

STATE OF MICHIGAN
COURT OF APPEALS

KAREN SCHULTE,

Plaintiff-Appellant,

v

ST. JOHN HEALTH SYSTEM, EASTWOOD
CLINICS, Jointly and Severally

Defendant-Appellee,

UNPUBLISHED

May 11, 2006

No. 265831

Oakland Circuit Court

LC No. 04-060007-CZ

Before: Schuette, P.J. and Bandstra and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm.

On July 19, 1999, plaintiff signed a contract titled Employee Split-Fee Clinician Services Agreement ("Agreement") and thereby entered into an employment agreement with defendant to work as a therapist. On December 3, 2002, plaintiff resigned from defendant's employ. The contract between the parties included this clause:

Employee agrees not to commence any action or suit related to his/her employment with the Corporation more than twelve (12) months after the occurrence of the facts giving rise to the claim, or more than twelve (12) months of the date of his/her termination of such employment, whichever is earlier, and to waive any statute of limitations to the contrary.

On July 27, 2004, plaintiff filed the breach of contract complaint underlying this appeal. Defendant moved for summary disposition, and the circuit court judge heard arguments and granted that motion on May 18, 2005, finding the contract was "valid and enforceable." Plaintiff filed a motion for reconsideration; the circuit court judge denied that motion on September 26, 2005, finding plaintiff had failed to demonstrate the requisite palpable error. Plaintiff appeals.

This Court reviews summary disposition determinations de novo. *Spiek v Dep't Of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The trial court granted this defendant's summary disposition motion under MCR 2.116(C)(10), so we "must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the party opposing the motion, and grant the benefit of any reasonable doubt to the opposing party." *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993).

Plaintiff first claims on appeal that defense counsel committed a palpable error that misled the trial court during the oral arguments on the motion for summary disposition. The trial court considered and rejected this argument when it denied plaintiff's motion for reconsideration. This Court reviews a trial court decision on a motion for reconsideration for an abuse of discretion, meaning the "result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion." *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000) (citations omitted). We find no such abuse of discretion here.

MCR 2.119(F)(3) provides that on motion for reconsideration, "[t]he moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error." Here the trial court correctly found plaintiff failed to meet the two-pronged standard. Even if the challenged statements¹ in the summary disposition arguments were indeed "palpable error," we find that a correction of the error could not have resulted in a different disposition of the motion. The dispositive issue was, and remains, the contractual limitations period for filing claims. Even viewing the pleadings, affidavits, depositions, admissions, and any other evidence in favor of plaintiff, there is no basis for finding the limitations period was not a valid element of the contract between the parties. *Radtke, supra*.

Plaintiff next claims that the Agreement constitutes an ongoing contract. Plaintiff argues that because defendant has continued to compensate plaintiff for services rendered while in defendant's employ, defendant has effectively waived plaintiff's resignation. Defendant has continued to pay plaintiff, although she has not conducted therapy sessions at defendant's place of business since December 2002, but this is because the Agreement that the parties signed included a deferred compensation scheme, whereby the therapist would not be paid until the patient's bill had been paid to the clinic.² We find that plaintiff had a right to receive this compensation, but that right does not serve, as plaintiff suggests, to prolong the contractual relationship that plaintiff terminated by her voluntary resignation.

We hold that defendant's motion for summary disposition was properly granted because plaintiff's claim was outside the contractual limitations period.

Affirmed.

/s/ Bill Schuette
/s/ Richard A. Bandstra
/s/ Jessica R. Cooper

¹ Defense counsel stated during the oral argument that "[t]here is no obligation under the contract to continue to send money."

² The Agreement stated that "compensation shall be considered earned upon receipt of payment from the patient and/or third party."