

STATE OF MICHIGAN
COURT OF APPEALS

ALAN WIDLANSKY, D.O.,

Plaintiff-Appellant,

v

THE DETROIT MEDICAL CENTER and
WAYNE STATE UNIVERSITY,

Defendants-Appellees.

UNPUBLISHED
December 23, 2003

No. 242328
Wayne Circuit Court
LC No. 01-107816-CZ

Before: Fitzgerald, P.J., and Neff and White, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendants' motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought this action asserting that defendants violated the Persons With Disabilities Civil Rights Act, MCL 37.1101 *et seq.*, by terminating him from a residency program based on a perceived disability. Plaintiff argues that the trial court erred in granting defendants' motion where he presented evidence raising a question of fact regarding the basis for his termination.

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating the motion, the trial court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in a light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

The Persons With Disabilities Civil Rights Act provides protection against discrimination in employment for those with disabilities, including those regarded as having a disability. *Michalski v Bar-Levav*, 463 Mich 723, 731; 625 NW2d 754 (2001). In order to succeed on a claim for a perceived disability under MCL 37.1103(d)(iii), an employee must prove (1) that the employee was regarded as having a determinable physical or mental characteristic, (2) that the perceived characteristic was regarded as substantially limiting one or more of the plaintiff's major life activities, and (3) that the perceived characteristic was regarded as being unrelated to the plaintiff's ability to perform the duties of a particular job. *Id.*, 735. Because of the present

tense language used in the statute, courts must evaluate the physical or mental characteristic either as it actually existed at the time of plaintiff's employment or as it was perceived at that time. *Id.*

In mid-November, 1999, plaintiff was placed on probation due to problems with his attendance and work performance. By mid-December, his attendance had improved, but there was still concern about his medical knowledge and his behavior. In mid-January, he was taken off probation due to his improved behavior and work ethic. However, it was noted that there were still consistent remarks made about deficiencies in his medical knowledge base and clinical judgment. His evaluations continued in the "marginal satisfactory" range. He requested time off in March to visit his terminally ill grandmother. However, he took more time than had been agreed on, and missed a rotation as a result; he then misrepresented that he had been granted the additional time for interviewing. The associate chairman for education recommended that he be placed on medical leave pending a psychiatric evaluation. At its quarterly meeting, the reviewing committee discussed plaintiff's performance and determined that if no psychiatric illness was found, there was no excuse for plaintiff's behavior, and he should be dismissed. An evaluation was performed and the evaluator found "nothing indicative of major mental illness." He noted:

He is a young man who tends to be rather rigid and to follow his own lead. He seems not to understand or to appreciate the hierarchical structure of any medical residency program and the need to conform to scheduling. He appears also not [to] be concerned about any inconvenience he might cause his fellow interns. I would describe his behavior as under the category of personality disorder without major mental illness.

Plaintiff was then terminated based on deficiencies in medical knowledge and clinical judgment and his unreliability.

Plaintiff failed to present evidence that he was terminated based on a perceived mental disability, or that that disability was unrelated to his ability to perform the duties of an intern. Although plaintiff argues that defendants' agents' state of mind was a question for the jury, there was no evidence on which to base a conclusion that the decision makers disbelieved the evaluator and concluded that plaintiff suffered from a "mental disability of a serious nature" or a "psychiatric pathology," and decided to dismiss him based on that conclusion. Further, there is no evidence that plaintiff was dismissed for a reason other than his performance as an intern. The trial court properly found that there was no evidence presented to raise a genuine issue of material fact.¹

¹ The fact that the evaluator recommended that plaintiff be permitted to complete his internship is of no consequence because his opinion was unrelated to his evaluation. The evaluator's recommendation was based on the reasoning that plaintiff would then go elsewhere and no longer present these problems.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Janet T. Neff

/s/ Helene N. White