

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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VALENCIA MOORER,

Plaintiff-Appellant,

v

SINAI HOSPITAL,

Defendant-Appellee.

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UNPUBLISHED

September 22, 1998

No. 200436

Wayne Circuit Court

LC No. 95-520854

Before: Sawyer, P.J., and Bandstra and J.B. Sullivan\*, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendant. We affirm.

Plaintiff argues that the trial court erred in granting defendant's motion for summary disposition and thereby dismissing plaintiff's two claims of wrongful discharge and civil rights claim. We disagree. This Court reviews summary disposition decisions de novo. *Omnicom of Mich v Giannetti Investment Co*, 221 Mich App 341, 344; 561 NW2d 138 (1997). "When conducting this review, . . . the entire record [is examined] in a light most favorable to the nonmoving party to determine whether a record could be developed that would leave open an issue on which reasonable minds could differ." *Donajkowski v Alpena Power Co*, 219 Mich App 441, 446; 556 NW2d 876 (1996).

Plaintiff first argues that the trial court improperly granted defendant's motion for summary disposition as to the breach of employment contract claim. Employment contracts for an indefinite duration are presumed to be terminable at the will of either party, unless a contractual provision exists for a definite term of employment or a contract forbids discharge absent just cause. *Lyle v Malady (On Rehearing)*, 458 Mich 153, 163-164 (Weaver, J.), 185-186 (Mallett, C.J.); 579 NW2d 906 (1998); *Rood v General Dynamics Corp*, 444 Mich 107, 116-117; 507 NW2d 591 (1993). A contract for just-cause employment may be established in three ways: (1) proof of a contractual provision forbidding discharge absent just cause; (2) an express agreement, either written or oral, regarding job security that is clear and unequivocal; and (3) a contract, implied at law, where an

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

employer's policies and procedures instill a "legitimate expectation" of job security in the employee. *Lytle, supra* at 164 (Weaver, J.), 185-186 (Mallett, C.J.).

Under the first two alternatives, a claim of wrongful discharge is "grounded solely on contract principles 'relative to the employment setting[.]'" See *Rood, supra* at 117-118, quoting *Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627, 632; 473 NW2d 268 (1991). "A basic requirement of contract formation is that the parties mutually assent to be bound." *Rood, supra* at 118. To determine whether there was mutual assent, this Court examines the parties' expressed words and their visible acts, and asks whether a reasonable person could have interpreted the words or conduct in the manner that is alleged. *Id.* at 119.

In the case at bar, the assistant vice president of human resources for defendant stated that during plaintiff's employment with defendant, defendant was an at-will employer. Furthermore, defendant presented documentary evidence in terms of its employee policy manual that traced the promulgation of an explicit at-will subsection or clause throughout plaintiff's employment with defendant. Although plaintiff argues that she was not an at-will employee because she had received two documents from defendant, one stating that she was allowed eight unplanned absences and another detailing the specific action that would be followed if she was absent, these documents do not constitute clear and unequivocal assurances of job security nor do they forbid discharge absent just cause. *Lytle, supra* at 164, 171-172 (Weaver, J.), 185-186 (Mallett, C.J.). Therefore, a reasonable person could not have interpreted defendant's policies and conduct as evincing an intention to assent to a just-cause employment contract with plaintiff. Thus, the trial court did not err in granting defendant's motion for summary disposition as to plaintiff's breach of employment contract claim.

Plaintiff next argues that the trial court improperly granted defendant's motion for summary disposition as to the third alternative, her breach of legitimate expectations of just-cause employment claim. When a policy manual is at issue as it is here, the employer's policy statements concerning employee discharge are examined to determine whether they "are reasonably capable of being interpreted as promises of just-cause employment." *Rood, supra* at 140.

In *Biggs v Hilton Hotel Corp*, 194 Mich App 239, 241; 486 NW2d 61 (1992), this Court, in affirming the trial court's grant of the defendant employer's motion for summary disposition, found that the plaintiff's reliance upon a disciplinary scheme did not establish a promise for termination for cause only. This Court first noted that the employment manual did not state that an employee would not be terminated except for one of the reasons listed in the disciplinary section. *Id.* Furthermore, this Court held that while the employment manual did not explicitly state that employment was at-will, the presumption of at-will employment required the "inquiry [of] whether the employer, through its employment manual or otherwise, made representations or promises that termination would be only for just cause" and that the plaintiff had failed in making such a showing. *Id.* Furthermore, this Court noted that the manual explicitly stated that it represented merely a guideline and not a contract. *Id.*

In the case at bar, defendant's employee policy manual, setting forth a disciplinary system in dealing with employees, does not unequivocally establish that plaintiff was a just-cause employee. Moreover, neither the attendance and punctuality policy nor the absenteeism and punctuality guidelines

make any representations from which a reasonable person could conclude that termination would *only* occur for just or good cause shown. *Id.* at 241-242. In addition, defendant's employment manual, which was in effect during plaintiff's entire employment with defendant, specifically states that the policies are guidelines only and do not constitute a contract or a guarantee. *Lytle, supra* at 166, 169-171 (Weaver, J.), 185-186 (Mallett, C.J.); *Biggs, supra*. Plaintiff could not have harbored any legitimate expectations of just-cause employment; the trial court did not err in granting defendant's motion for summary disposition as to this claim.

Plaintiff further argues that the trial court improperly granted defendant's motion for summary disposition as to her race discrimination claim. Plaintiff alleges a disparate treatment race discrimination claim.<sup>1</sup> *Harrison v Olde Financial Corp*, 225 Mich App 601, 606; 572 NW2d 679 (1997). Michigan has applied the *McDonnell Douglas*<sup>2</sup> approach to disparate treatment cases, thereby allowing a plaintiff to establish his or her claim by circumstantial evidence. *Harrison, supra*. The first burden of proof is on plaintiff to establish a prima facie case that (1) she was a member of a protected class, (2) she suffered an adverse employment action, (3) she was qualified for the position, and (4) she was discharged under circumstances that give rise to an inference of unlawful discrimination. *Lytle, supra* at 172-173 (Weaver, J.), 185-186 (Mallett, C.J.).

We conclude that plaintiff failed to establish this prima facie case. Plaintiff first points to defendant's response to the conduct of one medical assistant and a receptionist, both employees being outside of the protected class, to show that she had endured disparate treatment because of her race. However, the receptionist had been employed by the department since 1988 and was not similarly situated to plaintiff. In addition, the office manager testified that compliance with the call-in procedure was especially important for medical assistants like plaintiff. Further, the isolated incident involving the receptionist (i.e., walking out of the office following a disagreement with a physician and returning shortly thereafter) is dissimilar from and sufficiently less serious than plaintiff's repeated conduct of intentionally, negligently, or inadvertently not following the proper call-in procedure when absent. The same is true regarding the alleged incident where a medical assistant had walked out of the office after having had a disagreement with a physician. Plaintiff did not claim that the medical assistant repeatedly violated the call-in procedure in the manner that resulted in plaintiff's discharge.

Plaintiff also points to the officer manager's reference to African-Americans as "your people," but this characterization does not reflect any discriminatory animus or intent. Likewise, the manager's statement that she preferred the Oak Park office over the Detroit office because it was less chaotic and understaffed is not reflective of any discriminatory animus or intent. Plaintiff has failed to establish a prima facie case of race discrimination under the disparate treatment theory.

We affirm.

/s/ David H. Sawyer  
/s/ Richard A. Bandstra  
/s/ Joseph B. Sullivan

<sup>1</sup> Although plaintiff argues her race discrimination claim under two theories, disparate treatment and intentional discrimination, the disparate treatment theory actually constitutes a claim of intentional discrimination, *Harrison v Olde Financial Corp*, 225 Mich App 601, 606; 572 NW2d 679 (1997), and intentional discrimination is not a separate theory, *Meagher v Wayne State Univ*, 222 Mich App 700, 709; 565 NW2d 401 (1997). See, also, *Lytle, supra* at 177 n 26 (Weaver, J.), 185-186 (Mallett, C.J.); *Farmington Ed Ass'n v Farmington School Dist*, 133 Mich App 566; 351 NW2d 242 (1984).

<sup>2</sup> *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973).