

STATE OF MICHIGAN
COURT OF APPEALS

KAY BARTZ,

Plaintiff-Appellant,

v

HOSKINS MANUFACTURING COMPANY,

Defendant-Appellee.

UNPUBLISHED

June 17, 1997

No. 189874

Charlevoix Circuit Court

LC No. 94-012217-CZ

Before: Bandstra, P.J., and Hoekstra and J.M. Batzer*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendant in this handicap discrimination case. We affirm.

Plaintiff began working for defendant in the late 1960's. Over the years, plaintiff endured recurring problems with varicose veins in her legs that resulted in her having "vein stripping" surgeries performed in 1976 and 1986. In 1991, plaintiff accepted a position in defendant's spool and pack pail annealing department because she believed that the annealing position would be less stressful on her legs. However, on March 6, 1992, a company doctor examined plaintiff and suggested to her that she perform another job, if available, in order to avoid standing for a full eight hours. On March 18, 1992, plaintiff was assigned to do pack pail annealing work which required lifting and standing all day long. Plaintiff asked the plant manager to be reassigned to a different job, but the plant manager denied her request. As a result, plaintiff left the premises and did not return. Subsequently, defendant determined that plaintiff had voluntarily quit her job and considered plaintiff's employment terminated effective March 18, 1992.

Plaintiff argues that the trial court erred in summarily dismissing her handicap discrimination claim. Specifically, plaintiff argues that the trial court erred in finding that: 1) plaintiff was not

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

handicapped under the Michigan Handicappers' Civil Rights Act ("HCRA"),

MCL 37.1103(e)(1)(A); MSA 3.550(103)(e)(1)(A); 2) defendant had no duty to accommodate plaintiff given the nature of the accommodations sought; and, 3) plaintiff did not provide defendant with a written request for accommodation as required by statute. We disagree.

Even assuming arguendo that plaintiff was handicapped under the HCRA, summary disposition was properly granted because plaintiff failed to request an accommodation in writing from defendant as required by the HCRA. Therefore, defendant was not required to accommodate plaintiff and cannot be liable for failing to accommodate her. According to the HCRA:

A handicapper may allege a violation against a person regarding a failure to accommodate under this article only if the handicapper notifies the person in writing of the need for accommodation within 182 days after the date the handicapper knew or reasonably should have known that an accommodation was needed. [MCL 37.1210(18); MSA 3.550(21)(18).]

Plaintiff acknowledges that she never provided written notice to defendant regarding her desire for any type of accommodation. Although plaintiff argues that she constructively notified defendant of her need for an accommodation because she was led to believe by the company doctor that he was going to notify defendant of the company's need to accommodate her¹, plaintiff cites no authority in support of her position that an employer's agent (in this case, the company doctor) can provide constructive notice to an employer for purposes of satisfying the HCRA's written notice provision. This Court will not search for authority to sustain or reject a party's position, and as such, this argument fails. *Roberts v Vaughn*, 214 Mich App 625, 630; 543 NW2d 79 (1995). Plaintiff likewise provides no authority for her position that her Worker's Compensation claim form provided defendant with notice of her condition which would require accommodation, and we find this assertion to be wholly without merit because the claim form provided no information regarding what accommodation would be necessary.

We find that based upon plaintiff's own testimony, reasonable minds could not differ that plaintiff did not comply with the statutory requirement set forth in MCL 37.1210(18); MSA 3.550(21)(18) and, consequently, defendant was not required to accommodate her. Accordingly, plaintiff's claim was properly dismissed by the trial court. See *Nelson v United Parcel Service, Inc*, 6 NDLR-P 6, 1995 US Dist LEXIS 7117 (WD Mich May 4, 1995).

Because our disposition of this case rests on the fact that defendant had no obligation to accommodate plaintiff under the facts of this case, we need not address whether plaintiff's requests would have required defendant to accommodate her if she had provided proper notice or whether the trial court erred in concluding as a matter of law that plaintiff's leg ailment did not substantially limit one or more of her major life activities and thus did not constitute a handicap

under the HCRA. We express no opinion regarding the propriety of the trial court's findings with respect to either of these claims.

Affirmed.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ James M. Batzer

¹ We note that the record does not support plaintiff's claim that the company doctor believed that plaintiff could be accommodated by defendant.