

STATE OF MICHIGAN
COURT OF APPEALS

JEFFERY R. BURNETT,

Plaintiff-Appellant,

v

STATE OF MICHIGAN, GOVERNOR OF
MICHIGAN, ATTORNEY GENERAL,
SECRETARY OF STATE, MICHIGAN STATE
POLICE DIRECTOR, CHIPPEWA COUNTY
PROSECUTOR, JOHN LEUDESORFF, and
ALICE THOMPSON MATHESON,¹

Defendants-Appellees.

UNPUBLISHED

November 12, 1996

No. 178655

LC No. 94-015392

Before: Gribbs, P.J., and MacKenzie and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right the August 26, 1994, order of the Court of Claims granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10) in this case for handicap discrimination based on provisions of the Americans with Disabilities Act, 42 USC 12101 *et seq.*, and the Rehabilitation Act of 1973, 29 USC 701 *et seq.* We affirm.

Plaintiff filed this suit against defendants, alleging, among other things, that their failure to censure a certain circuit court judge or explain why plaintiff's divorce action was assigned to this judge amounted to discrimination on the basis of plaintiff's alleged handicap, mental disability. Defendants moved the court of claims for summary disposition pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10), generally arguing that plaintiff was unsuccessful in stating a claim upon which the court could predicate relief. With no explanation for its decision, the court of claims dismissed plaintiff's action. This appeal ensued.

On appeal, plaintiff argues that the court of claims erred in dismissing his claims by granting summary disposition in defendants' favor pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10). Plaintiff argues that he succeeded in stating claims upon which relief can be granted and in raising genuine issues

of material fact regarding defendants' liability for handicap discrimination and illegal retaliation under federal civil rights statutes. We disagree.

We will address plaintiff's arguments in relation to the MCR 2.116(C)(8) and (C)(10) standards of review.² MCR 2.116(C)(8) permits summary disposition on the ground that the opposing party "has failed to state a claim on which relief can be granted." A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 263; 532 NW2d 882 (1995). All factual allegations supporting the claim are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.* This Court reviews a trial court's decision under MCR 2.116(C)(8) de novo and determines if the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery. *Id.*

MCR 2.116(C)(10) permits summary disposition when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." This Court considers the factual support for the claim, giving the benefit of any reasonable doubt to the nonmoving party to determine whether a record might be developed which might leave open an issue upon which reasonable minds could differ. *Jackhill Oil Co v Powell Production, Inc.*, 210 Mich App 114, 117; 532 NW2d 866 (1995). When deciding a motion for summary disposition, a court must consider the pleadings, depositions, affidavits, admissions and other documentary evidence available to it. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). The grant of summary disposition pursuant to MCR 2.116(C)(10) is reviewed de novo. *Jackhill, supra.*

As far as this Court can determine from plaintiff's confusing pleadings and brief,³ plaintiff sought to base his claims for relief on the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.*, and the Rehabilitation Act of 1973, 29 USC 701 *et seq.* 42 USC 12132, a provision of the ADA, states:

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity.

29 USC 794(a), a provision of the Rehabilitation Act of 1973, states, in pertinent part:

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . .

In order to establish a prima facie case of discrimination by a public entity under either statute, plaintiff must establish, as pertinent to this discussion, that (1) other than his identified disability, he was qualified to participate or receive benefits of the services, programs, or activities of a public entity and (2) he was discriminated against by defendants. See *Hoot v Milan Area Schools*, 853 F Supp 243,

249 (ED Mich, 1994). A review of the various allegations in plaintiff's complaint reveals no reference to plaintiff's exclusion from any governmental service or any basis upon which he has been discriminated against. Indeed, it is quite obvious that plaintiff has not been denied access to the court system. We can discern no other basis upon which these public defendants may have injured or discriminated against plaintiff because of his alleged mental disability. Hence, plaintiff has failed to state a claim upon which relief can be based. Furthermore, plaintiff has failed to establish the existence of any genuine issue of material fact that would make summary disposition inappropriate in this matter.

Plaintiff also claims to have been retaliated against and intimidated because he pursued his rights under the ADA. 42 USC 12203 generally prohibits discrimination or retaliation against individuals that seek to exercise their rights under the ADA. It is not evident from the record that plaintiff has experienced any adverse treatment in reality. Lastly, plaintiff finds error with the trial court's failure to provide him with either a "Section 504 Coordinator" or an "ADA Compliance Officer." We interpret this as plaintiff's argument that he is entitled to legal representation on the basis of his disability. We find no support for this contention in relevant statutory or case law. Accordingly, we affirm the decision of the Court of Claims granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10).

Affirmed.

/s/ Roman S. Gribbs

/s/ Barbara B. MacKenzie

/s/ Richard Allen Griffin

¹ The Michigan State Police Director, Chippewa County Prosecutor, John Leudesdorff, and Alice Thompson Matheson do not join in this appeal.

² Defendants also motioned the trial court for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). MCR 2.116(C)(7) authorizes summary disposition on the basis that "[t]he claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action." It is unclear on which of these (C)(7) bases the trial court granted summary disposition, if indeed it did grant summary disposition on the basis of MCR 2.116(C)(7). No party addresses this issue. In the lower court, defendants confined their argument in support of dismissal to plaintiff's failure to state a claim upon which relief could be granted. Hence, we do not address the propriety of the trial court's decision as to MCR 2.116(C)(7).

³ We are mindful that we must remain particularly solicitous of a plaintiff's legal shortcomings where, as here, the plaintiff acts in propria persona and alleges violation of federal civil rights statutes. *Haines v Kerner*, 404 US 519, 520-521; 92 S CT 594, 595-596 (1972).