STATE OF MICHIGAN

COURT OF APPEALS

ROXANNE CONLEY,

Plaintiff-Appellant,

v

JOHN V. CARR & SON, INC.,

Defendant-Appellee.

UNPUBLISHED
September 27, 1996

No. 183681
LC No. 93-333707-CZ

Before: Cavanagh, P.J., and Hood and J.J. McDonald,* JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

On appeal, an order granting or denying summary disposition is reviewed de novo. A motion for summary disposition may be granted pursuant to MCR 2.116(C)(10) when, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Giving the benefit of reasonable doubt to the nonmovant, the trial court must determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Plieth v St Raymond Church*, 210 Mich App 568, 571; 534 NW2d 164 (1995).

Plaintiff first argues that the trial court erred in granting defendant's motion for summary disposition because there was a genuine issue of fact regarding the existence of a just-cause contract. Specifically, plaintiff contends that she had a legitimate expectation of just-cause employment. We disagree.

In order to create a legitimate expectation that discharge will only be for just case, an employer's statements must be clear and unequivocal. *Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627, 645 (Riley, J.), 662 (Boyle, J.); 473 NW2d 268 (1991). Plaintiff relies on the deposition testimony of Carol Douras, defendant's personnel director. Douras stated that defendant had intentionally excluded an at-will provision from the employee handbook to discourage unionization, and

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

that the handbook was designed to "communicate to employees that Carr was a good place to work." However, these statements are not sufficient to show that a just-cause contract had been formed. The employee handbook does not contain any promises regarding job security, specific disciplinary procedures, or statements that an employee's rights were subject to the handbook provisions. Compare *Renny v Port Huron Hosp*, 427 Mich 415, 430-431; 398 NW2d 327 (1986); *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 614, 651-656; 292 NW2d 880 (1980).

Plaintiff next contends that the trial court erred in ruling that she did not make out a prima facie case of discrimination under the Handicapper's Civil Rights Act (HCRA), MCL 37.1101 *et seq*.; MSA 3.550(101) *et seq*. To establish a prima facie case of discrimination under the HCRA, a plaintiff must show (1) that she is "handicapped" as defined in the act; (2) the handicap is unrelated to her ability to perform the duties of a particular job, and (3) she has been discriminated against in one of the ways set forth in the statute. *Sanchez v Lagoudakis (On Remand)*, ___ Mich App ___, ___; ___ NW2d ___ (Docket No. 189094, issued 7/9/96). The burden is on the handicapped person to show that the defendant failed to accommodate the handicap. Once the plaintiff succeeds in establishing a prima facie case, the burden shifts to the employer to show legitimate, nondiscriminatory reasons for its actions. If the employer rebuts the plaintiff's prima facie case, the burden shifts back to the plaintiff, who then has to show that the employer's reasons constituted a pretext for discrimination. *Rasheed v Chrysler Corp*, 445 Mich 109, 132-133 n 41; 517 NW2d 19 (1994).

To the extent that plaintiff argues that her insubordination, unresponsive behavior to her supervisors, and disruptive conduct were the result of her epilepsy, we find no HCRA violation. The HCRA does not apply when a plaintiff's handicap is related to her ability to perform her job. MCL 37.1103(b)(i); MSA 3.550(103)(b)(i).

Moreover, plaintiff failed to make out a prima facie case because she failed to establish that she was discharged because of her handicap. A plaintiff cannot establish an issue of fact through a bare assertion that the defendant improperly discriminated against her. *Grant v Michigan Osteopathic Medical Center, Inc*, 172 Mich App 536, 539-540; 432 NW2d 313 (1988). Defendant was aware when it hired plaintiff that she is an epileptic. Plaintiff had suffered seizures at work without any adverse employment consequences. According to plaintiff's testimony, nearly a year and a half had elapsed between plaintiff's last seizure at work and her discharge. With regard to the events of November 9, 1990, plaintiff admitted that she knowingly ingested Phenobarbital well in excess of her prescribed dosage. Termination of plaintiff's employment on the basis of that incident therefore would not violate the HCRA.[1]

However, even if plaintiff had presented a prima facie case, we would find that defendant had articulated a legitimate, nondiscriminatory reasons for its termination of plaintiff. Defendant argues that plaintiff was discharged because of insubordination on November 29, 1990, which was the last straw in a long history of disruptive conduct and unsatisfactory job performance. As plaintiff does not dispute most aspects of defendant's version of events, but only argues that her actions were justified and did not constitute insubordination, we find that the trial court did not err in granting defendants' motion for summary disposition on plaintiff's claim under the HCRA.

Finally, plaintiff argues that she presented genuine issues of fact regarding whether she was discharged without just case. We have already determined that plaintiff has not overcome the presumption of employment at will and therefore could have been terminated for any reason or for no reason at all. See *Rood v General Dynamics Corp*, 444 Mich 107, 116; 507 NW2d 591 (1993). However, even if plaintiff had established the existence of a just-cause relationship, summary disposition would still have been proper. Plaintiff concedes that her error ratio was higher than defendant's standards. Plaintiff also admits that she failed to respond to her supervisors on November 29, 1990, despite previous warnings that such conduct was unacceptable. Therefore, there is no genuine issue of material fact that plaintiff's conduct constituted just cause for dismissal. See *Maize v State Farm Mutual Automobile Ins Co*, 190 Mich App 106, 109-110; 475 NW2d 363 (1991).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Harold Hood
/s/ John J. McDonald

[1] The HCRA provides:

> For purposes of article 2, "handicap" does not include either of the following:
>
> (i) A determinable physical or mental characteristic caused by the illegal use of a controlled substance. [MCL 37.1103(f); MSA 3.550(103)(f).]