

STATE OF MICHIGAN
COURT OF APPEALS

DEL BENNETT,

Plaintiff-Appellant,

v

STATE OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED

December 13, 1996

No. 191090

LC No. 94-020188

Before: Young, P.J., and O'Connell and W.J. Nykamp,* JJ.

PER CURIAM.

In this handicap discrimination case, plaintiff appeals as of right the order of the circuit court granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff disputes the court's rulings that plaintiff failed to raise genuine questions of material fact with respect to either count of his complaint. In Count I of his suit, plaintiff alleged that he was discharged because of a handicap in violation of MCL 37.1202; MSA 3.550(202). In Count II he alleged that defendant failed to accommodate plaintiff's condition in violation of MCL 37.1210; MSA 3.550(210), by refusing to allow him to use a cane at work.

This Court reviews de novo a trial court's determination regarding motions for summary disposition. *Parcher v Detroit Edison Co*, 209 Mich App 495, 497; 531 NW2d 724 (1995). This Court's task is to review the record evidence, including all reasonable inferences drawn from such evidence, and determine whether a genuine issue of material fact exists to warrant a trial. All legitimate inferences must be drawn in favor of the non-moving party. *Skinner v Square D Co*, 445 Mich 153, 161-162; 516 NW2d 475 (1994).

The Handicappers Civil Rights Act (HCRA) provides that an employer shall not discharge an individual because of a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position. MCL 37.1202(1)(b); MSA 3.550(202)(1)(b). To establish a prima facie case of handicap discrimination under the Act, a plaintiff must establish, *inter alia*, that he has a

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

“determinable physical or mental condition” which is unrelated to his ability to perform job duties. *Doman v Grosse Pointe Farms*, 170 Mich App 536, 541; 428 NW2d 708 (1988). In determining whether a plaintiff’s condition is related to his ability to perform job duties, a trial court must examine the abilities of the handicapped person in the context of the specific job duties and articulate uncontested facts in support of its conclusion. *Mitchell v General Motors Acceptance Corp*, 176 Mich App 23, 29-31; 439 NW2d 261 (1989).

In this case, the trial court reviewed evidence indicating that plaintiff’s job description “requires that a Correction Officer count prisoners, observe critically, respond quickly to calls for assistance in other areas of the prison and appropriately respond to incidents such as assaults and threatening situations to employees and prisoners.” The court also noted plaintiff’s deposition testimony that he missed a prisoner count due to back pain, that he fell down due to his condition, and that he had difficulty climbing stairs. Finally, the court referred to the testimony of Dr. Kevin Brown, plaintiff’s physician, that plaintiff’s ability to perform “may be compromised by his back pain” and that “there may be times when he may not be able to meet the corrections officer’s requirements.” Another of plaintiff’s physicians testified that plaintiff “probably” could not “perform basic duties as far as controlling prisoners and . . . utilizing self-defense techniques and things like that without reinjuring his back or aggravating his condition.” Thus, the court concluded, plaintiff “simply cannot do the day-to-day duties of a correctional officer” and, therefore, is not “handicapped” within the meaning of the HCRA.

Plaintiff claims that this case is controlled by *Mitchell*, *supra* at 23. We disagree. In *Mitchell*, summary disposition was inappropriate because the trial court made its ruling without examining the plaintiff’s particular disabilities in the context of the job in question, and without citing “uncontroverted or undisputed facts” to support its conclusion. *Id.* at 30-31. In the present case, the trial court did so, and these findings are supported by the record. Nor is this case controlled by *Crittenden v Chrysler Corp*, 178 Mich App 324; 443 NW2d 412 (1989), as plaintiff suggests. In *Crittenden*, there was evidence from the plaintiff’s doctor that, so long as his hypertension was controlled by medication, it would not interfere with his ability to perform his job duties. *Id.* at 332. In the present case, on the other hand, the testimony of plaintiff’s physicians suggests otherwise. Therefore, *Crittenden* does not control the present case. We conclude that the circuit court properly granted summary disposition with respect to the first count of plaintiff’s complaint.

Plaintiff next argues that the trial court erred when it granted summary disposition of his failure-to-accommodate claim. While plaintiff is correct that the trial court did not explicitly rule on the merits of plaintiff’s argument on this claim, we will review plaintiff’s claim because the material facts are not in dispute. *Lawrence v Department of Treasury*, 140 Mich App 490, 494; 364 NW2d 733 (1985).

Under the HCRA, an employer must accommodate an employee who is capable of performing his job duties “with accommodation.” MCL 37.1103(l); MSA 3.552(103)(l). Plaintiff did not raise a question of fact on this issue because, as described above, he did not establish a question of fact that he is able to perform the duties of his job even with the use of a cane. The circuit court’s conclusion that plaintiff could not perform his job duties was based on evidence of plaintiff’s performance while he was temporarily allowed to use a cane at work. This same evidence also established that defendant could

not perform his job duties “with accommodation,” i.e., with the use of a cane. Therefore, summary disposition of plaintiff’s accommodation claim was appropriate under MCR 2.116(C)(10).

Affirmed.

/s/ Robert P. Young

/s/ Peter D. O’Connell

/s/ Wesley J. Nykamp