

STATE OF MICHIGAN  
COURT OF APPEALS

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LARRY KING,

Plaintiff-Appellant,

v

CHARTER TWP OF VANBUREN and MARK  
PERKINS,

Defendants-Appellees.

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UNPUBLISHED

January 25, 2002

No. 224847

Wayne Circuit Court

LC No. 98-819071-NZ

Before: Saad, P.J., and Sawyer and O’Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant summary disposition, and we affirm.

“A motion for summary disposition brought pursuant to MCR 2.116(C)(10) tests the factual support of a plaintiff’s claim and is subject to de novo review.” *Michalski v Bar-Levav*, 463 Mich 723, 729; 625 NW2d 754 (2001). Further, as our Supreme Court explained in *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999):

In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law.

Plaintiff contends that the trial court erred in ruling that he is not “disabled” within the meaning of Persons With Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.* The PWDCRA prohibits an employer from “[d]ischarg[ing] or otherwise discriminat[ing] against an individual with respect to compensation or the terms, conditions, or privileges of employment, because of a disability that is unrelated to the individual’s ability to perform the duties of a particular job or position.” MCL 37.1202(1)(b). The act defines a “disability” as follows:

(i) A determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic:

(A) For purposes of article 2, substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's ability to perform the duties of a particular job or position or substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's qualifications for employment or promotion. [MCL 37.1103(d).]

In *Chiles v Machine Shop, Inc*, 238 Mich App 462, 473; 606 NW2d 398 (1999), this Court stated:

To establish a prima facie case of discrimination under the statute, a plaintiff must show that (1) he is "disabled" as defined by the statute, (2) the disability is unrelated to the plaintiff's ability to perform the duties of a particular job, and (3) the plaintiff has been discriminated against in one of the ways set forth in the statute. . . . Before a court can address a plaintiff's ability to perform his job, any alleged discrimination and certainly any pretext for the "discrimination," the plaintiff must establish that he is the type of person to which the statute was meant to pertain — a person with a "disability." [Citation omitted.]

The trial court correctly ruled that plaintiff failed to establish that he was disabled under the PWDCRA. *Smith v Globe Life Ins Co*, 460 Mich 446, 455 n 2; 597 NW2d 28 (1999). In his response to defendants' motion for summary disposition, plaintiff identified his alleged disability as tremors caused by a prior electrical injury. Plaintiff further asserted that he controls the tremors by taking Inderal. Plaintiff also admitted that he could have passed the police department's firearms test if he had been taking his Inderal medication at the time.

Our Supreme Court has ruled that a plaintiff's condition must be assessed as it actually exists at the time of employment. *Michalski, supra*, at 733, n 13; 625 NW2d 754 (2001); *Chmielewski v Xermac*, 457 Mich 593, 606-607; 580 NW2d 817 (1998). If the alleged disability is controlled by medication and does not substantially limit a major life activity, the person is not "disabled" under the PWDCRA. *Michalski, supra* at 733, n 13; *Chmielewski, supra* at 606-607, 613; see also *Murphy v United Parcel Service, Inc*, 527 US 516; 119 S Ct 213; 144 L Ed 2d 484, 488 (1999). Accordingly, the trial court correctly ruled that, because plaintiff's tremors, as controlled by medication, did not limit a major life activity, plaintiff was not disabled under the PWDCRA. MCL 37.1103(d)(i)(A).

Moreover, we hold that the trial court did not err in denying plaintiff's motion for reconsideration. The court correctly ruled that plaintiff's alleged knee and back injuries did not constitute a disability within the meaning of the PWDCRA because, again, plaintiff could control those conditions with the medication Xanax and the alleged injuries have not substantially limited a major life activity. *Murphy, supra; Chmielewski, supra*. Plaintiff's assertion that he is not able to walk long distances for a long period of time is not sufficient to demonstrate a substantial limitation of a major life activity. "It is not enough for an impairment to *affect* a major life activity . . . but rather the plaintiff must proffer evidence from which a reasonable inference can be drawn that such activity is substantially limited." *Chiles v Machine Shop, Inc*, 238 Mich App 462, 479; 606 NW2d 398 (1999) (emphasis added). Plaintiff failed to proffer such evidence and the trial court properly granted summary disposition to defendants.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Peter D. O'Connell