STATE OF MICHIGAN

COURT OF APPEALS

JEANNIA MOORE,

Plaintiff-Appellant/Cross-Appellee,

v

BORG-WARNER PROTECTIVE SERVICES, INC. d/b/a BURNS INTERNATIONAL SECURITY SERVICES; MICHIGAN SUGAR COMPANY and ROGER DAGGERT,

Defendants-Appellees/Cross-Appellants.

UNPUBLISHED
November 14, 1997

No. 197073
Sanilac Circuit Court
LC No. 96-024377-CL

VICKI CAROL VANBRANDE,

Plaintiff-Appellant/Cross-Appellee,

v

BORG-WARNER PROTECTIVE SERVICES, INC. d/b/a BURNS INTERNATIONAL SECURITY SERVICES,

Defendants,

and

MICHIGAN SUGAR COMPANY and ROGER DAGGERT,

Defendants-Appellees/Cross-Appellants.

No. 197074
Sanilac Circuit Court
LC No. 96-024392-CL

Before: Young, P.J., and Markman and Smolenski, JJ.

PER CURIAM.

Plaintiffs brought suit against defendants claiming that defendants violated the Michigan Civil Rights Act, MCL 37.2202; MSA 3.548(202), by discriminating against plaintiffs on the basis of their "marital status." Plaintiffs now appeal by right from the trial court's grant of defendants' motions for summary disposition. In addition, defendants cross-appeal, challenging the trial court's refusal to award costs and attorney fees. While the present appeals were pending, Vanbrande and Borg-Warner Protective Services (BWPS) stipulated to the dismissal of No. 197074 as between those two parties only. We affirm the trial court's dismissal of plaintiffs' actions but reverse its denial of attorney fees and costs.

Plaintiff Vicki VanBrande is the mother of plaintiff Jeannia Moore; both were employed by defendant BWPS as security guards at a facility owned and operated by defendant Michigan Sugar. When Michigan Sugar learned from defendant Daggert that plaintiffs were the mother and sister of an employee of Michigan Sugar,[1] Michigan Sugar asked that plaintiffs be removed from the facility. After plaintiffs' employment was terminated in December 1995, plaintiffs filed separate complaints stating identical causes of action. VanBrande's complaint alleged that BWPS violated MCL 37.2202(1); MSA 3.548(202)(1) of the Michigan Civil Rights Act when it discriminated against her "based upon Plaintiff's marital status as that of a mother." Similarly, Moore's complaint stated that BWPS violated the antidiscrimination provision of the Michigan Civil Rights Act when it took adverse employment action against her "based upon [her] marital status as that of a sister." Count II of the complaints alleged that BWPS violated plaintiffs' employment agreements by terminating them in violation of law. Count III of the complaints claimed that Michigan Sugar and Daggert intentionally interfered with plaintiffs' advantageous business relations when they "instructed, induced or otherwise coerced [BWPS] . . . to terminate [plaintiffs'] employment."

After plaintiffs filed suit, Michigan Sugar and Daggert moved for summary disposition in both cases pursuant to MCR 2.116(C)(8), arguing that the complaints failed to state a cause of action against them because their actions were not wrongful. BWPS brought similar motions, asserting that the complaints did not state conduct which could constitute a violation of plaintiffs' civil rights. A court may grant a motion pursuant to MCR 2.116(C)(8) only where the claims presented are so clearly unenforceable that no factual development could possibly justify recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992). An order granting or denying a motion for summary disposition is reviewed de novo. *Northland Wheels Roller Skating Center, Inc v Detroit Free Press, Inc*, 213 Mich App 317, 322; 539 NW2d 774 (1995).

Moore claims that the trial court erred in granting BWPS' motion for summary disposition with regard to her employment discrimination claim. MCL 37.2202(1)(a); MSA 3.548(202)(1)(a) prohibits an employer from "discharg[ing], or otherwise discriminat[ing] against an individual with respect to

employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status." To establish a prima facie case of discrimination, a plaintiff must show that "(1) he was a member of a protected class, (2) he suffered an adverse employment action, (3) he was qualified for the position, and (4) other, similarly situated and outside the protected class, were unaffected by the employer's adverse conduct, suggesting that discrimination was a determining factor in defendant's adverse conduct toward the plaintiff." *Lytle v Malady*, 456 Mich 1, 29 (Justice Riley's opinion, Mallett concurring), 48 (Justice Cavanagh's opinion, Kelly concurring); 566 NW2d 582 (1997).

Here, Moore has not shown that she is a member of the affected class. Contrary to her argument on appeal, the term "marital status" has been defined for the purposes of the civil rights act. In *Miller v C A Muer Corp*, 420 Mich 355, 363; 362 NW2d 650 (1984), the Supreme Court held that the Legislature's inclusion of marital status as a protected class was intended "to prohibit discrimination based on *whether* a person is married." As this Court recently noted, "[i]t is the status of being married or not that an employer must refrain from using in a way that makes a difference in the challenged decision." *Fonseca v Michigan State University*, 214 Mich App 28, 32; 542 NW2d 273 (1995). Moore admits that she was discharged, not because she was married or single, but because she was the sibling of a Michigan Sugar employee. Thus, Moore failed to establish that she is a member of the affected class. Indeed, her marital status was never at issue. Moore's claim for breach of contract was properly dismissed because, as discussed above, BWPS violated no law when it discharged her. Consequently, we find that summary disposition was properly granted with regard to this issue.

Next, plaintiffs contend that the trial court erred in granting Michigan Sugar's and Daggert's motions for summary disposition with regard to plaintiffs' claim of tortious interference with advantageous business relationships. We disagree. In *Prysak v R L Polk Co*, 193 Mich App 1, 12; 483 NW2d 629 (1992), this Court stated:

> One who alleges tortious interference with a contractual or business relationship must allege the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another. [quoting *Stanton v Dachille*, 186 Mich App 247, 255; 463 NW2d 479 (1990).]

This Court has defined a wrongful act per se as "an act that is inherently wrongful or an act that can never be justified under any circumstances." *Id*. at 12-13. With regard to lawful acts done with malice, the principle is well-established that general allegations of malice are insufficient to establish a genuine issue of material fact. *BPS Clinical Laboratories v Blue Cross & Blue Shield (On Remand)*, 217 Mich App 687, 699; 552 NW2d 919 (1996); *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 80; 480 NW2d 297 (1991). Defendants who are "motivated by legitimate business reasons are protected from liability under this cause of action." *Prysak*, *supra* at 13; *BPS Clinical Laboratories*, *supra* at 699.

The Michigan Supreme Court has expressly held that anti-nepotism policies are enforceable and valid. An "employer . . . can lawfully prohibit any relative from working in the plant if related to another already working there." *Whirlpool Corp v Civil Rights Comm*, 425 Mich 527, 531; 390 NW2d 625 (1986); see also *Miller*, *supra* at 364-365. Because these policies are generally enforceable, the application of Michigan Sugar's policy to BWPS employees was a matter of contract. Consequently, defendants do not have to prove that Michigan Sugar's enforcement of its policy against BWPS' employees was legal, as plaintiffs contend. Plaintiffs presented no evidence that defendants were motivated by anything other than the desire to impartially enforce the anti-nepotism policy. Therefore, the trial court did not err in concluding that defendants' actions were not wrongful per se.

Moreover, plaintiffs failed to set forth any information that would create an issue of fact with regard to their allegation of malice. Plaintiffs have admitted that they are the mother and sister of a Michigan Sugar employee. There is no evidence that plaintiffs were discharged for any reason other than the anti-nepotism policy. Consequently, summary disposition was proper. *BPS Clinical Laboratories*, *supra* at 699; *Gonyea*, *supra* at 80.

Plaintiffs next argue that trial court's decisions must be reversed because Daggert was not acting within the scope of his employment when he informed Michigan Sugar that plaintiffs were the mother and sister of a Michigan Sugar employee. We decline to address this issue because it was not ruled on by the trial court. *Allen v Keating*, 205 Mich App 560, 564; 517 NW2d 830 (1994). In any event, we note that whether Daggert was acting within the scope of his employment is irrelevant where his conduct was not actionable.

On cross-appeal, defendants Michigan Sugar and Daggert contend that the trial court clearly erred when it failed to award sanctions. We review a determination whether to impose sanctions under the clearly erroneous standard. *Contel Systems v Gores*, 183 Mich App 706, 711; 455 NW2d 398 (1990). The amount of sanctions imposed under MCR 2.114 is to be judicially determined and is reviewed for an abuse of discretion. *Maryland Casualty Co v Allen*, 221 Mich App 26, 30, 32; 561 NW2d 103 (1997). MCR 2.114(D) provides that the signature of an attorney or party on a pleading or other document certifies that the signer has read the document and conducted a reasonable inquiry sufficient to form a good faith belief that "the document is well-grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law." Under MCR 2.114(E), appropriate sanctions are mandatory if a document is signed in violation of subsection (D). Here, plaintiffs' claims were not warranted by existing law which expressly holds that anti-nepotism policies are legal and enforceable. *Miller*, *supra* at 364-365; *Whirlpool*, *supra* at 531. In addition, plaintiffs had no reasonable basis to believe the facts underlying their allegations of malice were true because there were no facts in the record whatsoever to support that allegation. Plaintiffs have alleged no motive for Michigan Sugar's actions other than enforcement of its anti-nepotism policy and there is no evidence that Daggert ever had any contact with BWPS. Because any reasonable inquiry would have revealed the fact that plaintiffs' claims were without basis, the trial court clearly erred when it failed to impose sanctions pursuant to MCR 2.114(E).

Similarly, BWPS argues that the trial court clearly erred when it failed to find that plaintiffs' discrimination claim was frivolous. This court reviews a trial court ruling whether a suit is frivolous for

clear error. *Dillon v DeNooyer Chevrolet Geo*, 217 Mich App 163, 169; 550 NW2d 846 (1996). MCR 2.114(F) provides that additional sanctions may be imposed under MCR 2.625(A)(2) if a claim or defense is frivolous. "Frivolous" is defined in MCL 600.2591(3); MSA 27A.2591(3) as including those claims in which the party had no reasonable basis to believe that the facts underlying that party's legal position were true or in which the party's legal position is devoid of arguable legal merit. We find that the trial court clearly erred in failing to impose sanctions. As discussed above, Michigan courts have repeatedly held that "marital status" refers to the existence or non-existence of a spouse, *Miller*, *supra* at 363; *Fonseca*, *supra* at 32, and plaintiff has made no arguments, reasonable or otherwise, in support of extending this law.

In addition, we conclude that defendants are entitled to damages incurred in connection with this appeal pursuant to MCR 7.216(C)(1)(a) because the appeal was brought "without any reasonable basis for belief that there was a meritorious issue to be determined on appeal." Plaintiffs have made no argument for the modification or reversal of existing law and have cited no facts in support of their allegations of malicious or tortious conduct.

Rather than remanding these cases to the trial court for a determination of sanctions, including reasonable attorney fees, under these provisions, we instead will determine and order appropriate sanctions for plaintiffs' pursuit of these actions at the trial level and on appeal. See MCR 7.216(A)(7). Because these suits were so obviously lacking in any legal merit, we award these sanctions in the form of partial attorney fees against plaintiffs' attorney. We order that plaintiffs' attorney pay Michigan Sugar and Daggert $1000 (reflecting $500 per defendant), to be apportioned between these defendants on the basis of their respective proportions of the total actual attorney fees paid below and on appeal, and that plaintiffs' attorney pay BWPS $250 (reflecting half of $500 per defendant because only one plaintiff remains in the suit with respect to this defendant).

Affirmed with regard to defendants' motions for summary disposition but reversed regarding the denial of sanctions. We do not retain jurisdiction.

/s/ Robert P. Young, Jr.
/s/ Stephen J. Markman
/s/ Michael R. Smolenski

[1] Defendants refer to Daggert as Daggett. For the purposes of this opinion, the name will be spelled as it is on this Court's docketing sheet.