

STATE OF MICHIGAN
COURT OF APPEALS

RANDIE K. BLACK,

Plaintiff-Appellee,

v

SUCECEIDIA GREGORY,

Defendant-Appellant.

UNPUBLISHED

March 10, 1998

No. 193539

Ingham Circuit Court

LC No. 95-080524-CZ

Before: MacKenzie, P.J., and Holbrook, Jr. and Saad, JJ.

PER CURIAM.

Defendant appeals as of right an order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

In July, 1993, plaintiff agreed to represent defendant in a civil service arbitration proceeding and a circuit court employment discrimination case. Defendant signed a fee agreement providing that the arbitration case would be billed at \$125 per hour. Plaintiff represented defendant in the arbitration which resulted in defendant being reinstated to her previous employment with back pay, benefits, and restored seniority. At the conclusion of the arbitration proceeding, plaintiff billed defendant for fees and costs exceeding \$33,000 and defendant refused to pay plaintiff's bill. Consequently, plaintiff filed suit to collect her fees and costs, and plaintiff then moved for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff provided a copy of the fee argument in support of the motion. The trial court granted plaintiff's motion.

Defendant contends that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10) because there were genuine issues of material fact. We disagree. A trial court's determination of a motion for summary disposition is reviewed de novo on appeal. *Pickney Comm Schools v Continental Cas'ty Co*, 213 Mich App 521, 525; 540 NW2d 728 (1995).

Defendant claims that the trial court erred in granting summary disposition because the fee agreement was ambiguous as to the meaning of the word "arbitration." We disagree. The fee agreement provided detailed information regarding the incident for which plaintiff's services were being retained, so the word "arbitration" is not ambiguous in this context. Because the agreement was not

ambiguous, defendant was informed of what was being billed at the hourly rate as evidenced by her signature on the contract.

Further, defendant failed to timely present evidence to support her contention that she did not have capacity to enter into a contract. On October 17, 1995, one day before the hearing on the motion for summary disposition, defendant attempted to produce evidence of her incapacity through a letter from her physician dated December 14, 1993. However, the trial court ruled that the evidence was inadmissible because it had not been filed in a timely fashion. Considering defendant's history of noncompliance with the court rules, and her failure to properly support her defense of incapacity within the time proscribed by court rule MCR 2.116(G)(1)(a)(ii), the trial court did not abuse its discretion by not considering defendant's untimely documentary evidence. See *Prussing v General Motors Corp*, 403 Mich 366, 370; 269 NW2d 181 (1978). Without admissible evidence to support defendant's theory of incapacity, the contract's validity was uncontroverted. *Cox v Dearborn Hts*, 210 Mich App 389, 398; 534 NW2d 135 (1995).

Finally, defendant failed to present evidence to support her argument that plaintiff's fee was per se unreasonable. Pursuant to MCR 2.116(G)(4), defendant may not rest upon mere allegation in the face of a motion for summary disposition, but must set forth specific facts showing that there is a genuine issue for trial. Because defendant failed to present evidence to support her position, a genuine issue of material fact does not exist. The trial court did not err in refusing to permit defendant to amend her complaint.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Donald L. Holbrook, Jr.
/s/ Henry William Saad