STATE OF MICHIGAN

COURT OF APPEALS

REXLYN K. POHL and DAVID C. POHL,

Plaintiffs-Appellants,

v

JACKSON COUNTY MEDICAL CARE FACILITY, DONALD L. HAMPSTEAD, and CHARLES L. MILLER, D.O.,

Defendants-Appellees,

and

NURSEPRO, INC. and VIVIAN K. BAILEY,

Defendants.

UNPUBLISHED
May 23, 1997

No. 188063
Jackson Circuit Court
LC No. 94-67953-CL

Before: McDonald, P.J., and Reilly and O'Connell, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's February 28, 1995 order granting summary disposition in favor of defendant Jackson County Medical Care Facility ("JCMCF").

On March 8, 1993, plaintiff Rexlyn Pohl was terminated from her position as nursing officer manger with defendant JCMCF. According to defendant, plaintiff's dismissal was based on inappropriate comments she made to an employee of Nursepro Inc., a temporary placement service for nurses with which defendant contracted to provide nursing personnel.

Plaintiffs argue that the trial court erroneously granted summary disposition upon concluding that JCMCF's work rules do not instill a legitimate expectation of just-cause employment. We disagree. A trial court's decision to grant a motion for summary disposition is reviewed de novo by this Court to determine if the defendant was entitled to judgment as a matter of law. *Citizens Ins Co v Bloomfield Twp*, 209 Mich App 484, 486; 532 NW2d 183 (1995). In reviewing a motion for summary

disposition brought pursuant to MCR 2.116(C)(10), this Court construes the evidence in favor of the nonmovant. *Shirilla v Detroit*, 208 Mich App 434, 437; 528 NW2d 763 (1995). All relevant affidavits, deposition, admissions, and other documents are examined. *Id.* The nonmovant must, by documentary evidence, set forth specific facts demonstrating that there is a genuine issue of material fact. *Check Reporting Serv, Inc v Michigan Nat'l Bank-Lansing*, 191 Mich App 614, 622; 478 NW2d 893 (1991). This Court then determines, based on review of the record evidence, and all reasonable inferences therefrom, whether a genuine issue of material fact exists on which reasonable minds could differ to warrant a trial. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). All reasonable inferences must be made in the nonmoving party's favor. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 618; 537 NW2d 185 (1995).

Employment contracts for an indefinite duration are presumptively terminable at the will of either party with or without cause. *Rood v General Dynamics Corp*, 444 Mich 107, 116; 507 NW2d 591 (1993). To overcome this presumption, an employee must establish the existence of an explicit or implied in fact promise forbidding discharge absent just cause or present evidence of employer policies and procedures instilling a "legitimate expectation" of job security. *Id.*, 116-117. Regarding a legitimate expectation claim, the first step is to determine what, if anything, the employer has promised. *Id.*, 138. "Once it is determined that a promise has been made, the second step is to determine whether the promise is reasonably capable of instilling a legitimate expectation of just-cause employment in the employer's employees." *Id.*, 139.

In the case at hand, the statements contained in defendant's work rules upon which plaintiffs rely to support their just-cause employment claim merely recite the purpose and application of the work rules, and do not instill a legitimate expectation of just-cause employment. The fact that defendant has established work rules does not create a legitimate expectation of just-cause employment. *Biggs v Hilton Head Hotel Corp*, 194 Mich App 239, 241-242; 486 NW2d 61 (1992). Plaintiff is presumed to be an at-will employee, and the existence of work rules does not overcome this presumption. *Id.*, 241-242.

Moreover, because no language exists in defendant's work rules from which a reasonable jury could conclude that plaintiff's employment was terminable for cause, the fact that the rules are applicable to individuals who successfully complete a probationary period does not overcome the presumption that plaintiff's employment was at-will. The mere existence of a probationary period does not give rise to a legitimate objective expectation of discharge for just cause only. *Kostello v Rockwell International Corp*, 189 Mich App 241, 245; 472 NW2d 71 (1991).

Additionally, the work rules at issue provide that "[o]ther incidents of unfavorable behavior not listed may be subject to disciplinary action." In *Rood*, *supra*, 142, citing *Bauer v American Freight System, Inc*, 422 NW2d 435, 438 (SD, 1988), our Supreme Court held that "[a] nonexclusive list of common-sense rules of behavior that can lead to disciplinary action or discharge, clearly reserves the right of an employer to discharge an employee at will." Thus, here, even when viewed in the light most favorable to plaintiffs, defendant's work rules fail to support a claim of just-cause employment.

Plaintiffs also argue that the trial court erroneously found, in the alternative, that plaintiff was given reasonable notice of defendant's at-will employment policy because she had access during her involvement in the hiring process to employment applications that indicated that

employment was at-will. In this instance, however, based on our foregoing conclusion that defendant's work rules do not instill a legitimate expectation of just-cause employment, we need not address this issue.

Affirmed.

/s/ Gary R. McDonald
/s/ Maureen Pulte Reilly
/s/ Peter D. O'Connell