# STATE OF MICHIGAN

# COURT OF APPEALS

SEIJA SMITH,

Plaintiff-Appellant,

v

SHELTERHOUSE, BARBARA BADGERO and PAULA YENSEN,

Defendants-Appellees.

UNPUBLISHED
June 11, 1996

No. 177035
LC No. 93-1834-NZ

Before: Gribbs, P.J., and Hoekstra and C. H. Stark,* JJ.

PER CURIAM.

Plaintiff appeals the circuit court order granting summary disposition to defendants of her wrongful discharge action. We affirm.

The circuit court did not err in granting summary disposition in this case, where plaintiff failed to come forward with any evidentiary proof to establish a genuine issue of material fact. A motion for summary disposition under MCR 2.116(C)(10), tests whether there is factual support for a claim. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993).When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence available to it. *Patterson v Kleiman*, 447 Mich 429, 432; NW2d (1994). The moving party must specifically identify the matters which have no disputed factual issues and has the initial burden of supporting its position by affidavits, depositions, admissions or other documentary evidence. Id at 432. The party opposing the motion then has the burden of showing by evidentiary materials that a genuine issue of disputed fact exists. *Skinner v Square D Co*, 445 Mich 153, 160-161; 516 NW2d 475 (1994). The nonmovant may not rest upon mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. *Patterson*, supra at 432. The trial court did not err in concluding that the allegations and denials in plaintiff's affidavit did not create a genuine issue of material fact. Even assuming arguendo that

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

the release plaintiff signed was invalid, the trial court properly granted defendants summary disposition in this case.

The trial court did not err in dismissing plaintiff's claim of intentional infliction of emotional distress. Damages for intentional infliction of emotional distress are not recoverable in an action for breach of an employment contract. *Stopczynski v Ford*, 200 Mich App 190, 196-197; 503 NW2d 912 (1993). Moreover, the conduct alleged, even if unprofessional and unseemly, is not so outrageous that it goes beyond all possible bounds of decency. *Linebaugh v Sheraton Mich* Corp, 198 Mich App 335, 342; 497 NW2d 585 (1993); *Meek v Michigan Bell Telephone Co*, 193 Mich App 340, 346-347; 483 NW2d 407 (1992).

Plaintiff alleges that the trial court erred in dismissing her claims of intentional interference with an employment contract, in finding that she was a probationary employee in an at-will employment situation, and in granting summary disposition as to her claim of promissory estoppel. Plaintiff's claim of intentional interference is dependent upon the existence of a contract. *Henry v Hospital & Health Services Credit Union*, 164 Mich App 90, 94; 416 NW2d 338 (1987). The revised employee handbook in this case clearly stated that the employment relationship was at the will of the employer or employee, and that a 'qualifying period', in which termination could be immediate, was reinstated whenever an employee began a new position.. As the trial court noted, in light of the clear language in the revised employee handbook, plaintiff failed to demonstrate a clear and unequivocal oral communication that would show a just cause relationship.. Plaintiff's supervisor's alleged statements, to the effect that 'progressive discipline' would be followed in cases of misconduct, were not promises to discharge for cause only and were insufficient to create a just cause contract. *Rowe v Montgomery Ward*, 437 Mich 627, 646; 473 NW2d 268 (1991). Although progressive disciplinary procedures were available, they were not mandatory in an at will employment situation. Further, while plaintiff stated that she did not know she had been given a new "position", she acknowledged that she was aware that her duties and hours had been changed Thus, she could be terminated immediately without consultation of the personnel committee. As the trial court noted, the rules requiring that the personnel committee be consulted before a nonprobationary employee was terminated were to protect the personnel committee in its oversight capacity, rather than to protect the rights of an employee. The trial court properly concluded that plaintiff was an at will employee and that she had not established a claim under the promissory estoppel doctrine.

Finally, plaintiff contends that she was discharged in violation of public policy. Plaintiff did not raise this issue in her complaint or adequately argue it below, and it is not properly before this Court. Moreover, there is nothing in the record to support plaintiff's vague allegation that her activities were somehow protected. Plaintiff has not shown that her discharge was because of her refusal to violate the law or for the exercise of a right conferred by a legislative enactment. *Garavaglia v Moroun*, 211 Mich App 625, 629-630; 536 NW2d 805 (1995).

Affirmed.

/s/ Roman S. Gribbs
/s/ Joel P. Hoekstra
/s/ Charles H. Stark