

STATE OF MICHIGAN
COURT OF APPEALS

JAMES DARRYL FOUST,

Plaintiff-Appellant,

v

SAGINAW COOPERATIVE HOSPITALS, INC,

Defendant-Appellee.

UNPUBLISHED

September 30, 2003

No. 238762

Saginaw Circuit Court

LC No. 00-032418-NZ

Before: Sawyer, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

Plaintiff James Foust appeals by right from the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm.

Plaintiff, who was a resident doctor at defendant hospital, claims that defendant discriminated against him in violation of the Persons With Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.*, when it failed to renew his contract for a second year. We review a trial court's decision on a motion for summary disposition under MCR 2.116(C)(10) de novo. On review, this Court "must consider the available pleadings, affidavits, depositions, and other documentary evidence in a light most favorable to the nonmoving party and determine whether the moving party was entitled to judgment as a matter of law." *Unisys Corp v Comm'r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999).

The PWDCRA provides certain protections for persons with disabilities. The statutory definitions and prohibitions vary, depending on the actor. At issue here are the provisions governing places of public accommodation and educational institutions. Plaintiff claimed that defendant was a place of public accommodation and an educational institution, and the trial court agreed.

A place of public accommodation is "[a] business, educational institution, refreshment, entertainment, recreation, health, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public." MCL 37.1301(a). Defendant in this case falls within the definition of a "public accommodation" because there is no dispute that it is a "business" whose "services, facilities, privileges [and] advantages" are "extended, offered, sold or otherwise made available to the public." MCL 37.1301(a). There can be no dispute that a hospital that provides medical services to the public is a place of public accommodation.

Although defendant is clearly a place of public accommodation, the trial court still correctly granted summary disposition with respect to this aspect of plaintiff's PWDCRA claim because plaintiff failed to establish that defendant, as a "place of public accommodation," denied him the "full and equal enjoyment of the . . . facilities." MCL 37.1302(a). In short, plaintiff has not alleged that he was unable to access areas of the hospital because of his ADD. Consequently, the trial court properly granted summary disposition to defendant.

The same approach applies to plaintiff's claim that defendant discriminated against him in its capacity as an educational institution. Under Article 4 of the PWDCRA, an "educational institution" is defined as "a public or private institution or a separate school or department of a public or private institution," which includes vocational schools, professional schools, academies, colleges, and extension courses. MCL 37.1401. Here, the evidence submitted to the trial court established that defendant advertises itself as an educational institution because of the residency and other programs that it conducts. Accordingly, the trial court was correct in determining that defendant was an educational institution.

Again, however, plaintiff failed to establish a genuine issue of material fact that, as an educational institution, defendant discriminated against plaintiff by failing to afford plaintiff the full utilization of, or benefit from, the institution or its services. Therefore, summary disposition was properly granted to defendant with respect to plaintiff's assertions under Article 4 of the PWDCRA.

When examining whether a person has an actual disability, courts must look at whether the disability is a physical or mental impairment, whether a major life activity is affected by the impairment, and whether the disability substantially limits that major life activity. *Chiles v Machine Shop, Inc*, 238 Mich App 462, 476, 477, 479; 606 NW2d 398 (1999). The Equal Employment Opportunity Commission, which administers the ADA, has defined major life activities as "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." *Stevens v Inland Waters, Inc*, 220 Mich App 212, 217; 559 NW2d 61 (1996), quoting 29 CFR 1630.2(i).

In his brief opposing summary disposition, plaintiff stated only that his "life long learning disability [] has and continues to substantially impact his life. . . ." However, in opposing a motion for summary disposition, it is insufficient for a party to merely state conclusions without factual support. *Parpart v Detroit*, 194 Mich App 561, 563; 487 NW2d 506 (1992). Plaintiff testified that he felt he had to work harder in school all his life, but he did not identify either a major life activity or a substantial limitation. Even assuming that the major life activity was learning, plaintiff still failed to detail how his learning was substantially limited. In fact, plaintiff graduated from both undergraduate and medical school without any accommodations at all. Thus, not only did plaintiff fail to state a claim by failing to allege a substantial limitation on a major life activity in his complaint, but he failed to produce a genuine issue of material fact regarding that element to prevail on summary disposition. This Court may affirm a trial court where the trial court reached the right result for the wrong reason. *Mulholland v DEC Int'l Corp*, 432 Mich 395, 411 n 10; 443 NW2d 340 (1989).

Even if defendant was an educational institution, plaintiff's claim still fails. Defendant produced substantial evidence that it refused to renew his contract based on widespread alarm regarding plaintiff's abilities as a medical doctor. On one hand, plaintiff claims that his ADD did

not affect his ability to do his job, in which case he has not stated an ADA claim. On the other hand, if it was plaintiff's ADD that caused him to perform inadequately, then his disability was directly related to his ability to utilize and benefit from defendant's residency program and was thus not a disability within the meaning of the ADA. See MCL 37.1103(d)(i)(C), (ii), and (iii).

Because plaintiff's claim that he was disabled fails, we need not address plaintiff's additional claims that defendant discriminated against him based on a disability and that defendant retaliated against him because of his disability.

Affirmed.

/s/ David H. Sawyer

/s/ Joel P. Hoekstra

/s/ Christopher M. Murray