# STATE OF MICHIGAN

# COURT OF APPEALS

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W. ANN WARNER,

Plaintiff-Appellant,

v

SHULMAN, BURNS & OTTONI, P.C. d/b/a SHULMAN & BURNS, MARC I. SHULMAN and RICHARD F. BURNS, JR.,

Defendants-Appellants.

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UNPUBLISHED
July 15, 1997

No. 183183
Oakland Circuit Court
LC No. 94-475097-NZ

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

PER CURIAM.

Plaintiff appeals from the circuit court's order granting summary disposition of her claims brought under Michigan's handicappers' civil rights act (HCRA), MCL 37.1101 et seq; MSA 3.550(101) et seq. We affirm.

Plaintiff was previously employed as a lawyer with defendants' firm. She informed defendants that she was an alcoholic, and requested 4 weeks' unpaid leave of absence to participate in a treatment program. According to plaintiff, defendants agreed to grant her this unpaid leave, then assented to an additional 2 weeks' leave. However, 9 days after their oral agreement to grant the leave, defendants terminated plaintiff's employment for failing to report to work. Plaintiff filed suit claiming that her termination violated the HCRA, alleging that defendants violated the act by discharging plaintiff on the basis of her handicap and for failing to accommodate her condition by granting her a medical leave.[1] The circuit judge granted summary disposition pursuant to MCR 2.116(C)(10), based upon his finding that there was no genuine issue of fact with respect to the issue of whether plaintiff's alcoholism rendered her unable to perform her employment duties. This finding was based on a statement that plaintiff made on her treatment program admission form wherein she indicated that she was unable to perform her job.

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* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff argues that the circuit judge erred in concluding that there was no genuine issue of material fact that plaintiff's alcoholism prevented her from performing her job and so was not a handicap under MCL 37.1103(f)(ii); MSA 3.550(103)(f)(ii). We agree that there was a genuine issue of material fact regarding this question. However, despite this erroneous finding, reversal is not required because the circuit judge reached the correct result by granting summary disposition in favor of defendants. *Begola Services Inc v Wild Bros*, 210 Mich App 636, 640; 534 NW2d 217 (1995).

Regardless of whether plaintiff's alcoholism affected her ability to do her job, summary disposition of her HCRA claims was still appropriate under MCR 2.116(C)(10). Plaintiff's suit asserts only violation of the HCRA.[2] Under the HCRA, defendants had no duty to alter plaintiff's schedule to accommodate her treatment for alcoholism. There is no genuine issue of material fact that plaintiff was employed at will and that defendants' firm employed less that 15 people. Since defendants employed fewer that 15 employees they were "not required to restructure a job or alter the schedule of employees as an accommodation …." MCL 37.1210(14); MSA 3.550(210)(14). The HCRA did not require that defendants grant plaintiff medical leave to pursue treatment. *Ashworth v Jefferson Screw Prods Co*, 176 Mich App 737, 745; 440 NW2d 101 (1989). Since the HCRA did not require that defendants grant plaintiff leave, defendants' termination of an at-will employee for failing to report to work did not violate the HCRA.

Affirmed.

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

[1] Plaintiff's complaint also alleged a count of intentional infliction of emotional distress. Neither the circuit court's records nor the parties' briefs refer to this claim, so we will treat it as abandoned. *Severn v Sperry Corp*, 212 Mich App 406, 415; 538 NW2d 50 (1995).

[2] See note 1.