

STATE OF MICHIGAN  
COURT OF APPEALS

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KIMBERLY SWICK,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

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UNPUBLISHED

October 3, 1997

No. 186673

Ingham Circuit Court

LC No. 94-077044-NO

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

PER CURIAM.

In this employment discrimination case, plaintiff appeals by right the order granting defendant's motion for summary disposition under MCR 2.116(C)(10). Plaintiff also challenges the order denying her motion to withdraw her answer, amend her answer, or file a late response to defendant's request for admissions. We affirm.

Plaintiff alleges sexual discrimination, handicap discrimination and a violation of 42 USC 1983. In defendant's interrogatories to plaintiff, it requested her to admit: (1) that she did not know of any male employee whom defendant had treated differently regarding medical-related issues; (2) that the warden of defendant's Lakeland Correctional Facility had not violated her constitutional rights;<sup>1</sup> and (3) that she had suffered no damages as a result of defendant's acts. Because plaintiff failed timely to answer defendant's interrogatories, the court deemed the requests admitted. MCR 2.312(B)(1). On the basis of these admissions, the court granted defendant's motion for summary disposition because plaintiff could not prove the necessary elements to prevail.

Plaintiff first argues that the court erred when it denied her motion regarding defendant's requests for admission because the court did not apply the three-part balancing test set forth in *Janczyk v Davis*, 125 Mich App 683, 692-693; 337 NW2d 272 (1983). Plaintiff failed to preserve this issue because she did not present this argument to the trial court. Issues raised for the first time on appeal ordinarily are not subject to review. *Booth Newspapers, Inc v University of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993).

Regardless, a trial court, within its discretion, may allow an amendment to an admission and this Court will not overturn that decision absent an abuse of discretion. *Medbury v Walsh*, 190 Mich App 554, 556; 476 NW2d 470 (1991). In *Medbury*, this Court held that the trial court did not abuse its discretion in treating the plaintiff's failure to respond to a request for admissions as an admission of determinative facts where the plaintiff had not responded in three months. *Id.* at 555-556. Plaintiff here failed to respond to defendant's requests for admissions for over three months; thus, the court did not abuse its discretion.

Next, plaintiff argues that the circuit court erred when it determined that her admission that she "has suffered no damages" prevented her from proving any of her claims. Further, plaintiff argues that even in light of the admission, the court erred in granting summary disposition to defendant. This Court reviews de novo motions for summary disposition to determine whether the pleadings demonstrated that a party was entitled to judgment as a matter of law or whether the affidavits and other documentary evidence showed the existence of a genuine issue of material fact. *Wortelboer v Benzie Co*, 212 Mich App 208, 212; 537 NW2d 603 (1995). This Court draws inferences in favor of the nonmoving party. *Dagen v Hastings Mutual Ins Co*, 166 Mich App 225, 229; 420 NW2d 111 (1987).

In her complaint, plaintiff claimed violations under: (1) the Elliott-Larsen civil rights act (CRA), MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*; (2) 42 USC 1983; and (3) the Michigan handicappers' civil rights act, MCL 37.1101 *et seq.*; MSA 3.550(101) *et seq.* The three admissions that are relevant to these claims are:

21. Plaintiff does not know of any male employees who have been treated differently by the department for medical related issues.

22. Plaintiff does not know any pregnant or non-pregnant female employees who have been treated differently [by] the Department of Corrections for medical/maternity related issues.

23. Defendant [warden] has not violated or deprived the Plaintiff of any rights, privileges and/or immunities secured by the United States Constitution and the Constitution of the State of Michigan.

As indicated, plaintiff challenges the dismissal of her handicapper claim. We will not consider the handicapper claim because plaintiff has advanced no argument and provided no authority regarding it. *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992).

The court erred in dismissing plaintiff's other claims on the ground that she had suffered no damages. The CRA provides for equitable remedies: "A person alleging a violation of [the CRA] may bring a civil action for appropriate injunctive relief or damages, or both." MCL 37.2703; MSA 3.548(703). The federal statute similarly provides for equitable relief. See *McGhee v Draper*, 639 F2d 639, 646 (CA 10, 1981) (holding that reinstatement may be an appropriate remedy for a violation of 42 USC 1983).

Nevertheless, the court reached the correct result. We will not reverse where a trial court reaches a correct result for the wrong reason. *In re Powers*, 208 Mich App 582, 591; 528 NW2d 799 (1995). We instead affirm because of plaintiff's admissions. Plaintiff's own admission was fatal to her claim under 42 USC 1983. Plaintiff admitted that the warden had not deprived her of any rights, privileges, or immunities under the United States or Michigan constitutions. The *only* violation plaintiff alleged in that count, however, was the violation of the above rights. Also, although plaintiff argues that "[t]he federal [Equal Employment Opportunities Commission] laws are violated even if there were no constitutional violations," plaintiff failed to cite these "laws" or to allege their violation.

Regarding her CRA claim, plaintiff asserts that the court should have ruled on intentional discrimination, the alternate theory upon which a discrimination claim may rest. Plaintiff contends that, because the court never ruled whether plaintiff could establish a claim for intentional discrimination, this Court should reverse and remand.

In *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 651; 513 NW2d 441 (1994), this Court held:

In order to establish a prima facie case of intentional sex discrimination, a plaintiff must show that she was a member of a protected class, that she was discharged or otherwise discriminated against with respect to employment, *that the defendant was predisposed to discriminate against persons in the class, and that the defendant acted upon that disposition* to discriminate against persons in the class, and that the defendant acted upon that disposition when the employment decision was made. . . . In order to establish a prima facie case of sex discrimination under the disparate-treatment theory, a plaintiff must show that she was a member of a protected class, and that, for the same conduct or performance, she was treated differently than a man. . . . [*Id.* (citations omitted).]

Here, plaintiff failed to point to evidence that might create a genuine issue of fact regarding whether defendant was predisposed to discriminate against women or that defendant acted upon that predisposition when it made its employment decision. Moreover, plaintiff's admission established that she had no personal knowledge that defendant treated men differently. She identifies no other evidence of disparate treatment. Accordingly, summary disposition of her CRA claim was proper.

Affirmed.

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

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<sup>1</sup> Although the cases were not consolidated for review, see related case no. 192553, in which plaintiff brought an action against the Director of the Department of Corrections and the Personnel Director of the Lakeland Correctional Facility.