STATE OF MICHIGAN

COURT OF APPEALS

BOBBY SMITH,

Plaintiff-Appellant,

v

LAKE MICHIGAN COLLEGE,

Defendant-Appellee.

UNPUBLISHED
June 25, 1996

No. 185548
LC No. 94-003201-CK

Before: Marilyn Kelly, P.J., and Neff and J. Stempien,* JJ.

PER CURIAM.

Plaintiff Bobby Smith appeals the grant of defendant Lake Michigan College's motion for summary disposition in plaintiff's action for breach of an employment contract. In an attempt to balance its budget, defendant eliminated plaintiff's position as supervisor of custodians, along with nine others, approximately one year before plaintiff's employment contract was to expire. We affirm.

I

Plaintiff argues that his employment contract, which incorporates by reference the "Board of Trustees Policies Relating to Administrators and the Administrative Staff," entitled him to a pretermination hearing. Plaintiff relies on the following language in §XII of the policies:

> Termination: Within ten (10) working days of notice of intent to recommend termination of services, the staff member may request a hearing before the Board of Trustees prior to the Board's taking final action on the recommendation.

Plaintiff's argument violates the cardinal rule in contract interpretation; that is, that the parties' intent is to be determined from an examination of the instrument as a whole. *Singer v Gold*, 334 Mich 163, 168; 54 NW2d 290 (1952). The policies provide that defendant may terminate an employee during the term of his contract for any of three reasons: a reduction in force, illness or incapacity, or just

---

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

cause. The policies further provide that where an employee's termination is for illness or incapacity, or for just cause, termination will not occur until all of the policies' due process provisions, including the right to a hearing, have been completed. In contrast, the policies do not specifically provide the right to a pretermination hearing to an employee, such as plaintiff, who is subject to layoff because of a reduction in force; rather, such an employee is merely entitled to at least two weeks' notice of the layoff. In addition, the policies omit any reference to a burden of proof to establish the economic necessity for the layoff, whereas a person recommending termination for cause or for illness, incapacity or disability must establish the ground for termination by a preponderance of the evidence.

The provisions of §XII leave no doubt or ambiguity when viewed, as they must be, in light of the policies as a whole. The circuit judge properly determined that plaintiff, whose layoff was the result of a reduction in force, was not entitled to a pretermination hearing.

II

Plaintiff challenges the grant of defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). Such a motion may be granted when, after reviewing the entire record, including pleadings, affidavits, depositions, admissions and any other documentary evidence in a light most favorable to the nonmovant, the trial court determines that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Barnell v Taubman Co, Inc*, 203 Mich App 110, 115; 512 NW2d 13 (1995). We review de novo a trial court's grant of summary disposition. *Cipri v Bellingham Foods, Inc*, 213 Mich App 32, 41; 539 NW2d 526 (1995).

As a general rule, termination of an employee due to an economically motivated reduction in force does not constitute grounds for a wrongful discharge claim. *McCart v Thompson, Inc*, 437 Mich 109, 114-115; 469 NW2d 284 (1991); *Featherly v Teledyne*, 194 Mich App 352, 364; 486 NW2d 361 (1992). However, where an employer alleges the defense of economic necessity and the employee presents evidence that the defense is pretextual, the question of the employer's "true reason" for discharging the employee is one of fact for the jury. *Ewers v Stroh Brewery Corp*, 178 Mich App 371, 379; 443 NW2d 504 (1989).

Plaintiff has failed to demonstrate that a genuine issue of material fact exists regarding defendant's economic necessity defense. It is undisputed that defendant saved over $257,000 through the elimination of nine positions, of which $31,000 was attributable to the elimination of plaintiff's position. Defendant determined that it would be easiest to redistribute plaintiff's duties with no adverse effect, and plaintiff was the least senior of the supervisors. Moreover, plaintiff's performance was not at issue, as his most recent evaluation indicated that his performance on the job exceeded expectations. Contrary to plaintiff's argument on appeal, defendant did not create any new positions after plaintiff was laid off; the subsequently available full-time custodial positions were required to be filled by union members, which excluded plaintiff from consideration.

Plaintiff's bare assertions that he "believed" that his layoff was for improper reasons are nothing more than unsubstantiated opinions and are wholly insufficient to raise a genuine issue of material fact. *Durant v Stahlin*, 375 Mich 628, 638-639; 135 NW2d 392 (1965); *SSC Associates Limited Partnership v General Retirement System of Detroit*, 192 Mich App 360, 364; 480 NW2d 275 (1991).

Because there is no genuine issue of material fact regarding the propriety of plaintiff's layoff, the circuit court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Marilyn Kelly
/s/ Janet T. Neff
/s/ Jeanne Stempien