STATE OF MICHIGAN

COURT OF APPEALS

BRENDA L. KNEBEL,

Plaintiff-Appellant

v

MICHIGAN STATE UNIVERSITY, MERRILY DEAN BAKER, and KATHRYN E. LINDAHL,

Defendant-Appellees

UNPUBLISHED
July 25, 1997

No. 186770
Court of Claims
LC No. 94-015490

Before: Gribbs, P.J., and Sawyer and Young, JJ.

PER CURIAM.

Plaintiff appeals the trial court's grant of summary disposition as well as its subsequent order denying plaintiff the right to file a second amended complaint. We affirm the trial court's grant of summary disposition and reverse in part the trial court's denial of leave to file a second amended complaint.

On February 20, 1989, plaintiff was awarded the Big Ten Conference Intern-Fellowship position at Michigan State University ("MSU") for the 1988-1989 academic year. Defendant Kathryn Lindahl, Assistant Athletic Director for MSU, was her immediate superior. On June 11, 1990, MSU's department of intercollegiate athletics rehired plaintiff as an "on-call" employee with no designated hourly rate. Plaintiff alleges that, commencing July 1990 through June 1993, she worked on a regular basis in excess of forty hours per week, however, no compensation was received for hours worked in excess of forty hours per week.

On or about May 31, 1991, plaintiff alleged that Lindahl informed her that she was creating a full-time position for plaintiff titled Sports Operations Assistant, which would include an annual salary with full fringe benefits. Plaintiff also alleged that Merrily Dean Baker, athletic director of MSU, informed her that she should forego other job opportunities because she was to have continued employment with MSU. On August 26, 1993, plaintiff was informed by Lindahl that plaintiff was not selected for the position. Plaintiff's employment was terminated September 7, 1993.

On August 5, 1994, plaintiff filed a four-count complaint in the Court of Claims against MSU, Michigan State University Board of Trustees, Merrily Dean Baker and Kathryn Lindahl alleging estoppel, violation of the minimum wage law, misrepresentation and intentional interference with an advantageous business relationship. Prior to filing an answer, defendants submitted a motion for partial summary disposition challenging the legal sufficiency of plaintiff's estoppel claim. Defendants also sought summary disposition as to the counts for misrepresentation and the intentional interference with an advantageous business relationship, arguing that, pursuant to MCR 2.116(C)(8), the facts presented failed to present a claim upon which relief could be granted.

The Court of Claims granted defendants motion but allowed plaintiff 30 days to file an amended complaint. Plaintiff then filed her first amended complaint presenting a count for declaratory relief, one for minimum wage law violation and one for misrepresentation. Plaintiff subsequently filed a separate action against Kathryn Lindahl in her individual capacity with the Ingham Circuit Court. It was then stipulated that the Court of Claims case was to be joined with the Circuit Court action. However, the present appeal does not pertain to plaintiff's circuit court action.

Defendants again filed a motion for summary disposition pursuant to plaintiff's Court of Claims action, alleging that plaintiff's count for declaratory relief should be dismissed because the Court of Claims adjudicated that the allegations failed to state a claim upon which relief could be granted. Defendants further argued that plaintiff's minimum wage count, as well as the misrepresentation count, should be summarily dismissed. The trial court granted this motion, dismissing plaintiff's complaint in its entirety.

Plaintiff then presented a motion for leave to file a second amended complaint. The proposed second amended complaint contained two counts, one for breach of an implied in fact contract and one count of vicarious liability against MSU based upon Lindahl's misrepresentations. The trial court, without explanation, denied plaintiff's motion.

Plaintiff first argues that the trial court erred in determining that her claim for a declaratory judgment was barred by the law of the case doctrine. We disagree. Under the doctrine of law of the case, a final decision concerning a particular issue binds courts of equal or subordinate jurisdiction during subsequent proceedings in the same case. *McNees v Cedar Springs Stamping Co*, 219 Mich App 217, 221-222; 555 NW2d 481 (1996). A legal question may not be decided differently where the facts remain materially the same. *Id*. The doctrine applies only to those questions specifically determined in the prior decision and to questions necessarily determined in arriving at that decision. *Id*. The law of the case doctrine is a discretionary rule of practice. *Id*., citing *United States v United States Smelting, Refining & Mining Co*, 339 US 186, 198-199; 70 S Ct 537; 94 L Ed 750 (1950).

Upon reviewing plaintiff's second amended complaint, we find that her allegations for its claim for a declaratory judgment were the same as plaintiff's prior estoppel claim. Because the allegations are identical to that previously adjudicated, the law of the case doctrine applies. *McNees*, *supra* at 221-222. Accordingly, the trial court did not err in determining that plaintiff's claim should be dismissed through application of the law of the case doctrine.

Defendant next asserts that the defense of governmental immunity is inapplicable to claims sounding in contract. However, plaintiff's first amended complaint did not present any contractual claims. Accordingly, we decline to review this issue, although we note our agreement that governmental immunity does not bar a breach of contract claim. *Ross v Consumer Power Co* (*On Rehearing*), 420 Mich 567; 363 NW2d 641 (1984).

Plaintiff's final argument is that the trial court erred in summarily denying her the opportunity to file a second amended complaint to raise a breach of contract claim. We agree in part. A court should freely grant leave to amend a complaint when justice so requires. MCR 2.118(A)(2); *Patillo v Equitable Life Assurance Society*, 199 Mich App 450, 456; 502 NW2d 696 (1993). The rules pertaining to the amendment of pleadings are designed to facilitate amendment except when prejudice to the opposing party would result. *Phillips v Estate of Deihm*, 213 Mich App 389, 393; 541 NW2d 566 (1995). This Court will not reverse a trial court's decision on a motion to amend a complaint absent an abuse of discretion that results in injustice. *Id*.

Where a motion for summary disposition is grounded on MCR 2.116(C)(8), (9) or (10), the trial court is required to give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the amendment would be futile. MCR 2.116(I)(5); *Blue Water Fabricators, Inc v New Apex Co, Inc*, 205 Mich App 295, 299; 517 NW2d 319 (1994). The rules pertaining to the amendment of pleadings are designed to facilitate amendment except when prejudice to the opposing party would result. *IBEW, Local Union No 58 v Mcnulty*, 214 Mich App 437, 447, 543 NW2d 25 (1995). Amendment is generally a matter of right rather than grace. *Id*. A motion to amend ordinarily should be granted; denial should only be for particularized reasons, such as undue delay, bad faith, dilatory motive, repeated failure to cure deficiency by amendments previously allowed, undue prejudice to the opposing party, or futility. *Id*.

In the present case, the trial court failed to provide any reasoning for denying plaintiff's motion for leave to file a second amended complaint. Consequently, this Court is required to reverse the trial court's decision unless amendment would be futile. *Noyd v Claxton, Morgan, Flockhart & VanLiere*, 186 Mich App 333, 340; 463 NW2d 268 (1990).

The first count of plaintiff's second amended complaint presents a myriad of facts, most of which directly parallel the statements in plaintiff's previous allegations of "estoppel" and "declaratory judgment." However, while the facts are the same, plaintiff altered the complaint to present a claim for breach of contract, and alleged that according to the statements and actions of defendants, she was actually a regular, full-time employee and MSU breached their employment agreement by not adhering to the rules in its policy manual. Because plaintiff has alleged these facts with detailed factual support, we believe that plaintiff's breach of employment contract claim cannot be deemed futile. See *Foehr v Republic Automotive Parts, Inc*, 212 Mich App 663, 665; 538 NW2d 420 (1995); *Rice v ISI Mfg, Inc*, 207 Mich App 634, 636-637; 525 NW2d 533 (1994). Accordingly, the trial court abused its discretion in failing to permit plaintiff to file her second amended complaint as to Count I. *Noyd*, *supra* at 340.

However, we find that plaintiff's second count was merely a restatement of her misrepresentation claim based on Lindahl's statements. Because plaintiff has dismissed her claims against Lindahl with prejudice, MSU may not be held vicariously liable for Lindahl's statements. *Theophelis v Lansing Hospital*, 430 Mich 473, 489; 424 NW2d 478 (1988); *Larkin v Ostego Memorial Hospital*, 207 Mich App 391, 393; 525 NW2d 475 (1994). Accordingly, because this claim was futile, the trial court did not abuse its discretion in not allowing plaintiff to file an amended complaint.

Accordingly, we affirm the trial court's grant of summary disposition as to plaintiff's first amended complaint, as well as its determination to deny leave to file a second amended complaint as to her claim for misrepresentation. Additionally, we reverse the trial court's ruling to deny plaintiff the opportunity to file her second amended complaint as to her breach of employment contract claim.

Affirmed in part, reversed in part. We do not retain jurisdiction.

/s/ Roman S. Gribbs
/s/ David H. Sawyer
/s/ Robert P. Young, Jr.