

STATE OF MICHIGAN
COURT OF APPEALS

ROGER PEARSALL and SANDRA
PEARSALL,

UNPUBLISHED
April 2, 1999

Plaintiffs-Appellants,

v

No. 198087
Wayne County Circuit Court
LC No. 95-531400 NO

CHARTER TOWNSHIP OF CANTON,

Defendant-Appellee.

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

MEMORANDUM.

Plaintiffs appeal by right the trial court's order granting summary disposition for defendant in this retaliatory/wrongful discharge action based upon defendant's failure to recognize a continuing employment relationship with plaintiff Roger Pearsall when he attempted to return to work in 1995. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Because the trial court relied upon the documentary evidence presented in this case, we review the trial court's decision under MCR 2.116(C)(10). *Velmer v Baraga Area Schools*, 430 Mich 385, 389; 424 NW2d 770 (1988). We consider all of the documentary evidence available to us in a light most favorable to plaintiffs to determine whether genuine issue of material fact exists. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).

Here, defendant supported its motion with an affidavit from the township personnel analyst, David Medley, and other documentary evidence indicating that Mr. Pearsall's employment was terminated in 1992, long before the attempted return to work at issue in this case, based upon his continued absence from work after his accrued sick/ vacation days expired, after which Mr. Pearsall applied for and received pension and long-term disability benefits. To avoid summary disposition, it was incumbent upon plaintiffs to present specific factual proof to establish the existence of a genuine factual dispute regarding Mr. Pearsall's employment status in 1995 and/or the legitimacy of defendant's proffered, nondiscriminatory reasons for discharge prior to that time. *Quinto, supra*. See *Polk v Yellow Freight System, Inc*, 876 F2d 527, 531 (CA 6, 1989). Plaintiffs did neither.

Plaintiffs argue that a genuine issue of fact exists as to Mr. Pearsall's employment status in 1995 because Mr. Medley previously testified at Mr. Pearsall's worker's compensation hearing in March of 1993 that Mr. Pearsall could return to limited duty work available at that time. However, contrary to plaintiffs' argument, Mr. Medley's testimony regarding an offer of favored work at that time is not necessarily inconsistent with his assertion that Mr. Pearsall's employment was terminated in 1992, since there is nothing to indicate that Mr. Pearsall was necessarily required to be a current employee of the township police department in order for the township to offer him favored employment. In fact, the Worker's Disability Compensation Act itself recognizes that favored work may be offered by a "previous," as opposed to a current, employer. See MCL 418.301(5)(a); MSA 17.237(301)(5)(a). In short, there is nothing to indicate that any offer of favored work in 1993 would constitute a recognition of continued employment, as opposed to a mere offer of re-employment.

Plaintiffs object that defendant offered no evidence of a release and waiver of seniority, a letter of resignation or some other "conventional document" to prove that Mr. Pearsall was no longer employed at the township. However, there is nothing to indicate that any such documents were necessarily required in order to terminate Mr. Pearsall's employment under the circumstances that obtained in 1992. Plaintiffs also note that the Worker's Compensation Appellate Commission ultimately found, several months after the dismissal ruling in this case, that Mr. Pearsall suffers from an on-going work-related disability, a fact which is not only beyond the scope of the record in this appeal but which also provides no relevant support for plaintiffs' claim of retaliation.

Affirmed.

/s/ Gary R. McDonald
/s/ Harold Hood
/s/ Martin M. Doctoroff