STATE OF MICHIGAN

COURT OF APPEALS

RUTH YVETTE SECREST and MYSHELLE YVETTE ALLIX,

Plaintiffs–Appellants,

v

MICHIGAN NATIONAL CORPORATION, CLAUDIA SHIMMIN, TOM KIMBRO, RUTH NOWICKI and WAYNE CAREY,

Defendants–Appellees.

UNPUBLISHED
June 4, 1996

No. 174212
LC No. 92-444004

Before: Corrigan, P.J., and MacKenzie, and P.J. Clulo,* JJ.

PER CURIAM.

Plaintiffs appeal the trial court's order granting defendants summary disposition in this employment discrimination suit. We reverse.

Plaintiff Secrest, an African-American woman, was employed by defendant Michigan National Corporation (Michigan National) from September 22, 1986, until her discharge on May 5, 1993. Plaintiffs brought this action under the Elliott-Larsen Civil Rights Act, MCL 37.2010 *et seq*; MSA 3.548(101) *et seq* and the Michigan Handicappers Civil Rights Act (MHCRA), MCL 37.1101 *et seq*; MSA 3.550(101) *et seq*. Plaintiffs alleged that during Secrest's employment, she was subjected to disparate treatment on the basis of race with regard to pay and other conditions of employment. Plaintiffs also alleged that Michigan National violated the MHCRA by firing Secrest for refusing to perform tasks contrary to her medical restrictions.

In the course of discovery, defendants discovered that Secrest had made misrepresentations on her job application and fidelity bond application and had accessed confidential information regarding her co-workers' salaries. Defendants moved for summary disposition, arguing that Secrest would not have been hired if Michigan National had been aware of the misrepresentations, or that Secrest would have been fired if Michigan National had learned that she accessed the confidential information.

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* Circuit judge, sitting on the Court of Appeals by assignment.

The trial court determined that plaintiff's misrepresentations on the fidelity bond constituted misconduct which would have resulted in plaintiff's termination if Michigan National had been aware of the misrepresentation. The summary disposition motion was granted. The trial court relied on two federal cases, *Johnson v Honeywell Information Systems, Inc*, 955 F2d 409 (CA 6, 1992) and *Milligan-Jensen v Michigan Technological University*, 975 F2d 302 (CA 6, 1992). In *Johnson*, the sixth circuit held that a plaintiff who lied about her educational background was barred from relief under the state Civil Rights Act because she would not have been hired absent her resume fraud. *Id.* at 415. In *Milligan*, the sixth circuit held that a plaintiff who failed to disclose a past conviction on her employment application was barred relief under Title VII of the federal Civil Rights Act 42 USC 2000e *et seq*. *Id.* at 305.

Since the time of the trial court's decision, the federal precedents relied upon by the trial court have been rendered obsolete by the United States Supreme Court's decision in *McKennon v Nashville Banner Publishing Company*, 513 US __; 115 S Ct 879; 130 L Ed 2d 852 (1995). In *McKennon*, The United States Supreme Court held that after-acquired evidence of wrongdoing which would have resulted in termination would not bar all relief for an earlier violation of the Age Discrimination in Employment Act (ADEA), 29 USC 621 *et seq*. 513 US at __; 115 S Ct at 884; 130 L Ed 2d at 861. The Court held, however, that the after-acquired evidence would bar frontpay as a remedy. 513 US at __; 115 S Ct at 886; 130 L Ed 2d at 862-864. This Court applied the *McKennon* reasoning to the state Civil Rights Act in *Wright v Restaurant Concept Management, Inc*, 210 Mich App 105, 110; 532 NW2d 889 (1995). By analogy, the decision is also applicable to actions brought under the MHCRA. Defendants were therefore not entitled to summary disposition. Secrest's misconduct will preclude her from recovering frontpay if she successfully proves discrimination, but it does not bar her civil rights suit.

Because the after-acquired evidence doctrine does not entitle defendants to judgment as a matter of law, it is not necessary to consider whether the trial court erred in determining that there was no issue of fact concerning whether plaintiff would have been discharged for her misconduct.

Reversed and remanded for proceedings in accordance with this opinion. We do not retain jurisdiction.

/s/ Maura D. Corrigan
/s/ Barbara B. MacKenzie
/s/ Paul J. Clulo