

STATE OF MICHIGAN
COURT OF APPEALS

WILLIE HOLT,

Plaintiff-Appellant,

v

PIPP MOBILE SYSTEMS, INC.,

Defendant-Appellee.

UNPUBLISHED

September 20, 2002

No. 231180

Kent Circuit Court

LC No. 99-009559-CZ

Before: Whitbeck, C.J., and Sawyer and Kelly, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition in this employment discrimination action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was terminated from his employment with defendant on October 1, 1998. He filed this action on September 28, 1999, alleging racial discrimination, racial harassment, and retaliation. The trial court granted defendant's motion for summary disposition on statute of limitations grounds, based on a six month limitations period contained in the employment agreement.

Parties may contract for a period of limitation shorter than the applicable statute of limitation, provided that the abbreviated period remains reasonable. *Herweyer v Clark Hwy Services, Inc*, 455 Mich 14; 564 NW2d 857 (1997). A period of limitation is reasonable if (1) the claimant has sufficient opportunity to investigate and file an action, (2) the time is not so short as to work a practical abrogation of the right of action, and (3) the action is not barred before the loss or damage can be ascertained. *Camelot Excavating Co, Inc v St Paul Fire & Marine Ins Co*, 410 Mich 118, 127; 301 NW2d 275 (1981).

Plaintiff asserts that *Herweyer* held that a 180-day limitation period in an employment contract was unreasonable when applied to a civil rights act claim. However, in *Timko v Oakwood Coating, Inc*, 244 Mich App 234; 625 NW2d 101 (2001), this Court found that *Herweyer* only considered the contract's savings clause, and expressed no opinion as to the reasonableness of a six-month limitation period. *Timko* held that no inherent unreasonableness accompanies a six-month limitation period, as similar periods are included in a number of state and federal laws concerning employment actions. Where the plaintiff failed to demonstrate that

the shortened period unfairly deprived him of the opportunity to file his claims, the 180-day period was reasonable. *Id.*, 243-244.

When one party has less bargaining power than the other, an employment contract must be given close judicial scrutiny. *Herweyer, supra*, 21. A waiver of rights under the civil rights act must be knowing, intelligent, and voluntary. *Myers v Western-Southern Life Ins Co*, 849 F 2d 259 (CA 6, 1988). The employee has the burden of proving that the waiver was not knowing and voluntary. *Id.*, 261.

Here, the waiver was not buried in a handbook, and the language would not be confusing to a layperson. Plaintiff has failed to show that the waiver was not knowing and voluntary or that the shortened limitations period deprived him of the opportunity to file his claims. The trial court properly granted summary disposition to defendant.

Affirmed.

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ Kirsten Frank Kelly