

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MICHAEL THOMAS ROTH,

Plaintiff-Appellant,

v

CITY OF EASTPOINTE,

Defendant-Appellee.

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UNPUBLISHED

July 27, 1999

No. 205066

Macomb Circuit Court

LC No. 97-000482 CZ

Before: Sawyer, P.J., and Holbrook, Jr., and W. E. Collette,\* JJ.

MEMORANDUM.

Plaintiff appeals by right from the trial court's order granting summary disposition for defendant, under MCR 2.116(C)(10), in this action for a declaratory judgment that plaintiff's employment as a code enforcement officer for defendant should be classified as full-time. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, plaintiff argues that summary disposition should not have been granted because there exist disputed issues of fact regarding whether plaintiff had worked in excess of 37.5 hours per week during his employment, and whether the city had acted arbitrarily and capriciously by promoting various other part-time employees to full-time status without civil service testing, while refusing to grant plaintiff full-time status without testing. We disagree.

Given the effect of plaintiff's failure to timely respond to defendant's request for admissions, and the biweekly work hour evidence submitted by both parties, the trial court determined that plaintiff was unable to show that his "normal assigned work hours" as a code enforcement officer, exclusive of other work in "fill in" positions outside of his regularly scheduled work, averaged at least 37.5 hours per week. Therefore, the trial court concluded that plaintiff's employment did not qualify as full-time employment as defined by defendant's employment rules, even though it was undisputed that there were at least some occasions when plaintiff worked 37.5 or more hours in a work week. Plaintiff has failed to specifically address the trial court's reasoning, and we are not persuaded that the trial court's

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

interpretation of the evidence is incorrect. This analysis moots the issue of defendant's reliance upon the requirement of civil service testing for full-time employment.

Affirmed.

/s/ David H. Sawyer

/s/ Donald E. Holbrook, Jr.

/s/ William E. Collette