

STATE OF MICHIGAN
COURT OF APPEALS

JANE WEAR,

Plaintiff-Appellant,

v

D & N BANK, a federal savings bank,

Defendant-Appellee.

UNPUBLISHED

March 4, 1997

No. 173987

Genesee County

LC No. 92018338 CL

Before: Gribbs, P.J., and Marilyn Kelly and White, JJ.

PER CURIAM.

In this breach of contract and age discrimination action, plaintiff appeals as of right from the grant of a directed verdict for defendant.

Plaintiff asserts that there were genuine issues of material fact with respect to both claims. She argues, also, that the trial judge erred in awarding attorney fees to defendant. We affirm in part and reverse in part.

In evaluating a directed verdict, we consider the evidence at the time the motion is made in a light most favorable to the opposing party. *Locke v Pachtman*, 446 Mich 216, 223; 521 NW2d 786 (1994). If no factual question exists, the trial judge may grant a directed verdict. *Michigan Mut Ins Co v CNA Ins Cos*, 181 Mich App 376, 380; 448 NW2d 854 (1989).

In this case, the judge properly directed a verdict on the breach of contract claim. Plaintiff alleges that defendant's policy regarding cashier's checks gave her a legitimate expectation that she would be fired only if defendant suffered a loss from a violation of the policy. *Rood v General Dynamics Corp*, 444 Mich 107, 117-118; 507 NW2d 591 (1993). Even if plaintiff were correct, the evidence clearly demonstrated that plaintiff violated the cashier's check policy on two occasions. In the incident regarding the cashier's check issued to Mr. Rutherford, there was no dispute that the transaction caused a loss to the bank. Plaintiff admitted that her manager never told her to issue the check. It was plaintiff's individual decision to issue the cashier's check that constituted a violation of bank policy.

As for the issuance of the cashier's check to Mr. Poisson, there was no dispute that plaintiff issued the check without Poisson having sufficient funds in his account to cover it. Defendant sustained a loss, because it could have charged interest and fees on the transaction. Such amounts would have been minimal in this case, but the cashier's check policy does not specify that a loss must be above a minimum amount to constitute a violation. Accordingly, defendant did not breach its employment contract with plaintiff.

With respect to plaintiff's age discrimination claim, plaintiff established a prima facie case. However, she failed to rebut defendant's legitimate assertion that her employment was terminated due to her violation of the cashier's check policy. *Barnell v Taubman Co, Inc*, 203 Mich App 110, 120; 512 NW2d 13 (1993); *Sisson v Board of Regents of the University of Michigan*, 174 Mich App 742, 748; 436 NW2d 747 (1990). Therefore, the judge properly directed a verdict for defendant.

The trial judge properly set aside the original judgment drafted by defense counsel which inadvertently stated that the action was to be dismissed "without costs." MCL 2.612(C)(1)(a); *McDonald's Corp v Canton Twp*, 177 Mich App 153, 159; 441 NW2d 37 (1989). Defendant was entitled to costs under MCR 2.625(A)(1) as the prevailing party.

However, we find that the judge abused his discretion in assessing \$500 in attorney fees against plaintiff for not stipulating to the entry of a corrected order and in forcing defendant to bring a motion. MCR 2.114(E); *Wojas v Rosati*, 182 Mich App 477; 452 NW2d 864 (1990). Defense counsel was the one who made a mistake in drafting the original judgment that said the action was to be dismissed without costs. Plaintiff had a legitimate reason for not stipulating to the entry of the new judgment, where a judgment had already been entered which stated that costs would not be awarded, and plaintiff's counsel asserted that the attorneys had negotiated regarding the terms of the order, albeit not the term at issue.

Affirmed in part and reversed in part.

/s/ Roman S. Gribbs
/s/ Marilyn Kelly
/s/ Helene N. White