

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ANITA B. MCCULLOM,

Plaintiff-Appellant,

v

MICHIGAN DEPARTMENT OF  
TRANSPORTATION,

Defendant-Appellee.

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UNPUBLISHED

November 22, 1996

No. 186629

LC No. 93-076434-CL

Before: Saad, P.J., and Griffin and M. H. Cherry,\* JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of summary disposition entered pursuant to MCR 2.116(C)(8), and MCR 2.116(C)(10) in favor of defendant. On appeal, plaintiff argues that defendant failed to reasonably accommodate plaintiff's handicap pursuant to the Michigan Handicappers' Civil Rights Act, MCL 37.1101 *et seq.*; MSA 3.550(101) *et seq.*, and that there existed genuine issues of material fact. We affirm.

Plaintiff argues that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10). We disagree. Summary disposition may be granted where, 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. MCR 2.116(C)(10). The movant must specifically identify those matters which have no disputable issue of fact and then support its position with documentary evidence. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). The party opposing the motion must then show by documentary evidence that a genuine issue of material fact exists. *Skinner v Square D Co*, 445 Mich 153, 160; 516 NW2d 475 (1994); *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991). We review a trial court's grant of summary disposition, pursuant to MCR 2.116(C)(10), de novo to determine, giving the benefit of doubt to the nonmoving party, whether the movant was entitled to summary disposition as a matter of law. *Lytle v Malady*, 209 Mich App 179, 183-184; 530 NW2d 135 (1995).

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

To establish a prima facie case of discrimination, the plaintiff must show: (1) the plaintiff is handicapped as defined by the Handicappers' Civil Rights Act; (2) the plaintiff's handicap is unrelated to the plaintiff's ability to perform the duties of the particular job or position; and (3) the plaintiff has been discriminated against in one of the ways set forth in the Handicappers' Civil Rights Act. *Gazette v City of Pontiac*, 212 Mich App 162, 168; 536 NW2d 854 (1995).

The term "handicapped" is defined as:

A determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic . . . substantially limits 1 or more major life activities of that individual *and is unrelated to the individual's ability to perform the duties of a particular job or position* . . . [MCL 37.1103(e)(i)(A); MSA 3.550(103)(e)(i)(A) (emphasis added).]

Furthermore, "unrelated to the individual's ability" is defined as:

[W]ith or without accommodation, an individual's handicap does not prevent the individual from . . . performing the duties of a particular job or position. [MCL 37.1103(l)(i); MSA 3.550(103)(l)(i).]

A disability that is related to one's ability to perform the duties of one's job or position is not a "handicap" within the meaning of the Handicappers' Civil Rights Act. *Koester v Novi*, 213 Mich App 653, 661-662; 540 NW2d 765 (1995); *Rymar v Michigan Bell Telephone Co*, 190 Mich App 504, 506; 476 NW2d 451 (1991). While an employer must give an employee a reasonable time to recover if a handicap is temporary, that time must be under like conditions as other employees and the delay must not "impede getting the employer's work done." *Rymar, supra* at 507.

While plaintiff argues that she is handicapped because her illness substantially interfered with a major life activity, employment, and that defendant failed to reasonably accommodate that handicap, plaintiff's continued and ongoing inability to be present at her place of employment is related to her ability to perform the duties of that employment. Plaintiff's illness prevented her from being present at work and thus performing her employment duties, despite the fact that defendant granted her leaves of absence in excess of one year. Consequently, plaintiff was not "handicapped" for purposes of the Handicappers' Civil Rights Act, MCL 37.1103(e)(i)(A); MSA 3.550(103)(e)(i)(A); *Rymar, supra* at 506, and therefore failed to establish a prima facie case of discrimination pursuant to the Handicappers' Civil Rights Act. There was no genuine issue of material fact and defendant was entitled to judgment as a matter of law. MCR 2.116(C)(10).

Affirmed.

/s Henry William Saad  
/s/ Richard Allen Griffin  
/s/ Michael H. Cherry