STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL WASIELEWSKI,

Plaintiff-Appellant,

v

PRICE WATERHOUSE, LIONEL ENDSLEY, and MATT SCHUYLER,

Defendants-Appellees.

UNPUBLISHED

No. 195426
Wayne Circuit Court
LC No. 95-507767-CZ

Before: Corrigan, CJ, and Michael J. Kelly and Hoekstra, JJ.

MICHAEL J. KELLY, J. (concurring in part and dissenting in part).

I agree with the majority's conclusion that the trial court did not err in granting defendants' MCR 2.116(C)(10) motion for summary disposition as to plaintiff's retaliation claim. However, I write separately because I disagree with the majority's conclusion that the trial court was correct in summarily disposing of plaintiff's claim for handicap discrimination. Reviewing the evidence in a light most favorable to plaintiff, I conclude that the trial court erred in granting defendants' motion for summary disposition as to plaintiff's claim for handicap discrimination under the Michigan Handicapper's Civil Rights Act (MHCRA), MCL 37.1101 *et seq.*; MSA 3.550(101) *et seq.*

I acknowledge that the MHCRA specifically recognizes only three types of accommodation: purchasing equipment and devices; hiring readers or interpreters; and restructuring jobs and altering schedules for minor or infrequent duties. MCL 37.1210(2)-(6), (8)-(12), and (14)-(15); MSA 3.550(210)(2)-(6), (8)-(12), (14)-(15); *Hall v Hackley Hospital*, 210 Mich App 48, 53; 532 NW2d 893 (1995). I further agree with the majority that the MHCRA did not obligate defendants to hire extra assistants to aid plaintiff in his job performance. However, I do not read plaintiff's complaint as an attempt to predicate his discrimination claim on defendants' failure to hire extra workers. Other workers assigned to the department pre existed the events which resulted in plaintiff's handicap discrimination claim. The essence of the claim involves *withdrawal* of established support.

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

Plaintiff was hired in 1980. Evidence established that Price Waterhouse promoted plaintiff to supervisor of its Office Services Department in 1982, after laudatory job reviews. His 1986 back injury required a laminectomy in 1991, after which he was restricted to lifting only 25 pounds and was physically unable to perform extensive twisting or bending. While plaintiff's supervisory duties encompassed some lifting and moving, he also supervised several employees who did this work. In light of plaintiff's supervisory role, I think there exists a question whether plaintiff's menial chores were actually minor or infrequent duties as contemplated in MCL 37.1210(14)-(15); MSA 3.550(210)(14)-(15). If they were, I believe the MHCRA required defendants to restructure plaintiff's job and alter his schedule to eliminate sporadic lifting duties in order to accommodate his handicap, which severely limited his ability to move heavy objects. Job restructuring may have required defendants to order other employees to assume the minor or infrequent duties that plaintiff was unable to perform. However, this is not the equivalent of hiring extra employees to assume plaintiff's responsibilities. I do not find this mode of accommodation to be inconsistent with the MHCRA.

In light of these considerations, I would reverse the trial court's grant of summary disposition as to plaintiff's handicap discrimination claim.

/s/ Michael J. Kelly