

STATE OF MICHIGAN  
COURT OF APPEALS

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JUDY COLE,

Plaintiff-Appellant,

V

TUSCOLA COUNTY MEDICAL CARE  
FACILITY,

Defendant-Appellee.

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UNPUBLISHED  
January 27, 2011

No. 292449  
Tuscola Circuit Court  
LC No. 08-024847-CZ

Before: WHITBECK, P.J., and ZAHRA and FORT HOOD, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We reverse.

The trial court's decision regarding a motion for summary disposition is reviewed de novo on appeal. *Kuznar v Raksha Corp*, 481 Mich 169, 175; 750 NW2d 121 (2008). The appellate courts apply theories of contract law to disputes surrounding the terms of a release. *Shay v Aldrich*, 487 Mich 648, 660; 790 NW2d 629 (2010). We review de novo questions regarding the proper interpretation of a contract and whether the language of a contract is ambiguous. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). In *Gortney v Norfolk & Western R Co*, 216 Mich App 535, 540-541; 549 NW2d 612 (1996), this Court set forth the following rules addressing the scope and interpretation of a release:

The scope of a release is controlled by the intent of the parties as it is expressed in the release. If the text in the release is unambiguous, we must ascertain the parties' intentions from the plain, ordinary meaning of the language of the release. The fact that the parties dispute the meaning of a release does not, in itself, establish an ambiguity. A contract is ambiguous only if its language is reasonably susceptible to more than one interpretation. If the terms of the release are unambiguous, contradictory inferences become "subjective, and irrelevant," and the legal effect of the language is a question of law to be resolved summarily. [(Citations omitted).]

A release is an affirmative defense, MCR 2.111(F)(3)(a), and the defendant has the burden of proof. *Will H Hall & Son, Inc v Ace Masonry Constr, Inc*, 260 Mich App 222, 234 n 6; 677 NW2d 51 (2003).

In the present case, plaintiff executed a voluntary layoff agreement. The trial court held that plaintiff could not dispute the agreement until she returned the consideration received. This holding was erroneous. Review of the layoff agreement reveals that plaintiff waived “access to the grievance and arbitration provisions of the Union contract or any other appeal procedures that may otherwise be available.” The plain language of the release reveals that it was applicable to grievance and arbitration provisions of the union contract and any appeals. The plain language of the release did not provide that plaintiff waived access to the filing of an original civil action unrelated to the union contract. *Gortney*, 216 Mich App at 540-541. In light of the fact that the release did not govern the underlying civil action, the trial court erred in applying the tender back rule and in dismissing the complaint.

Reversed.

/s/ William C. Whitbeck

/s/ Brian K. Zahra

/s/ Karen M. Fort Hood