STATE OF MICHIGAN

COURT OF APPEALS

CYNTHIA J. STEVENS and DAVID STEVENS,

Plaintiffs-Appellants,

v

LAPEER REGIONAL HOSPITAL,

Defendant-Appellee.

UNPUBLISHED
February 20, 1998

No. 197107
Lapeer Circuit Court
LC No. 95-021332-CL

Before: Hood, P.J., and McDonald and White, JJ.

PER CURIAM.

Plaintiff Cynthia J. Stevens appeals as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff had filed a claim against defendant, her former employer, alleging that she was wrongfully terminated from employment in violation of the Michigan Handicappers' Civil Rights Act, MCL 37.1101 *et seq*.; MSA 3.550(101) *et seq*., and that her termination violated an employment agreement with defendant. We affirm.

Plaintiff first argues there is a question of fact as to whether she had a just-cause employment agreement with defendant. We review the trial court's determination de novo, *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 650; 513 NW2d 441 (1994), and conclude the trial court was correct in finding that plaintiff was an at-will employee.

Plaintiff executed a sign-off sheet acknowledging receipt of an employee handbook and indicating her agreement to abide by its rules and regulations in 1985. The final section of the handbook provides that employment "may be terminated with or without cause or notice, at any time, at the option of either the Hospital or the staff member, it being understood that the employment relationship . . . is one of employment at will." Given the fact that the handbook clearly and unambiguously notified plaintiff of defendant's termination at-will policy, we conclude that it effectively modified any prior agreement of just-cause employment that may have arisen from statements made to plaintiff during her initial employment interview, *Scholz v Montgomery Ward & Co*, 437 Mich 83, 89-90; 468 NW2d

845 (1991), or from previous written policy statements, *In re Certified Question*, 432 Mich 438, 441; 443 NW2d 112 (1989).

Plaintiff argues she was not given adequate notice of the changes in company policy. We disagree. In order for a discharge for cause policy to be legally revoked, "reasonable notice" must be "uniformly" given to employees. *In re Certified Question*, *supra* at 457. Reasonable notification is not necessarily actual notification; rather, the method instituted must be calculated in its objective of providing notice to those affected and not invoke the appearance of bad faith in its assurance of actually giving notice. *Lytle v Malady*, 456 Mich 1, 16; 566 NW2d 582 (1997), reh'g gtd 570 NW2d 785 (1997), quoting *Grow v General Products, Inc*, 184 Mich App 379, 386; 457 NW2d 167 (1990) and citing *In re Certified Question*, *supra* at 457. Although plaintiff testified at deposition that at the time she signed the sign-off sheet she was not given or shown a copy of the handbook, defendant submitted an affidavit below of defendant's Benefits Coordinator, Anne Dellar, in which Dellar stated that she participated in the preparation and distribution of the 1985 handbook, that all department heads were given sufficient copies of the handbook for every employee in their department, and that the department heads were also given a handbook receipt, to be signed as each staff member received his or her copy of the handbook. The receipt states that the employee agreed to "read and study" the handbook's contents. Plaintiff did not rebut Dellar's affidavit, and does not contest the fact that she signed the receipt slip. Under these circumstances, we conclude that defendant's distribution of the 1985 handbook, nine years before plaintiff was terminated in March 1994, was reasonable, uniform, and evidenced no bad faith. *Grow*, *supra* at 387; see also *Rowe v Montgomery Ward*, 437 Mich 627, 650; 473 NW2d 268 (1991).

Next, plaintiff argues there is a question of fact whether her employment relationship with defendant required following a progressive discipline policy before she could be discharged. However, since we conclude that plaintiff was an at-will employee, defendant could terminate her employment at any time without cause and without progressive discipline. In any event, since nothing in the record suggests plaintiff was terminated because of a disciplinary problem, progressive discipline would have been inappropriate and unnecessary.

Finally, plaintiff argues there is a question of fact whether defendant discriminated against her in violation of the Michigan Handicappers' Civil Rights Act, MCL 37.1101 *et seq*.; MSA 3.550(101) *et seq*. Section 202(1)(b) of the act states that an employer shall not "[d]ischarge or otherwise discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment, because of a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position." MCL 37.1202; MSA 3.550(202). The act defines "handicap" to mean:

> 1 or more of the following:
>
> (i) A determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic:

(A) substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's ability to perform the duties of a particular job or position or substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's qualifications for employment or promotion.

* * *

(ii) A history of a determinable physical or mental characteristic described in subparagraph (i).

(iii) Being regarded as having a determinable physical or mental characteristic described in subparagraph (i). [MCL 37.1103(e); MSA 3.550(103)(e).]

In *Sanchez v Lagoudakis*, 440 Mich 496, 502; 486 NW2d 657 (1992), the Michigan Supreme Court held that the act prohibits an employer from discharging or otherwise discriminating against an employee due to a belief that the employee has a handicap, even if the employee does not actually have the handicap. This Court has held that the perception of an employee as "mentally unstable" falls within the amended statutory definition of "handicap." *Merillat v Michigan State University*, 207 Mich App 240, 245; 523 NW2d 802 (1994).

In order to establish a prima facie case of discrimination, plaintiff must prove that she is handicapped (or perceived to be handicapped), that the handicap is unrelated to her abilities to perform her duties, and that she has been discriminated against due to the handicap (or perception of such). *Merillat, supra* at 244. Once a prima facie case is established, the burden of production shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the adverse employment action. See *Means v Jowa Security Services*, 176 Mich App 466, 473-474; 440 NW2d 23 (1989). If the defendant makes such a showing, the burden shifts back to the plaintiff to show that the defendant's reason was a mere pretext. *Id.*

Assuming that plaintiff in the instant case did present a prima facie case of discrimination, defendant articulated a legitimate, non-discriminatory reason for its adverse employment action. Defendant presented evidence that plaintiff's position of laboratory supervisor was eliminated pursuant to a reorganization and that an "upgraded" position, clinical supervisor, was created that required an academic degree that plaintiff lacked. Thus defendant articulated a legitimate, non-discriminatory reason for its adverse employment action.

Plaintiff has not presented sufficient evidence that defendant's reorganization was a mere pretext. Plaintiff did not present evidence to rebut that defendant reorganized or that defendant placed a person in the clinical supervisor position, Karen Trainor, who held the required academic degree. Plaintiff argues that Trainor, who left the job on a maternity leave in June 1995 (15 months after the reorganization) was replaced with a person who did not hold the requisite academic degree, Jan Cranick, and that this is evidence of pretext. However, defendant presented evidence that Larry Ross and Ralph Roland assumed the supervisory duties Trainor had performed, and that Cranick, who

assumed the duties of "charge phlebotomist" assisted Roland, who supervised the phlebotomists. We therefore conclude that plaintiff's HCRA claim was properly dismissed.

Affirmed.

/s/ Harold Hood
/s/ Gary R. McDonald
/s/ Helene N. White