

STATE OF MICHIGAN
COURT OF APPEALS

DONNA SEUDEAL,

Plaintiff-Appellant,

v

CIENA HEALTH CARE MANAGEMENT,
CIENA HEALTHCARE MANAGEMENT,
WILLOWBROOK ACQUISITION COMPANY,
WILLOWBROOK MANOR and JAMES NASH,

Defendants-Appellees.

UNPUBLISHED

October 18, 2011

No. 300144

Genesee Circuit Court

LC No. 09-091550-CL

Before: OWENS, P.J., and JANSEN and O'CONNELL, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition of his claim under Michigan's Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq.* to defendant Ciena Health Care Management. We affirm.

Plaintiff, who emigrated from Guyana, is a physical therapy assistant who worked for Willowbrook Manor. She claimed she was treated differently because of her race and/or national origin. Further, she claimed that when she complained, her supervisor, James Nash, fired her after falsely accusing her of resident abuse. Following summary disposition for Ciena, this case proceeded to trial against Nash and Willowbrook, resulting in a judgment of no cause of action.

Ciena provided certain management services to Willowbrook pursuant to a management agreement. Plaintiff mistakenly thought that Ciena owned Willowbrook. After she was fired, she corresponded with Ciena regarding her termination. Ciena's director of human resources, Antonio Oddo, investigated her claims and responded to her inquiries.

In seeking summary disposition, Ciena asserted that the management agreement did not provide that it would handle hiring, firing, or personnel decisions, that it did not employ plaintiff or make any decisions relative to her termination, and that it was therefore not her "employer." In response, plaintiff noted that for purposes of the ELCRA, "employer" includes an "agent" under MCL 37.2201(a). She generally averred that Ciena managed the organization and made decisions on its behalf, and that it was therefore an agent and a proper party. The trial court simply stated, "Ciena's out." A decision on a motion for summary disposition is reviewed *de novo*. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 424; 751 NW2d 8 (2008). In reviewing such a claim, the court "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).

In *McClements v Ford Motor Co*, 473 Mich 373, 387; 702 NW2d 166 (2005), the Court held that “an employer can be held liable under the ELCRA for discriminatory acts against a nonemployee if the nonemployee can demonstrate that the employer affected or controlled a term, condition, or privilege of the nonemployee’s employment.” However, the Court concluded that the defendant could not be held liable to the employee of a company hired to run its cafeteria where the other company handled hiring, firing, and discipline, and the defendant had no control over employee benefits or where she worked.

Here, Ciena was involved in certain aspects of operation, but plaintiff did not submit any evidence to show that Ciena ran the organization or that it controlled hiring and firing decisions. We note that the agreement states that Ciena was to “recruit and present professional and administrative candidates,” indicating that it did not make ultimate decisions to hire. Moreover, it was to “[m]anage the employment of the administrator of the facility,” suggesting that it was not meant to manage the employment of other personnel. Even with regard to the administrator, it only “recommended certain actions” to Willowbrook. Thus, while Ciena may have been an agent of Willowbrook, plaintiff did not establish that Ciena ran her place of employment or that it was responsible for any decision that may have given rise to an ELCRA claim.

Plaintiff next argues that Ciena discriminated against or retaliated against her because, subsequent to the firing, Oddo investigated and then “ratified” the decision. Although Oddo undertook an investigation in response to plaintiff’s inquiries and indicated that this was one of his responsibilities, the management agreement does not spell out that he had such a duty. Moreover, there is no indication that Oddo had veto power over the decision to fire plaintiff, or that Willowbrook would have been bound to reconsider or reverse its decision based on the outcome of Oddo’s investigation. Thus, even if Oddo were regarded as having “ratified” the decision, there is no evidence that he or Ciena “affected or controlled a term, condition, or privilege” of plaintiff’s employment.

Affirmed.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Peter D. O’Connell