STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH A. MCMANUS,

Plaintiff-Appellant,

v

GENERAL MOTORS CORPORATION, a Delaware Corporation

Defendant-Appellee.

UNPUBLISHED
April 18, 1997

No. 182217
Wayne Circuit Court
LC No. 93-317465-CK

Before: Gribbs, P.J., and Young and W.J. Caprathe,*JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm.

Plaintiff alleges that on May 8, 1990, he was notified that he was being transferred to a clerical position from his position as a material handling supervisor. Plaintiff reported to this position on May 14, 1990. Plaintiff never returned after he left on June 20, 1990 claiming that he suffered from an adjustment disorder. Plaintiff filed this action June 18, 1993, alleging age discrimination and breach of a just cause employment contract. Defendant moved for summary disposition, arguing that plaintiff's action was barred by the statute of limitations, and that plaintiff was an at-will employee. The trial court concurred with defendant, and granted its motion for summary disposition.

Plaintiff first argues that his age discrimination claim was not barred by the statute of limitations. When reviewing a motion for summary disposition under MCR 2.116(C)(7), a court must accept as true the plaintiff's well-pleaded factual allegations and construe them in the plaintiff's favor. *Huron Tool and Eng'g Co v Precision Consulting Servs, Inc*, 209 Mich App 365, 376-377; 532 NW2d 541 (1995). The court must look to the pleadings, affidavits, or other documentary evidence to determine whether there is a genuine issue of material fact. *Id*. at 377. If no facts are in dispute, and reasonable minds could not differ on the legal effect of those facts, whether the plaintiff's claim is barred by the statute of limitations is a question for the court as a matter of law. *Id*.

An action for employment discrimination under the Civil Rights Act must be brought within three years after the cause of action accrued, MCL 600.5805(8); MSA 27A.5805(8). *Mair v Consumers Power Co*, 419 Mich 74, 77, 348 NW2d 256 (1984). Generally, a cause of action accrues on "the date a plaintiff's injury results . . . ," i.e., when a plaintiff can allege each element of the asserted claim. *Lemmerman v Fealk*, 449 Mich 56, 64; 534 NW2d 695 (1995). If a plaintiff alleges a civil rights violation due to discrimination, his or her claim accrues on the date of the discriminatory act. *Sumner v Goodyear Tire & Rubber Co*, 427 Mich 505, 527-528; 398 NW2d 368 (1986). Thus, to fall within the statute of limitations, a plaintiff must allege a present violation, i.e., one which occurred within the limitations period. *Id*. at 527. However, where an action is not in and of itself discriminatory, i.e., it has a discriminatory effect only because of a prior discriminatory act, it cannot sustain a cause of action. *Id*. at 530.

Plaintiff contends that his action accrued on June 20, 1990, the date that he left his employment, because he is claiming that he was constructively discharged. Specifically, plaintiff alleges that he left his job as a direct result of defendant's decision to force him to do clerical duties instead of utilizing his experience and skill. For a claim of constructive discharge, the employee's decision to leave his employment is deemed as the employer's decision to actually discharge the employee. *Champion v Nation Wide Security*, 450 Mich 702, 710; 545 NW2d 596 (1996). Constructive discharge is not itself a cause of action, but instead, is a defense against the argument that an employee's voluntary termination of employment precludes the underlying cause of action asserted by the plaintiff. *Vagts v Perry Drug Stores*, 204 Mich App 481, 487; 516 NW2d 102 (1990). Therefore, a claim of discrimination accrues from the date of the discriminatory act, rather than the date of discharge. *Sumner, supra*.

Alternatively, plaintiff alleges that his discharge was a continuing violation. Assuming as true plaintiff's allegation that his transfer was based on his employer's age animus, plaintiff was notified of the transfer on May 8, 1990, and the transfer took effect on May 14, 1990. Both occurred outside the limitations period. Plaintiff maintains, however, that the discrimination persisted after his transfer. Specifically, plaintiff argues that the discrimination continued because the degradation of doing menial clerical tasks directly resulted from the demotion and were the factors that led to his resignation. Plaintiff also alleges that in May 1990, defendant instituted a program to buy out employment contracts or induce qualified employees over 55 years of age to accept special retirement, and that he was not offered a buyout even though his name appeared on a list of eligible employees. Finally, plaintiff insists that his new supervisor told him that his pay would be cut and that another supervisor admitted his transfer resulted from age discrimination.

However, the mere existence of some vague or undefined relationship between the timely and untimely acts is an insufficient basis upon which to find a continuing violation. *Sumner, supra* at 539. The central question is whether the plaintiff's dismissal was a present violation and whether it was sufficiently connected to the discriminatory act. *Id*. Even when considering these allegations in a light most favorable to plaintiff, it is undisputed that these alleged injuries emanate from the alleged discriminatory act, i.e., plaintiff's "demotion." In other words, even assuming that the clerical position led to his depression and choice to leave, the only alleged discriminatory act was the demotion itself.

The other allegations concern the effects of the alleged discrimination, and are not actionable by themselves. Thus, because plaintiff has not alleged a "present violation," the trial court properly dismissed his age discrimination claim.

Plaintiff next argues that the court erred in dismissing his breach of contract claim. Specifically, plaintiff contends that the employer's handbook evidences a promise that an employee would not be transferred form his or her present position, unless he or she was being transferred to a position commensurate with his or her experience and skills.[1] We disagree. The handbook that plaintiff relies upon contains a provision clearly disclaiming any contractual relationship between defendant and its employees. Significantly, the language in the handbook that plaintiff claims is evidence of an independent promise only applies if an employee is laid off or in transitional status. Since plaintiff was actively employed at the time of his transfer, this provision had no application to that transfer. Thus, the lower court correctly concluded that no genuine factual issue existed regarding plaintiff's breach of contract claim.

Affirmed. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Roman S. Gribbs
/s/ Robert P. Young, Jr.
/s/ William J. Caprathe

[1] This Court has rejected allegations that similar or identical contracts create legitimate expectations of just-cause employment. See *Schultes v Naylor*, 195 Mich App 640, 644; 491 NW2d 240 (1992).