# STATE OF MICHIGAN

# COURT OF APPEALS

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CHRISTIAN OJIMADU,

Plaintiff-Appellant,

v

HENRY FORD HOSPITAL,

Defendant-Appellee.

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UNPUBLISHED
March 28, 1997

No. 191024
Wayne Circuit Court
LC No. 94-434891 CL

Before: Wahls, P.J., and Hood and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of the Wayne Circuit Court granting defendant's motion for summary disposition regarding his breach of contract claim pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff was accepted into a thirteen-month "Second-Career/Second-Degree" (CD2) nursing program at Wayne State University for students who already had a bachelor's degree in another field. In conjunction with the Wayne State University program, defendant offered a program whereby it agreed to sponsor students in the CD2 program. By sponsoring a student, defendant agreed to loan the student tuition money, which was paid by defendant directly to the school. In return, the student was required to complete the program in a timely fashion and become licensed as a registered nurse in Michigan. According to the loan repayment terms, if a student graduating from the program began employment with defendant as a "graduate nurse" within thirty days of graduating from the program, and continued to be employed with the defendant as a graduate nurse for the following twenty months, defendant would forgive the loan in full.

Plaintiff was accepted into the CD2 program for the 1992-1993 school year, successfully completed the courses, and graduated from the program in October 1993. However, plaintiff was not hired by defendant upon his graduation form the CD2 program. Defendant asserts that plaintiff was not hired upon his graduation because he informed Nancy Grisdale, the Manager of Nursing Employment at Henry Ford Hospital, that he would not be available for employment until the spring of 1994, because

he planned to travel to Africa to visit his family. Plaintiff thereafter interviewed for employment with defendant in the spring of 1994, but was not offered a job. Defendant asserts that plaintiff was not offered a job in the spring of 1994 because the number of positions were limited, and because of his employment history.

Plaintiff filed the present action on December 2, 1994, alleging breach of contract and national origin discrimination. On November 21, 1995, the trial court granted summary disposition of plaintiff's complaint pursuant to MCR 2.116(C)(10). Plaintiff does not challenge the trial court's grant of summary disposition with respect to his discrimination claim on appeal.

Plaintiff first argues that the trial court erred in granting summary disposition of his breach if contract claim based on its finding that he did not fulfill the terms of the Loan and Scholarship Agreement by making himself available for employment within thirty days of his graduation. We disagree.

An order granting summary disposition is reviewed de novo on appeal. *Michigan Mutual Insurance Company v Dowell*, 204 Mich App 81, 86; 514 NW2d 185 (1994). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests whether there is factual support for a claim. *Michigan Mutual, supra*, p 85. The motion may be granted when, 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. *Id*. The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence presented by the parties. *Id.* Giving the benefit of reasonable doubt to the nonmoving party, the court must determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Id.*

In support of its motion, defendant submitted the affidavit of Nancy Grisdale, in which she testified that plaintiff informed her after his graduation that he would not be available for employment until the spring of 1994 because he planned to travel to Africa to visit his family. Grisdale's affidavit testimony stated that she informed plaintiff at that time that there would be fewer employment opportunities in the spring, and that there were no guarantees of employment with defendant. Plaintiff failed to submit an affidavit or other documentary evidence to counter Grisdale's affidavit. A party opposing a motion for summary disposition may not rest upon mere allegations or denials in the pleadings, but must, by affidavit or other documentary evidence, set forth specific facts showing that there is a genuine fact issue for trial. MCR 2.116(G)(4); *York v Fiftieth District Court*, 212 Mich App 345, 349; 536 NW2d 891 (1995). Accordingly, the trial court properly granted summary disposition based on its finding that plaintiff did not fulfill the terms of the Loan and Scholarship Agreement by making himself available for employment within thirty days of his graduation.

Plaintiff next argued that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10) based on its finding that plaintiff would have been an at-will employee had he been hired by defendant. We disagree.

There is a strong presumption that an employment contract for an indefinite duration is terminable at the will of either party for any reason or for no reason at all. *Nieves v Bell Industries, Inc*, 204 Mich App 459, 462; 517 NW2d 235 (1994). However, a party may rebut the presumption of at-will employment by presenting proof of a contract provision for employment for a definite term, or a provision forbidding discharge absent just cause. *Nieves, supra,* p 462. In support of its motion for summary disposition, defendant submitted Nancy Grisdale's affidavit in which she testified that all newly hired employees of defendant were subject to a ninety-day qualifying period during which they were at-will employees who could be terminated for any reason with or without notice, and with or without cause. Plaintiff submitted no documentary evidence to dispute defendant's assertion that plaintiff would have been an at-will employee had he been hired by defendant. As an at-will employee, plaintiff's employment was terminable by either party at any time, including before plaintiff began the employment. *Cunningham v 4-D Tool Company,* 182 Mich App 99, 102; 451 NW2d 514 (1989). Therefore, plaintiff has no cause of action for breach of contract. *Id.*, p 105.

Affirmed.

/s/ Myron H. Wahls
/s/ Harold Hood
/s/ Kathleen Jansen