

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

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SUZANNE L. MISTALKSI,

Plaintiff-Appellant,

v

L & L ASSOCIATES, INC., d/b/a HILTON  
CONVALESCENT HOME,

Defendant-Appellee.

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UNPUBLISHED  
May 23, 2013

No. 309873  
Oakland Circuit Court  
LC No. 2011-119914-CK

Before: STEPHENS, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Plaintiff appeals by right the order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff filed a complaint based on breach of contract, in which she alleged that plaintiff and defendant, plaintiff's employer, had a valid and enforceable contract that allowed plaintiff to return to her position as "Activity Coordinator" after her medical leave, but when she returned to work defendant did not allow her to return to that position. Plaintiff based this argument on a statement the Director of Nursing made to plaintiff over the telephone while plaintiff was on medical leave that plaintiff should not worry and that she still had her job. Plaintiff also alleged that she was subsequently terminated by defendant because of her refusal to work in a lesser capacity.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10). Defendant alleged that plaintiff was offered a co-coordinator position when she returned from her medical leave. When plaintiff indicated she would not work with the other coordinator, plaintiff was offered a clerk position with the same amount of pay and benefits. Plaintiff failed to come to work after that and was terminated. Defendant argued that there was no genuine issue of material fact that plaintiff was an at-will employee and did not have a written contract to modify her at-will status; nor did the statement that plaintiff relied on made by the Director of Nursing give rise to a clear and unequivocal statement of job security. Defendant further argued that plaintiff was offered two positions when she returned from her medical leave and refused them.

An appellate court reviews de novo the trial court's grant of summary disposition, *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008), examining the evidence in the light most favorable to plaintiff as the nonmoving party, *In re Egbert R Smith Trust*, 480

Mich 19, 23-24; 745 NW2d 743 (2008). A motion for summary disposition brought under MCR 2.116(C)(10) should be granted if “there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” MCR 2.116(C)(10). A motion for summary disposition tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass’n*, 491 Mich 200, 206; 815 NW2d 412 (2012). Its purpose is to avoid extensive discovery and an evidentiary hearing when a case can be quickly resolved on an issue of law. *Shepherd Montessori Center Milan v Ann Arbor Twp*, 259 Mich App 315, 324; 675 NW2d 271 (2003).

We conclude that the trial court properly granted summary disposition to defendant. Plaintiff’s complaint alleges that she had a verbal contract with defendant in which she was entitled to return to her position as “Activity Coordinator” after her medical leave. Plaintiff agrees that she was an at-will employee and that her status as an at-will employee was not modified. Plaintiff argues, however, that she and defendant had a separate oral agreement regarding her specific position and that defendant violated the terms of that agreement. Plaintiff argues that this separate agreement was formed during a conversation that she had over the telephone with Diane Bradley, defendant’s Director of Nursing, in which plaintiff was told, “Don’t worry Susie, you still have your job.” Plaintiff alleges that, when she returned to work, she was informed that she would be an Activity Co-Coordinator with another individual. She does not allege that defendant altered her pay or benefits in any way. Plaintiff alleges that she was terminated by defendant because she refused to work in a “lesser capacity.”

Plaintiff does not dispute that she was an at-will employee of defendant. She argues, however, that when she was on medical leave, defendant entered into a separate agreement with her for a particular position with defendant. Plaintiff does not provide any legal support for her argument. Plaintiff does, however, cite several cases, all of which address the issue of whether an employee’s at-will status was amended to a just-cause employment arrangement. However, since plaintiff argues that her at-will employment status was not amended, these cases are not relevant.

The law regarding at-will employment in Michigan is quite clear. An at-will contract may be amended by a contractual provision that becomes part of the employment contract as a result of explicit promises or promises implied in fact. *Rood v Gen Dynamics Corp*, 444 Mich 107, 117; 507 NW2d 591 (1993). Another theory is the “legitimate expectations” theory set forth in *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579; 292 NW2d 880 (1980). Under this theory, a contract is implied by “the conduct of the parties, language used or things done by them, or other pertinent circumstances.” *Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627, 640, 662; 473 NW2d 268 (1991) (citation and quotation marks omitted). The issue is “whether a reasonable person could have interpreted the words or conduct in the manner that is alleged.” *Rood*, 444 Mich at 119.

Plaintiff argues that she and defendant had a separate oral agreement for a specific position. To maintain a cause of action for breach of contract, a party must establish the existence of a contract and then must demonstrate that the contract was breached. *Pawlak v Redox Corp*, 182 Mich App 758, 765; 453 NW2d 304 (1990). “The essential elements of a valid contract are the following: (1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation.” *Hess v Cannon*

*Twp*, 265 Mich App 582, 592; 696 NW2d 742 (2005) (citation and quotation marks omitted). Plaintiff's complaint and deposition fail to show that the statement made by the Director of Nursing gives rise to a separate valid contract or if it did there was a breach. She was in fact offered a job with the same title, compensation, and essential tasks as her pre-leave position. Therefore, we conclude that the trial court properly granted summary disposition to defendant under MCR 2.116(C)(10).

Affirmed.

/s/ Cynthia Diane Stephens  
/s/ David H. Sawyer  
/s/ Patrick M. Meter