

STATE OF MICHIGAN  
COURT OF APPEALS

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MATTHEW HAMILTON,

Plaintiff-Appellant,

v

CONSUMERS ENERGY COMPANY,

Defendant-Appellee.

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UNPUBLISHED

August 8, 2006

No. 266866

Calhoun Circuit Court

LC No. 04-002102-CZ

Before: Kelly, P.J., and Markey and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendant, his former employer, and dismissing his claim for an alleged violation of the Persons with Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.* We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

While employed with defendant as a journeyman line worker, plaintiff suffered a serious back injury in 1995. Several operations followed. Plaintiff returned to work in 1998, agreeing to work part-time as a Consumer Expert Specialist (CES),<sup>1</sup> but his physician opined that he would benefit from employment that kept him more physically active rather than requiring him to sit or stand for long periods of time. According to plaintiff, he repeatedly applied for lineman positions, without success. Plaintiff asserts that, although he did not have a medical condition that would hamper his ability to perform a lineman's work and did not require any special accommodations, defendant made it clear that plaintiff would not be considered for a lineman's position. Defendant reports that plaintiff was discharged in December 2002 "for his continued absence and for abandoning his CES job."

Plaintiff commenced this action, asserting that defendant violated his rights under the PWDCRA by failing to accommodate his disabilities, refusing to promote him, and "terminating Plaintiff while he was on long term disability . . . under Doctor's order." In granting defendant's motion for summary disposition, however, the trial court concluded that plaintiff's allegations did not "establish a genuine and material question of fact that the Defendant discriminated

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<sup>1</sup> The parties alternately refer to this position as a "Customer Energy Specialist."

against the Plaintiff because of any physical limitations which the Plaintiff had which are unrelated to his ability to do the job which he agreed to accept after his previous work injury.” The court elaborated:

. . . Defendant supplies evidence . . . that Plaintiff could not do at least one requirement of a line worker’s job because of his disability – the so called “pole rescue” which requires rescuing a 150 pound person from a power pole without assistance. Plaintiff has not rebutted that evidence . . . .

This Court is left with clear and un-rebutted evidence that the Plaintiff was not qualified for a line worker job, even assuming for purposes of argument that the Defendant had an obligation to put him in that position . . . .

Plaintiff’s sole issue on appeal consists of the assertion that he “was capable of performing the unrestricted functions of an electrical line worker” and that the trial court for that reason erred in granting defendant summary disposition.

This Court reviews de novo a trial court’s decision concerning a motion for summary disposition. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). “In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial.” *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

MCL 37.1102(2) obligates an employer to “accommodate a person with a disability for purposes of employment . . . unless . . . the accommodation would impose an undue hardship.” This provision does not obligate an employer to transfer an employee to a different work station. *Rourk v Oakwood Hosp Corp*, 458 Mich 25, 32; 580 NW2d 397 (1998). Plaintiff, however, after initial equivocation in his brief, ultimately and emphatically denies that he is seeking an accommodation. Instead, he asserts that defendant violated its duty under MCL 37.1202(1)(a) not to “refuse to hire, recruit, or promote an individual because of a disability . . . that is unrelated to the individual’s ability to perform the duties of a particular job or position.”

Assuming, without deciding, that defendant would have been obligated to award plaintiff a lineman’s job if plaintiff were able to perform the work that that position requires, the trial court held that defendant produced evidence that plaintiff was physically unable to perform one of the essential tasks of a lineman, the “pole rescue,” and that plaintiff offered no evidence to rebut that evidence. See MCR 2.116(G)(4). We agree with the trial court.

A human resources consultant for defendant testified by affidavit that, “[a]s a result of Plaintiff’s injury and prior to August 10, 1998, he was unable to climb poles or perform a ‘pole rescue,’ which required an electric line worker to be able to rescue a 150 pound co-worker from a 40-foot pole in four minutes.” The consultant added, “Pole climbing and ‘pole rescue’ are both essential functions of the line worker job,” and subsequently stated that “[p]laintiff’s inability to perform these essential functions, with or without reasonable accommodation, made him ineligible for the position.” A medical evaluation listing test dates of January 29 and 30, 2001, stated in part:

It . . . does not appear feasible that [plaintiff] could return to pole work due to the very heavy physical demands required to rescue another worker. [Plaintiff] would need to pass the testing for rescuing another line worker. The risk of increased intervertebral disc pressure above the fused area of his lumbar spine is great with this job task. . . . [I]t is not recommended that he even attempt this type of rescue.

This documentary evidence shows both that the “pole rescue” is a necessary part of the job and that plaintiff was not physically able to do it. Although plaintiff asserts generally that he is able to resume the duties of a lineman without special accommodations, he neither specifically asserts, nor points to evidence to show, that he can manage the pole rescue. Plaintiff in fact substantially confirms this limitation by reporting that his injuries “led to [a] herniated disc and six operations dealing with back fusions,” plus “formation of scar tissue” causing great pain, which continues to hamper his ability to sleep, or to stand or sit for long periods.

Because plaintiff’s disabilities prevent him from performing an essential part of a line worker’s job, defendant did not run afoul of MCL 37.1202(1)(a). Plaintiff has failed to show that the trial court erred in granting defendant’s motion for summary disposition.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Jane E. Markey  
/s/ Patrick M. Meter