

STATE OF MICHIGAN  
COURT OF APPEALS

---

ST. CLAIR COUNTY COMMUNITY COLLEGE  
DISTRICT,

UNPUBLISHED  
July 28, 2005

Plaintiff-Appellee,

v

ST. CLAIR COUNTY COMMUNITY  
COLLEGE/MICHIGAN ASSOCIATION FOR  
HIGHER EDUCATION,

No. 252948  
St. Clair Circuit Court  
LC No. 03-001321-CK

Defendant-Appellant.

---

Before: Borrello, P.J., and Bandstra and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right the trial court order granting summary disposition in favor of plaintiff. We reverse and remand. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff hired Debbie Beck as a probationary faculty member, and then terminated her employment after conducting a performance evaluation that found her unsatisfactory. The parties' contract explicitly precludes probationary faculty members from appealing a decision to terminate their employment to the contractual grievance procedure. However, defendant contends that the grievances pertain only to the procedures plaintiff followed in conducting the evaluation, not to the final decision to terminate. We agree, and therefore find the grievances arbitrable.

We review de novo a trial court's grant or denial of summary disposition to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion for summary disposition under MCR 2.116(C)(8) "tests the legal sufficiency of the complaint," *id.* at 119, and a movant is entitled to summary disposition if "[t]he opposing party has failed to state a claim on which relief can be granted." All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the non-moving party, and "[a] motion under MCR 2.116(C)(8) may be granted only where the claims alleged are 'so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.'" *Id.*, quoting *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992).

Additionally, we review de novo as a question of law whether a dispute is arbitrable. *Madison Dist Pub Schools v Myers*, 247 Mich App 583, 594; 637 NW2d 526 (2001). “Arbitration is generally recognized as a matter of contract,” and “[a]rbitration agreements are generally interpreted in the same manner as ordinary contracts” and “must be enforced according to their terms to effectuate the intentions of the parties.” *Bayati v Bayati*, 264 Mich App 595, 598-599; 691 NW2d 812 (2004).

“To ascertain the arbitrability of an issue, the court must consider whether there is an arbitration provision in the parties’ contract, whether the disputed issue is arguably within the arbitration clause, and whether the dispute is expressly exempt from arbitration by the terms of the contract.” *City of Huntington Woods v Ajax Paving Industries, Inc (After Remand)*, 196 Mich App 71, 74-75; 492 NW2d 463 (1992). “Any doubts about the arbitrability of an issue should be resolved in favor of arbitration.” *Id.* at 75. Our Supreme Court has expressly emphasized that “in a suit to compel or enjoin arbitration, a court’s inquiry is limited to the question of arbitrability,” and that “courts must assiduously avoid deciding the merits of the underlying dispute in the guise of deciding arbitrability.” *Ottawa Co v Jaklinski*, 423 Mich 1, 25; 377 NW2d 668 (1985). Accordingly, “a court should not interpret a contract’s language beyond determining whether arbitration applies.” *Fromm v Meemic Ins Co*, 264 Mich App 302, 306; 690 NW2d 528 (2004).

It is undisputed that the relevant contractual provisions explicitly preclude a probationary employee like Beck from submitting “a grievance to arbitration challenging his or her termination.” In particular, Article V, part C, § 10, ¶ 10 provides in relevant part:

In the event of a Board decision for dismissal, the faculty member, through the Association may appeal the decision to binding arbitration as provided in the grievance procedure, with the following exceptions:

- a. First and second semester probationary faculty members may be dismissed without recourse to the grievance procedure.

Contrary to plaintiff’s arguments, this section does not create an independent grievance procedure, but rather refers to *the* grievance procedure, which is set out in Article X of the parties’ contract. Further, subparagraph (a) does not absolutely preclude probationary faculty members from recourse to the grievance procedure, because it is presented solely as an exception to faculty members’ rights to appeal a dismissal decision to binding arbitration. Moreover, the right in ¶ 10 only arises “[i]n the event of a Board decision for dismissal.” Therefore, the plain language of that section grants faculty members a limited right: *if* the Board has decided to dismiss them, they may appeal *the decision* directly to arbitration.

Beck filed two grievances on November 5, 2001, and a third on November 15, 2001. However, her actual dismissal was not initiated until January 8, 2002, when plaintiff’s president recommended that the Board “take action to approve . . . the dismissal of probationary instructor Debbie Beck, effective December 21, 2001.” Further, the grievances explicitly assert that her evaluation process, not termination, was flawed, and seek a new evaluation, not reinstatement. Therefore, on their faces, Beck’s grievances fall outside the scope of Article V, part C, § 10, ¶ 10 and are not excluded from arbitration by that section. *Kentwood Pub Schools v Kent Co Ed*

*Ass'n*, 206 Mich App 161, 164-165; 520 NW2d 682 (1994) (observing that courts may only determine whether the claim is on its face either explicitly excluded from arbitration by express terms in the contract or by “the most forceful evidence of a purpose to exclude the claim”). Further analysis of the merits of her grievances is not permitted. *Ottawa Co*, *supra* at 25.

Because Article V, part C, § 10, ¶ 10 is the only exception plaintiff relied on, the only remaining question is whether the grievances are facially arbitrable under the provisions of the grievance procedure set forth in Article X. Presuming all procedures set forth in that article have been followed, our reading is that it allows Beck’s grievances ultimately to go to arbitration. See *Kaleva-Norman-Dickson School Dist No 6, Cos of Manistee, Lake & Mason v Kaleva-Norman-Dickson School Teachers’ Ass’n*, 393 Mich 583, 591-592; 227 NW2d 500 (1975), quoting *United Steelworkers of America v American Mfg Co*, 363 US 564, 568; 80 S Ct 1343; 4 L Ed 2d 1403 (1960).

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello  
/s/ Richard A. Bandstra  
/s/ Kirsten Frank Kelly