STATE OF MICHIGAN

COURT OF APPEALS

AUDREY BROOKS,

Plaintiff-Appellant,

v

BAY MEDICAL CENTER,

Defendant-Appellee.

UNPUBLISHED
September 9, 1997

No. 196939
Bay Circuit Court
LC No. 93-003383-CL

Before: Corrigan, C.J., and Markey and Markman, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) and dismissing plaintiff's claims of wrongful termination and sex discrimination. We affirm.

We review de novo the grant of summary disposition pursuant to MCR 2.116(C)(10), examining the entire record, including pleadings, affidavits, depositions, admissions and other documentary evidence, and construing all reasonable inferences arising from the evidence in a light most favorable to the nonmoving party. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994); *Fitch v State Farm Fire and Casualty Co*, 211 Mich App 468, 470-471; 536 NW2d 273 (1995); *Lytle v Malady*, 209 Mich App 179, 183-184; 530 NW2d 135 (1995), aff'd in part, rev'd in part on other grounds ___ Mich ___; ___ NW2d ___ (Docket No. 102515, decided July 31, 1997). Once the moving party has shown that no genuine issues of material fact exist, the opposing party has the burden of establishing through evidentiary materials that a genuine issue of disputed fact does exist. *Skinner, supra* at 160. We will uphold the grant of summary disposition if we are satisfied that the claim or defense cannot be proven at trial. *Fitch, supra* at 471.

For eleven years, plaintiff was the director of admitting, telecommunications, and credit at defendant's medical center. Defendant terminated her employment without warning after employees in her department filed a series of complaints against her with the employee assistance program, the human resources department and plaintiff's supervisor.

Plaintiff argues that the trial court erred in granting summary disposition with regard to her wrongful termination claim. We disagree. The trial court correctly held that plaintiff did not have an express contract that guaranteed just-cause employment, that defendant had lawfully altered its employment policy to be an at-will policy and provided reasonable notice of the change to its employees, and that a reasonable person could not have legitimately expected to have just-cause employment given the change in defendant's employment policy. *In re Certified Question*, 432 Mich 438, 441, 456-457; 443 NW2d 112 (1989). Plaintiff and defendant had no mutual agreement regarding an express just-cause employment contract for plaintiff. See *Rood v General Dynamics Corp*, 444 Mich 107, 118-119; 507 NW2d 591 (1993). There were no conversations regarding job security during the hiring process. An expression of optimism in a letter from defendant to plaintiff after she was hired was insufficient to create a binding agreement. *Rood*, *supra;* cf. *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 83-84, 480 NW2d 297 (1991). Plaintiff's employment application did not guarantee that employees would only be dismissed for just cause and the application's reference to the employee handbook in effect at that time did not create a mutually binding contract.

Although the handbook, which contained a just-cause policy, did not create an express contract based on mutual assent, it could provide evidence for legitimate expectations of just-cause employment. See *In re Certified Question*, *supra* at 453-456. However, defendant unilaterally changed that just-cause policy, adopted an at-will employment policy, and provided its employees with reasonable notice of the change. *Id*. at 441, 456-457. Defendant sent a memorandum to all management employees and incorporated the new policy in two succeeding employee handbooks. Although plaintiff disputes the receipt of this notice, actual notice is not required for the change to be effective. *Lytle*, 209 Mich App 197. Further, although the initial employee handbook could have created the legitimate expectation of just-cause employment, a reasonable person could not have continued to hold such an expectation after defendant gave notice that the prior just-cause policy had been rescinded. See *Clement-Rowe v Michigan Health Care Corp*, 212 Mich App 503, 506; 538 NW2d 20 (1995) (the expectation of just-cause employment must be both subjectively and objectively legitimate).

Plaintiff also argues that the trial court erred by granting summary disposition to defendant with regard to her claim of sex discrimination. We disagree. Plaintiff failed to establish a prima facie case of sex discrimination because she was unable to show that she was treated in a manner different from that of a similarly situated male employee for the same or similar conduct. *Town v Michigan Bell Telephone Co*, 455 Mich 688, 695; ___ NW2d ___ (1997) ("others, similarly situated and outside the protected class, were unaffected by the employer's adverse conduct"); *Schultes v Naylor*, 195 Mich App 640, 645; 491 NW2d 240 (1992). The trial court correctly found that three of the six employees cited by plaintiff as similarly situated male employees were not directors of departments and were therefore not similarly situated to her. Two others were directors, but plaintiff admitted at her deposition that neither was in a situation comparable to her own. The final employee upon whom plaintiff primarily relied as being similarly situated, Dan Hatton, had been transferred to another position after a longstanding history of managerial problems, including general management inadequacies, such as lack of organization and communication, and ineffective leadership. The trial court found that although the employee was similarly situated to plaintiff, he did not engage in the same or similar conduct. Plaintiff,

on the other hand, was accused of engaging in favoritism, of unprofessional behavior, and of imposing fear of retaliation on her subordinates. The trial court also noted, however, that another male employee, Steve Hamlin, who was also a director, had been discharged without warning for engaging in favoritism among subordinates, which caused defendant to lose faith in his management ability. Therefore, the trial court correctly concluded that plaintiff failed to establish that she was treated differently than a similarly situated male employee for the same or similar conduct. *Schultes*, *supra*.

Affirmed.

/s/ Maura D. Corrigan
/s/ Jane E. Markey
/s/ Stephen J. Markman