STATE OF MICHIGAN

COURT OF APPEALS

RICKI EDWARD ASH,

Plaintiff-Appellant,

v

TRY-ME DISTRIBUTING COMPANY and SILVER FOAM DISTRIBUTING COMPANY,

Defendants-Appellees.

UNPUBLISHED
January 23, 1998

No. 200789
Washtenaw Circuit Court
LC No. 93-001749-CL

Before: Gribbs, P.J., and Murphy and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order granting defendants summary disposition pursuant to MCR 2.116(C)(10). We affirm.

After being discharged, plaintiff brought this claim against his former employer, Try-Me Distributing Company, and its successor, Silver Foam Distributing Company, under Michigan's Handicappers' Civil Rights Act (HCRA), MCL 37.1101 *et seq.;* MSA 3.550(101) *et seq.* Both defendants are distributing companies for various beer breweries. The lower court granted defendants summary disposition because it found that plaintiff had not established a prima facie case of discrimination where defendant's reason for discharging plaintiff was not plaintiff's alcoholism but because plaintiff was no longer insurable as one of its drivers, due to the drinking-related convictions on plaintiff's driving record. We affirm the lower court's decision because it reached the correct result, although we do so for a different reason.

We review de novo a trial court's grant of summary disposition. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). The threshold issue that we review in this case is an alternative ground for affirmance presented by defendants: whether a provision of the Labor-Management Relations Act (LMRA), 29 USC 141 *et seq.*, preempts plaintiff's complaint under Michigan's HCRA. An appellee is generally limited to the issues raised by the appellant unless the party cross-appeals as provided in MCR 7.207. *Barnell v Taubman Co, Inc*, 203 Mich App 110, 123; 512 NW2d 13 (1993). However, an appellee may

properly argue reasons rejected by the lower court that support the judgment issued in the appellee's favor. *Ass'n of Businesses Advocating Tariff Equity v Public Service Comm*, 192 Mich App 19, 24; 480 NW2d 585 (1991). Because this issue was raised before and rejected by the lower court on defendants' motion for summary disposition and plaintiff's motion for reconsideration, it is preserved for our review. *People v Connor*, 209 Mich App 419, 422; 531 NW2d 734 (1995).

State law is preempted where it regulates conduct in a field that Congress intended the federal government to exclusively occupy. US Const, art VI, cl 2 (Supremacy Clause). This Court has interpreted section 301(a) of the LMRA to preempt the application of state law to claims arising under a labor agreement "where the state law conflicts with federal law, would frustrate the federal scheme, or it is determined that Congress sought to occupy the field." *DesJardins v The Budd Co*, 175 Mich App 599, 601; 438 NW2d 622 (1988) (citing *Allis-Chalmers Corp v Lueck*, 471 US 202, 209; 105 S Ct 1904; 85 L Ed 2d 206 (1985)). That provision of the LMRA is merely the venue provision of the act, which states that "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 29 USC 185(a).

Not every state lawsuit asserting a right that relates in some way to a provision in a collective bargaining agreement is necessarily preempted by section 301, *Lueck, supra* at 471 US 211, 220; instead, the analysis focuses on whether the state law in question confers nonnegotiable state law rights on employers or employees independent of any right established by contract, or, instead, whether evaluation of the state law claim is inextricably intertwined with consideration of the terms of the labor contract, *id.* at 213. For example, in *DesJardins, supra* at 603, this Court relied upon *Lueck* in finding that the plaintiff's HCRA claim was preempted by federal law because "but for defendant's recall agreement with the union, plaintiff would have no claim under the HCRA."

Plaintiff's cause of action does not rest on a right granted to him by the CBA but on his independent, nonnegotiable right not to be discriminated against on the basis of handicap. Indeed, the United States Supreme Court specifically noted that it would be "inconsistent with congressional intent under [section 301] to pre-empt state rules that proscribe conduct, or establish rights and obligations, independent of a labor contract." *Lueck, supra* at 471 US 212. Defendants argue that resolution of plaintiff's claim is nonetheless "inextricably intertwined" with the terms of the collective bargaining agreement (CBA) because the analysis requires this Court to interpret at least two provisions of the parties' CBA. One provision may have required plaintiff to maintain insurable status and another provision may have allowed defendant to discharge plaintiff because he was an employee who had been suspended for more than two years. We agree.

In the case relied upon by the lower court, *Hawaiian Airlines, Inc v Norris*, 512 US 246; 114 S Ct 2239; 129 L Ed 2d 203, 216 (1994), the United States Supreme Court addressed this aspect of preemption within the context of the Railway Labor Act. The Court noted, however, that its analysis was "virtually identical to the pre-emption standard the Court employs in cases involving § 301 of the LMRA." The Supreme Court stated that "even if a dispute resolution pursuant to a collective

bargaining agreement, on the one hand, and state law, on the other, would require addressing precisely the same set of facts, as long as the state-law claim can be resolved without interpreting the agreement itself, the claim is 'independent' of the agreement for § 301 pre-emption purposes." *Id.* at 217 (quoting *Lingle v Norge Division of Magic Chef, Inc*, 486 US 399, 408-409; 108 S Ct 1877; 100 L Ed 2d 410 (1988)). Indeed, purely factual questions about an employee's conduct or an employer's conduct and motives do not require a court to interpret any term of the CBA. *Id.*

Although the Supreme Court's language may open the door for state courts to hear more suits involving parties to a CBA, preemption is still proper in this case. Defendants' argument is meritorious because the provisions of the parties' CBA on which this dispute revolves do not clearly define the parties' relationship with regard to insurance and do not clearly mandate or prohibit certain conduct with regard to obtaining insurance. Therefore, this Court's references to the CBA do not concern "purely factual issues" about the parties' conduct and motives, as permitted by the Supreme Court in *Hawaiian Airlines*. Instead, this Court's evaluation of the HCRA claim is inextricably intertwined with consideration and interpretation of the terms of the CBA. *Lueck, supra* at 471 US 213. Because the state courts lack jurisdiction in this matter, plaintiff must seek his remedy elsewhere.

Affirmed.

/s/ Roman S. Gribbs
/s/ William B. Murphy
/s/ Hilda R. Gage