MISSOURI COURT OF APPEALS
WESTERN DISTRICT

KEVIN LABRANCHE, Appellant,
v.
CIRCUIT COURT OF JACKSON COUNTY, Respondent.

DOCKET NUMBER WD86579

DATE: December 17, 2024

Appeal From:

Jackson County Circuit Court
The Honorable Corey Keith Herron, Judge

Appellate Judges:

Division One: Lisa White Hardwick, Presiding Judge, Gary D. Witt, Judge, and Janet Sutton, Judge

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Attorneys:

Allison Kort, Kansas City, MO counsel for Appellant.

Nicolas Taulbee, Kansas City, MO counsel for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT

KEVIN LABRANCHE, Appellant,
v.
CIRCUIT COURT OF JACKSON COUNTY, Respondent.

WD86579 Jackson County

Before Division One Judges: Lisa White Hardwick, Presiding Judge, Gary D. Witt, Judge, and Janet Sutton, Judge.

Kevin LaBranche (LaBranche) is a White male over the age of forty who is employed by the Circuit Court of Jackson County, Missouri (Employer). In July 2020, LaBranche filed a petition for damages alleging claims of discrimination, hostile work environment, and retaliation under the Missouri Human Rights Act against Employer.

In his petition, LaBranche alleged he applied for and was not selected for a number of vacancies for which he was qualified and that Employer instead hired and promoted people of color, women, and people under forty years of age. LaBranche further alleged that after filing a Charge of Discrimination with the Missouri Commission on Human Rights, Employer did not select him for positions that LaBranche believed he was qualified for and created a hostile work environment. Additionally, LaBranche alleged that Employer no longer contacted LaBranche to cover available shifts which denied him overtime pay.

Employer filed a motion for summary judgment and statement of uncontroverted material facts (SUMF), arguing LaBranche had not produced and would not be able to produce sufficient evidence for a trier of fact to find Employer (1) discriminated against him based on his age, race, or sex in its hiring decisions; (2) created a hostile work environment based on his age, race, or sex, or because of any discrimination complaint; or (3) retaliated against him after he complained of discrimination.

LaBranche filed an opposition to the motion for summary judgment that, in part, moved to strike and objected to the paragraphs of Employer's statement of uncontroverted material facts (SUMF) that relied on the Affidavit of M.J., the Director of Human Resources. LaBranche argued M.J. lacked personal knowledge of the facts and that Employer failed to attach certified copies of the employment and promotion records the Affidavit of M.J. referenced, thus, violating Rule 74.04(e).

The trial court granted Employer's motion for summary judgment. The trial court found the Affidavit of M.J. was based in part on personal knowledge known to him as the Director of Human Resources and that he qualified as a records custodian. The trial court did not, however, consider the paragraphs in Employer's SUMF which "depend[ed] too much upon documents reviewed by affiant to be considered personal knowledge," which were not attached to the affidavit.

LaBranche raises two points on appeal. First, LaBranche argues the trial court erred in granting summary judgment for Employer because it abused its discretion in denying LaBranche's motion to strike Employer's factual assertions in the SUMF which relied on the Affidavit of M.J. Second, LaBranche argues the trial court erred in granting summary judgment for Employer because the trial court misapplied the law under Rule 74.04 by inviting Employer to expand the summary judgment record after the motion and response had been filed and did not allow LaBranche to respond to Employer's supplemental suggestions.

REVERSED AND REMANDED.

Division One holds:

1. The trial court erred in finding the assertions from the Affidavit of M.J. to be uncontroverted facts because Employer failed to attach the necessary business records which affiant relied on pursuant to rule 74.04(e). M.J.'s experience and position were insufficient to establish a basis for personal knowledge of the facts set forth in the affidavit. Only after M.J. reviewed the relevant records, did he provide the facts which Employer relied on in its SUMF. The SUMF that came from the Affidavit of M.J. should have been stricken. Without the ability to rely on the facts presented in the Affidavit of M.J., there are insufficient uncontroverted facts upon which to grant summary judgment to Employer.

2. We are unable to review LaBranche's second point on the merits because of briefing deficiencies under Rule 84.04. LaBranche's argument is analytically insufficient as his argument only consists of a single sentence, which fails to include any factual assertions or any citations to the relevant portion of the record on appeal, thus, violating Rule 84.04(e).

Opinion by: Janet Sutton, Judge December 17, 2024

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