STATE OF MICHIGAN

COURT OF APPEALS

GWENDOLYN BAKER,

Plaintiff-Appellant/Cross-Appellee,

v

BECKER GROUP INC.,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED
May 23, 1997

No. 195408
Oakland Circuit Court
LC No. 95-499745-CZ

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

PER CURIAM.

Plaintiff appeals as of right from the trial court's order of dismissal, granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) (claim barred because of release). Defendant cross appeals from the trial court's order of dismissal, denying its motion for summary disposition pursuant to MCR 2.116(C)(10) (no genuine issue regarding any material fact and moving party entitled to judgment as a matter of law). We affirm the order of dismissal, finding that summary disposition should have been granted pursuant to MCR 2.116(C)(10).

I.

Plaintiff was employed by defendant as a quality control inspector. While working on August 8, 1991, plaintiff dropped a tape gun onto her small toe. As she bent down to remove the tape gun, she injured her back. Plaintiff consequently took a medical leave of absence as of August 22, 1991, for one year. She attempted to return to work on August 21, 1992, by giving defendant a note from her physician stating that she was able to return to work. Pursuant to the collective bargaining agreement between plaintiff's union and defendant, an employee who was on medical leave for more than thirty days could not return to work without first being examined by defendant's staff physician. Thus, defendant informed plaintiff that she could not return to work without being examined by defendant's doctor, which she subsequently did. The doctor indicated that plaintiff could not return to work without the restrictions of standing and bending, which her job required her to do. Because the collective bargaining agreement also provided that an employee would be terminated if absent from work for one year, defendant terminated plaintiff on August 26, 1992.

After she was terminated, plaintiff filed a grievance. A grievance meeting was conducted, during which it was agreed that plaintiff would undergo an independent medical examination by a third-party physician, whose conclusion regarding whether plaintiff could return to work would be binding on the parties. Plaintiff was thereafter examined by Dr. Richard Reilly, who determined that she could return to work without restrictions. However, neither plaintiff nor her union received the results of the examination and she was not rehired by defendant. Plaintiff subsequently filed a claim for worker's compensation benefits, which resulted in a settlement of $5,000. In consideration for the money, plaintiff signed a release and waiver, in which she agreed not to seek reemployment with defendant or pursue other worker's compensation benefits. Plaintiff later filed this suit alleging handicap discrimination.

II.

Plaintiff argues that the trial court improperly granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) regarding her claim for handicap discrimination because she did not waive her right to bring suit under the Handicappers' Civil Rights Act (HCRA) by signing the release and waiver. Rather, plaintiff maintains that she merely waived her right to seek re-employment with defendant in exchange for the worker's compensation settlement of $5,000.

MCR 2.116(C)(7) provides in relevant part that "a party may move for dismissal of or judgment on all or part of a claim [if] . . . the claim is barred because of release." This Court reviews a summary disposition determination de novo as a question of law. *Florence v Dep't of Social Services*, 215 Mich App 211, 214; 544 NW2d 723 (1996). A motion brought under MCR 2.116(C)(7) may be supported by affidavits, depositions, admissions, or other documentary evidence. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). If such documentary evidence is presented to the court, it must be considered when deciding the motion. MCR 2.116(G)(5).

Plaintiff entered into an agreement to redeem liability and a "release and waiver of seniority" agreement with defendant on December 22, 1994. The agreement to redeem liability indicated that plaintiff agreed to redeem liability for all benefits under worker's compensation in consideration for $5,000. The release and waiver of seniority provided:

> WHEREAS GWEN BAKER has filed a claim under the Worker's Disability Compensation Act for injury alleged to have resulted from his/her employment;
>
> And whereas the employer, BECKER MANUFACTURING has denied liability, the undersigned, in consideration of settlement of the claim through redemption proceedings with the Worker's Disability Compensation Department, does hereby voluntarily quit his/her employment with said employer, waives any and all seniority rights he/she may have, and releases any claim he/she may have for re-employment based on such seniority rights and further agrees not to seek re-employment with the above-named employer.

If a contract's language is clear, its construction is a question of law for the court. *G&A Inc v Nahra*, 204 Mich App 329, 330; 514 NW2d 255 (1994). When presented with a dispute, a court must determine what the parties' agreement is and enforce it. *Id*. Contractual language is given its ordinary and plain meaning, and technical and constrained constructions are avoided. *Id*., pp 330-331.

The language of the release and waiver clearly indicates that plaintiff agreed to voluntarily quit her employment with defendant, waived any seniority rights and any claim for re-employment based on such rights, and agreed not to seek re-employment, in consideration for $5,000. The agreement to redeem liability also clearly stated that plaintiff "agree[d] to redeem any and all liability for any and all benefits under the Worker's Disability Compensation Act." Neither the release and waiver, nor the agreement to redeem liability stated that plaintiff waived any handicap discrimination claim or that she waived any and all claims she had against defendant.

Defendant points out that plaintiff's attorney sent a letter to defendant on November 14, 1994, before entering into the release and waiver, which indicated that plaintiff believed defendant had violated the HCRA by refusing to reinstate her from her medical leave after Dr. Reilly determined she was able to work without restrictions. The letter further stated:

> However, before we file suit on [plaintiff's] behalf it is our practice, w[h]ere practical, to offer the defendant an opportunity to provide us with any information they might have which would demonstrate that our client's claim lacks merit or, in the alternative, to explore settlement of our client's claim.
>
> Accordingly, we will postpone filing a complaint on Ms. Baker's behalf for twenty (20) days to allow you an opportunity to respond to this letter.

Defendant contends that this letter demonstrates that plaintiff intended to waive her claims under the HCRA because she entered into the release after sending the letter, and did not raise the claim when she agreed to the settlement. We do not agree with defendant's contention because the letter and the release cannot be read, by their clear and unambiguous language, as indicating that plaintiff waived her claim of handicap discrimination. Had plaintiff intended to waive all her claims, then the language of the release would have indicated that.

Accordingly, the trial court erred in granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) because the release and waiver did not bar plaintiff from bringing a claim for handicap discrimination against defendant.

III.

On cross appeal, defendant argues that the trial court erroneously denied its motion for summary disposition pursuant to MCR 2.116(C)(10) because plaintiff failed to prove a prima facie case of handicap discrimination. Specifically, defendant argues that plaintiff did not establish that defendant made any adverse employment decision toward her on the basis of handicap.

In reviewing a trial court's decision regarding a motion for summary disposition brought pursuant to MCR 2.116(C)(10), this Court examines all relevant affidavits, depositions, admissions, and other documentary evidence and construes the evidence in favor of the nonmoving party. *Sanchez v Lagoudakis (On Remand)*, 217 Mich App 535, 539, 522 NW2d 472 (1996). This Court then determines whether a genuine issue of material fact exists on which reasonable minds could differ. *Id*. We review de novo a trial court's grant or denial of a motion for summary disposition. *Id*.

Section 202(1)(b) of the HCRA, MCL 37.12012(1)(b); MSA 3.550(202)(1)(b), provides that an employer shall not "[d]ischarge or otherwise discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment, because of a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position." To establish a prima facie case of discrimination under the HCRA, it must be shown that (1) the plaintiff is "handicapped" as defined in the HCRA, (2) the handicap is unrelated to the plaintiff's ability to perform the duties of a particular job, and (3) the plaintiff has been discriminated against in one of the ways set forth in the statute. *Sanchez, supra*, p 539.

MCL 37.1103(e)(i)(A); MSA 3.550(103)(e)(i)(A) defines handicap, in relevant part, as:

> (i) A determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic:
>
> (A) For purposes of article 2, substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's ability to perform the duties of a particular job or position or substantially limits one or more of the major life activities of that individual and is unrelated to the individual's qualifications for employment or promotion.

"'Unrelated to the individual's ability' [means that], with or without accommodation, an individual's handicap does not prevent the individual from . . . performing the duties of a particular job or position." MCL 37.1103(l)(i); MSA 3.550(103(l)(i). Moreover, discriminatory actions taken against an employee based on an employer's belief that the employee has a handicap unrelated to job performance are prohibited under the HCRA. *Sanchez, supra*, pp 556-557.

To establish a prima facie case, plaintiff was first required to establish that she was handicapped as defined by the act and that the handicap was unrelated to her ability to perform the duties of a particular job. Plaintiff took a medical leave of absence from her job from August 1991 until August 1992. She produced a note from her physician stating that she could return to work on August 22, 1992. Defendant had the right to terminate plaintiff if she did not return to work on August 23, 1992, under the collective bargaining agreement because she would have been on medical leave for one year. Pursuant to defendant's policy, plaintiff was required to be evaluated by defendant's physician before she could return to work after having been absent on medical leave for over thirty days. Plaintiff was consequently examined by defendant's physician, who indicated that plaintiff could not return to work without the restrictions of bending and standing. Plaintiff was required to bend and stand in order to perform her job. She was terminated by defendant on August 26, 1992 because she had been absent from work for over one year.

Plaintiff subsequently filed a grievance, and as a result, the parties agreed that plaintiff would undergo an independent medical examination by a third-party doctor, whose determination of whether plaintiff could return to work would be binding. Accordingly, plaintiff was examined by Dr. Richard Reilly, who determined that she was able to return to work without restrictions. Dr. Reilly sent a letter indicating his conclusions to defendant's staff physician, Dr. Blau, on December 3, 1992. However, plaintiff was not informed of the results of Dr. Reilly's examination and she was not rehired.

Plaintiff testified that she called Donna Obrycki and Anna Showman of human resources, to find out the results of the examination, but they did not return her calls. Plaintiff then called her union representative, Shirley Wallace, who told plaintiff that Showman did not give her any information. Wallace eventually stated that she would follow up with Showman to obtain the results, but Wallace never obtained the information for plaintiff. On the other hand, Showman testified that she was never contacted by plaintiff or Wallace regarding the results of the independent medical examination. Showman stated that if plaintiff had requested to return to work, she would have been allowed to do so. Shirley Wallace testified that plaintiff called her once or twice to inquire about Dr. Reilly's conclusion, and she contacted Showman once or twice in response, but Showman told her that she did not have any information and that she would get back to her. However, Wallace claims she was not contacted by Showman.

Plaintiff claims that defendant discriminated against her by refusing to allow her to return to work. She does not contest that defendant initially had a right to require her to be examined by defendant's doctor before allowing her to return to work after several months medical leave. Rather, plaintiff objects to the fact that defendant did not provide her with the results of Dr. Reilly's medical examination and allow her to return to work based on his findings. Both parties acknowledge that, at that point, plaintiff was able to return to work without restrictions. We believe that there was no genuine issue of material fact that plaintiff was not handicapped or perceived to be handicapped within the meaning of the HCRA because there was no question that defendant knew plaintiff could return to work without restrictions.

Accordingly, the trial court erred in denying defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) because there was no genuine issue of material fact that plaintiff was not handicapped or perceived to be handicapped within the meaning of the HCRA.

Therefore, although the trial court improperly granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) and denied defendant's motion pursuant to MCR 2.116(C)(10), we affirm the order of dismissal because the court reached the right result, albeit for the wrong reason. *Hawkins v Dep't of Corrections*, 219 Mich App 523, 528; 557 NW2d 138 (1996).

Affirmed.

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