STATE OF MICHIGAN

COURT OF APPEALS

TIMOTHY CARLISLE,

Plaintiff-Appellant,

v

SARA LEE CORPORATION,

Defendant-Appellee.

UNPUBLISHED
December 20, 1996

No. 186191
LC No. 93-011824

Before: Neff, P.J., and Hoekstra and G.D. Lostracco,* JJ.

PER CURIAM.

Plaintiff appeals from the trial court's order granting summary disposition to defendant pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff began working for defendant on July 31, 1978. In May 1984, plaintiff sustained serious injuries, including multiple fractures to his hip and leg in an automobile accident, and was placed on a lengthy medical leave. Plaintiff was eventually allowed to return to work under restrictions implemented by his doctor that defendant was able to accommodate. Subsequently, plaintiff was injured in a second automobile accident and was granted another medical leave. After recovering from the second accident, plaintiff requested to return to work with restrictions on a full-time basis in November 1990. The restrictions placed on plaintiff were, if anything, less restrictive than those placed on him previously. On January 3, 1991, defendant informed plaintiff that it could no longer reasonably accommodate him. On the basis of this denial of employment, plaintiff filed this action alleging defendant violated the Michigan Handicappers' Civil Rights Act, MCL 37.1101 *et seq.;* MSA 3.550(101) *et seq*.

Plaintiff first argues that the trial court erred in summarily dismissing his handicap discrimination claim. Specifically, plaintiff argues that the trial court erred in holding that no genuine issue of material fact existed regarding the ability of defendant to accommodate plaintiff's restrictions. We disagree.

Defendant's duty with regard to accommodating its employees is set forth in MCL 37.1102(2); MSA 3.550(102)(2), which provides:

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

> Except as otherwise provided in article 2, a person shall accommodate a handicapper for purposes of employment, public accommodation, public service, education, or housing unless the person demonstrates that the accommodation would impose an undue hardship.

Additionally, this Court has held that a duty to accommodate does not extend to new job placement. *Hall v Hackley Hospital*, 210 Mich App 48, 57; 532 NW2d 893 (1995). See also MCL 37.1210(15); MSA 3.550(210)(15).

In support of its motion for summary disposition, defendant offered the affidavit of its Human Resources manager, Anthony M. Gerstberger. Gerstberger stated that because defendant had implemented a system during plaintiff's last medical leave where all of its employees rotate between "light duty" and "heavy duty" work, plaintiff could not work solely in "rest" positions in order to accommodate his restrictions as he had been allowed to do previously without denying other employees access to those "rest" positions. In response to Gerstberger's affidavit, plaintiff relies on a Human Resources form as evidence that defendant has "light duty" work to offer to its employees. We find the Human Resources form insufficient as a matter of law to rebut the affidavit. The Human Resources form was unsigned, undated, and never connected with any supporting authority as having any applicability to plaintiff's case. Without a context as to how often, when, and in what manner the Human Resources form is used, a reasonable person could not conclude, based on this form alone, that defendant could reasonably accommodate plaintiff. Accordingly, we affirm the trial court's grant of summary disposition.

Next, plaintiff argues that the trial court abused its discretion in denying plaintiff's motion for reconsideration. Specifically, plaintiff argues that the trial court abused its discretion in disregarding the affidavit of John Terry that was submitted for the first time with the motion for reconsideration because it was untimely. We disagree. Plaintiff recognizes that Michigan courts have held that untimely filed affidavits may not be considered by a trial court when deciding motions for summary disposition. See *Prussing v General Motors Corp*, 403 Mich 366, 369-370; 269 NW2d 181 (1978); *Apfelblat v Nat'l Bank Wyandotte-Taylor*, 158 Mich App 258, 263; 404 NW2d 725 (1987). Nevertheless, plaintiff argues that because the trial court "invited" plaintiff to file additional support, the Terry affidavit should have been considered. We believe the record does not support plaintiff's interpretation of what the trial court "invited." Actually, the trial court only indicated a willingness to consider documents that it may have overlooked when considering the motion for summary disposition. Accordingly, the trial court did not abuse its discretion by failing to consider Terry's affidavit when ruling on plaintiff's motion for rehearing.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Gerald D. Lostracco