing Troupe v. May Dep’t Stores Co.*, 20 F.3d 734, 736 (7th Cir. 1994). This court indicated that Day’s fist-amended complaint does not allege any facts that establish direct racial discrimination or from which it could be inferred. As a result, this court indicated that it would analyze the facts presented using the indirect method of proof.

This court indicated that the indirect method of proof imposes on a plaintiff the initial burden of establishing by a preponderance of evidence a *prima facie* case of racial discrimination. *See Zaderaka*, 131 Ill. 2d at 179-80. This standard of evidence has been described as a “convincing mosaic’ of circumstantial evidence that allows a jury to infer intentional discrimination by the decision maker.” *Rhodes v. Illinois Dep’t of Transp.*, 359 F.3d 498, 504 (7th Cir. 2004). That circumstantial evidence must point directly to a discriminatory reason for the employer’s action. *See id.* This court noted that to establish a *prima facie* case of employment discrimination, a plaintiff must allege and prove: “(i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant’s qualifications.” *McDonnell Douglas*, 411 U.S. at 802.

This court continued to explain that, if a plaintiff establishes a *prima facie* case, a rebuttable presumption arises that the employer unlawfully discriminated against the plaintiff. *See Zaderaka*, 131 Ill. 2d at 178-79. To rebut the presumption, the employer must then articulate a legitimate, nondiscriminatory reason for its decision. *See id.* at 179. If the employer articulates such a reason, the plaintiff must then prove, again by a preponderance of the evidence, that the

employer's reason was untrue and was a pretext for discrimination. *See id.* Under this test, the ultimate burden of persuasion remains on the plaintiff throughout the proceedings. *See id.*

This court then applied the *prima facie* test to the facts alleged in Day's first-amended complaint. First, Day alleges that, as an African-American, he is a member of a protected class. While that may be true, this court pointed out that Day failed to allege that the school district's application form required him to identify himself as African-American or required other information from which the school district could infer that he was African-American. This court indicated that although Day failed to plead these necessary facts, these deficiencies could be overcome with more facts in an amended pleading.

Second, this court pointed out that Day's first-amended complaint does not allege that the school district had open positions that needed to be filled at or near the time he filed his applications. This court did infer from the facts, however, that at some point during the time period at issue, openings must have existed since Day alleges that the school district hired other less qualified persons not from a protected class. Day did, therefore, establish this element.

As to the third element, this court noted that Day does not allege that the school district rejected him for any position. Rather, he merely alleges that: (1) he had a viable application on file; (2) his application remained in a pool with others; and (3) the school district never called him. In other words, Day's allegations admit that the school district never accepted or rejected his application for any position. The court indicated that this was a necessary allegation that could not be cured by an amended pleading because the fact that the school district rejected him simply did not exist.

The court addressed the fourth element by stating that Day had not alleged that any particular teaching position at the school district remained open after his rejection since he had never been rejected. Rather, Day only alleged that the school district hired less qualified candidates. This court indicated that, even if that allegation were

true, the fact that the school district hired other applicants does not meet the *McDonnell Douglas* requirement that positions at the school district remained open after it had rejected him. Again, this court indicated that is a necessary element that Day could never establish through an amended pleading.

This court concluded that since Day could never present facts to establish a prima facie of racial discrimination because: (1) the school district had rejected him for a position; and (2) after such a rejection, positions at the school district remained open. Given those insurmountable hurdles, this court granted the school district's motion and dismissed the case with prejudice.

John H. Ehrlich, Circuit Court Judge