

No. 1-11-0796

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

|                      |   |                  |
|----------------------|---|------------------|
| EDDIE SMALL,         | ) | APPEAL FROM THE  |
|                      | ) | CIRCUIT COURT OF |
| Plaintiff-Appellant, | ) | COOK COUNTY      |
|                      | ) |                  |
| vs.                  | ) | No. 09 CH 23152  |
|                      | ) |                  |
| VILLAGE OF BELLWOOD, | ) | HONORABLE        |
|                      | ) | MARTIN S. AGRAN, |
| Defendant-Appellee.  | ) | JUDGE PRESIDING  |

---

PRESIDING JUSTICE STEELE delivered the judgment of the court.  
Justices Neville and Salone concurred in the judgment.

**ORDER**

¶ 1 *HELD:* The circuit court of Cook County granted the Village of Bellwood's motion for summary judgment. Small appealed, alleging the trial court erred in limiting actionable claims under section 10 of the Illinois Human Rights Act (Act) (775 ILCS 5/10 (West 2006)) to "unlawful discrimination," and that the proper inquiry is whether Small alleged a "civil rights violation." He contends the Illinois Human Rights Commission precludes employment discrimination against those carrying arrest records under section 10 of the Act. This court finds the trial court did not err in granting Bellwood's motion for summary judgment. The trial court's judgment is affirmed.

¶ 2

## BACKGROUND

¶ 3 Plaintiff Eddie Small worked as commissioner of public works for the Village of Bellwood (Bellwood) under two separate employment contracts operating through 2005. His employment with Bellwood commenced in 1989. From May 2005, until his termination, Small worked without an employment contract. On November 27, 2007, Bellwood police responded to a domestic violence call at the home of Small's girlfriend, Viola Shaw. Small reported to the police station, where he was arrested and charged with domestic battery. On November 28, 2007, Small received a letter addressed to him and signed by Roy Campbell, comptroller/human resource director of Bellwood. The letter stated in part:

"As Superintendent of Public Works for the Village, you represent the Village at all times. Your conduct whether off or on duty, impacts the Village's reputation. Engaging in conduct, such as that for which you were charged, reflects poorly on Village government as you are a representative of the Village in the community. Prior to a determination as to what, if any, action is appropriate as a result of you[r] off duty conduct, you have the opportunity to respond to allegations that you impaired the reputation of the Village governmental administration by engaging in off duty conduct which violates State law and serves as a negative role model in the community."

This same letter summoned Small to a Bellwood due process meeting on November 30, 2007, and advised him that he would have the opportunity to respond to allegations that he impaired the reputation of Bellwood's governmental administration by engaging in off duty conduct that violated state law. On November 29, 2007, Small appeared in court to respond to the domestic

1-11-0796

battery charge. However, the complaining witness refused to prosecute and the case was dismissed. On November 30, 2007, Small appeared at the due process meeting and stated he was not guilty of domestic battery, the complaining witness retracted her allegations in court, and the criminal complaint was dismissed. After the hearing, Small received another letter from Campbell informing him that he was placed on administrative leave while Bellwood reviewed a transcript of the court proceedings to gain a better understanding of the facts surrounding the arrest.

¶ 4 In a letter dated December 27, 2007, Campbell announced Small's termination as commissioner, stating that a review of the court transcript revealed that the complainant did not, as Small suggested, state that the allegations were false or exaggerated. The transcript also did not support Small's position that he was wrongly accused of the conduct resulting in his arrest. Lastly, the letter stated that as a result of such conduct, Bellwood decided to terminate his employment.

¶ 5 Small filed an action in the circuit court alleging that Bellwood discharged him from employment as a result of his arrest for domestic battery, thus violating section 2-103(A) of the Act (775 ILCS 5/2-103(A) (West 2006)), which makes it a civil rights violation for employers to terminate an employee on the basis of having an arrest record. Small filed a motion for summary judgment pursuant to section 2-1005(c) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1005(c) (West 2006)), claiming the undisputed facts show that Bellwood discharged him solely because of an arrest, amounting to pretext for discrimination. In its answer, Bellwood asserted that it was entitled to immunity for Small's claims under section 2-201 of the Illinois

1-11-0796

Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/2-201 (West 2006)). Bellwood also filed a motion for summary judgment, arguing Bellwood did not discharge Small based on his arrest, and consequently, was entitled to judgment as a matter of law. The trial court granted Bellwood's motion for summary judgment, holding Bellwood did not violate section 5/2-103(A) of the Act and is immune from liability pursuant to section 2-201 of the Tort Immunity Act. Small filed a timely appeal to this court.

¶ 6

#### DISCUSSION

¶ 7 In the matter before us, the parties dispute whether the circuit court properly granted Bellwood's motion for summary judgment on the bases that Bellwood did not violate section 5/2-103(A) of the Act and whether section 2-201 of the Tort Immunity Act completely immunized defendant from liability for the acts and omissions stated in Small's complaint.

¶ 8 Summary judgment is intended to determine whether triable issues of fact exist and “is appropriate where the pleadings, affidavits, depositions, admissions, and exhibits on file, when viewed in the light most favorable to the nonmovant, reveal that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” *Catom Trucking, Inc. v. City of Chicago*, 2011 IL App (1st) 101146, ¶9 (citing *Busch v. Graphic Color Corp.*, 169 Ill. 2d 325, 333 (1996)). “When, as in this case, parties file cross-motions for summary judgment, they concede the absence of a genuine issue of material fact and invite the court to decide the questions presented as a matter of law.” *Steadfast Insurance Co. v. Caremark Rx, Inc.*, 359 Ill. App. 3d 749, 755 (2005). “On appeal, our standard of review is *de novo*; and we may affirm the trial court's grant of summary judgment on any ground apparent from the

1-11-0796

record.” *Fan v. Auster Co.*, 389 Ill. App. 3d 633, 648 (2009).

¶ 9 First, we evaluate whether the claimed violation constitutes employment discrimination within the meaning of the Act. Bellwood argues Small failed to present evidence necessary to withstand summary judgment. In particular, Bellwood asserts Small provided no evidence to show that his arrest was the motivating reason for his discharge from employment with Bellwood. We agree.

¶ 10 Small contends the trial court erred in limiting actionable claims under section 10 of the Act (775 ILCS 5/10 (West 2006)) to "unlawful discrimination" where the proper inquiry is whether plaintiff alleged a "civil rights violation" as defined by the Act. Small cites *Blount v. Stroud*, 232 Ill. 2d 302 (2009), in support of his contention that the proper inquiry is whether a plaintiff has alleged a "civil rights violation" as defined in section 1-103(D) of the Act (775 ILCS 5/1-103(D) (West 2006)). However, Small cites nothing in the record to support his contention that the trial court limited the claims under section 10 of the Act to "unlawful discrimination." We find the contrary. In the trial court's memorandum opinion, issued on February 18, 2011, the court distinguishes a case Small relied on in his argument that his termination was pretextual. Unlike Small's facts, the case distinguished involved issues of "unlawful discrimination" as it appears in section 1-103(D) of the Act, whereas Small never alleged unlawful discrimination in his complaint. In its memorandum opinion, the trial court stated in pertinent part:

"Plaintiff relies on *Grohs v. Gold Bond Bldg. Products, Div. of Nat'l Gypsum Co.*, 859 F.2d 1283 (1988). Plaintiff's argument, however, is misguided. In *Grohs*, the court

1-11-0796

articulated criteria that a plaintiff in an age discrimination action must satisfy in order to support a finding that age was a determinative factor in the plaintiff's discharge. *Grohs* 859 F.2d at 1286. The *Grohs* case, however, is inapplicable to the current matter. The *Grohs* case involved a suit based on alleged age discrimination. The current matter is not a case of discrimination. Section 1-103(Q) of the Illinois Human Rights Act describes 'unlawful discrimination' as: 'Discrimination against a person because of his or her race, color, religion, national origin, ancestry, age, sex, marital status, handicap or unfavorable discharge from military service as those terms are defined in this Section.' *Illinois State Bd. of Elections v. Human Rights Comm'n*, 291 Ill. App. 3d 185, 186-87 (1997). Small does not allege that Bellwood discharged him on account of any of these reasons. The current matter, therefore, does not involve a case of unlawful discrimination.

Consequently, any argument made relying on such a foundation is without merit."

Therefore, because Small did not allege unlawful discrimination, we find the trial court did not erroneously rely on an incorrect section of the statute.

¶ 11 Small also argues the trial court erred in finding that Small was not entitled to prove his claim by utilizing the indirect method. The indirect method of proving civil rights violations under the Act first appeared in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973), and was adopted by the Illinois Supreme Court in *Zaderaka v. Human Rights Comm'n*, 131 Ill. 2d 172, 178-79 (1989). First, the plaintiff must establish by a preponderance of the evidence a *prima facie* case of unlawful discrimination. *Zaderaka*, 131 Ill. 2d at 179-80. If a *prima facie* case is established, a rebuttable presumption arises that the employer unlawfully discriminated

1-11-0796

against the plaintiff. *Id.* at 180. Second, to rebut the presumption, the employer must articulate, not prove, a legitimate, nondiscriminatory reason for its decision. *Id.* Third, if the employer articulates such a reason, the burden falls back to the plaintiff to prove by a preponderance of the evidence that the employer's articulated reason was untrue and was a pretext for unlawful discrimination. *Id.*

¶ 12 The record does not indicate the trial court stated Small was not entitled to or precluded from using the indirect method to prove his claim. In its memorandum opinion, the trial court concluded:

"The current matter is not a case of discrimination. [Section]1-103(Q) of the Illinois Human Rights Act describes 'unlawful discrimination' as: 'Discrimination against a person because of his or her race, color, religion, national origin, ancestry, age, sex, marital status, handicap or unfavorable discharge from military service as those terms are defined in this Section. *Illinois State Bd. of Elections v. Human Rights Comm'n*, 291 Ill. App. 3d 185, 186-187 (1997)."

¶ 13 Small does not allege that Bellwood discharged him for any of these reasons. Therefore, we find the trial court was correct in its contention that the current matter does not involve a case of unlawful discrimination as defined in section 1-103(Q) of the Act. Consequently, any argument made relying on such a foundation lacks merit.

¶ 14 Small's claim is based on section 2-103(A) of the Act. This court distinguishes between claims brought under sections 1-103(Q) and 2-103(A) of the Act. For example, in *C.R.M. v. Chief Legal Counsel of Illinois Dept. of Human Rights*, 372 Ill. App. 3d. 370 (2007), this court

1-11-0796

analyzed claims of unfair discrimination under section 1-103(Q) of the Act using the indirect method and analyzed a claim under section 2-103(A) of the Act separately, without utilizing the indirect method. In *C.R.M.*, petitioner filed a discrimination charge with the Illinois Department of Human Rights (Department), alleging the city of Country Club Hills discriminated against him by denying him employment based on his race, age, sex, and previous arrest record. *Id.* at 731. The trial court found petitioner did not establish a *prima facie* case for race, age or sex discrimination, and that nothing in the record indicated the city relied on petitioner's arrest record in deciding not to hire him. *Id.* at 733. In analyzing the petitioner's claims, the trial court separated those claims under section 2-102(A) of the Act from the claim of discrimination due to an arrest record under section 2-103(A). The trial court noted discrimination due to race, age or sex is defined by section 1-103(Q) of the Act. The *C.R.M.* court applied the indirect method in analyzing the petitioner's claim of race, age or sex discrimination. *Id.* at 733. However, the court separately analyzed whether there was an indication in the record that the city of Country Club Hills used the petitioner's arrest in its decision not to hire him. *Id.* at 734.

¶ 15 Here, based on the record before us, we find no indication Bellwood fired Small because of his arrest. Small had an administrative hearing with Bellwood during which he misrepresented facts about the incident surrounding his arrest. Bellwood then reviewed the trial transcript, found the discrepancy, and terminated Small's employment for the deemed misrepresentation during the hearing. A letter was sent to Small outlining exactly why his employment was terminated. The letter from the director of human resources for Bellwood to Small states in pertinent part:

1-11-0796

"A review of the court transcript reveals that the complainant stated in open court that she did not wish to go forward with the prosecution of the complaint that said she had previously filed against you for domestic battery. The complainant did not, as you suggested at our meeting, state that the allegations that she had made against you were false or exaggerated in any way. Although the charges against you were dropped, the transcript of that proceeding, unfortunately, does not support your position that you were wrongly accused of off duty conduct which resulted in your arrest by Bellwood Police and jeopardized the reputation of the Village. As we discussed previously, the Superintendent of Public Works represents the Village and its elected officials at all times. Inappropriate off duty conduct of the Village's highest officials, especially that which results in police intervention, reflects negatively on the reputation of the Village. As a result of your off duty conduct of November 27, 2007, the Village has no other choice but to terminate your employment effective immediately."

¶ 16 We find no genuine issue of material fact exists about whether Small's arrest was the basis for his employment termination in violation of section 2-103(A) of the Act. Therefore, we need not reach the issue of whether Bellwood is immune under the Tort Immunity Act.

¶ 17 **CONCLUSION**

¶ 18 For all the aforementioned reasons, we affirm the trial court's grant of summary judgment to Bellwood.

¶ 19 Affirmed.

1-11-0796