

STATE OF MICHIGAN
COURT OF APPEALS

MACARTHUR CLARK, KELLOGG
COMMUNITY COLLEGE MAINTENANCE
ASSOCIATION, and MEA/NEA,

UNPUBLISHED
July 26, 2002

Plaintiffs-Appellants,

v

KELLOGG COMMUNITY COLLEGE and
KELLOGG COMMUNITY COLLEGE BOARD
OF TRUSTEES,

No. 230075
Calhoun Circuit Court
LC No. 99-001849-NZ

Defendants-Appellees.

Before: Talbot, P.J., and Cooper and D. P. Ryan*, JJ.

PER CURIAM.

Plaintiffs (hereinafter “plaintiff” when referring to plaintiff Clark) appeal as of right the trial court’s order granting defendants’ motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff worked for defendant College as lead custodian on the third shift. Plaintiff was a member of plaintiff Maintenance Association (hereinafter “the union”), and the terms and conditions of his employment were determined by a collective bargaining agreement (“CBA”) entered into by the union and defendants. A video camera installed in the kitchen area of the building in which plaintiff worked showed that on two occasions plaintiff went into the kitchen and removed small quantities of food from the food locker. Defendant Board terminated plaintiff’s employment. Plaintiff’s grievance was denied at each step of the procedure.

Plaintiff filed suit for breach of contract. Specifically, plaintiff alleged that he was terminated without just cause and that defendants’ actions were arbitrary and capricious. Defendants moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). According to defendants, the CBA provided for at-will employment, and there were no restrictions on their right to discharge an employee. In the alternative, defendants argued that just cause existed to terminate plaintiff’s employment. The trial court granted the motion pursuant to MCR

* Circuit judge, sitting on the Court of Appeals by assignment.

2.116(C)(10), concluding that no genuine issue of fact existed as to whether plaintiff had a legitimate expectation of job security, absent just cause for termination. The trial court did not address defendants' argument that just cause existed to terminate plaintiff's employment.

On appeal, plaintiff argues that the trial court erred by granting defendants' motion for summary disposition. He acknowledges that the CBA did not contain an express provision forbidding discharge absent just cause, but contends that various provisions of the CBA, when read together, provided a legitimate expectation of job security. We disagree. We review a trial court's decision on a motion for summary disposition de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454, 597 NW2d 28 (1999).

Generally, an employment contract for an indefinite term is presumptively terminable at the will of either party for any reason or no reason. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 163-164; 579 NW2d 906 (1998); *Rood v General Dynamics Corp*, 444 Mich 107, 116-117; 507 NW2d 591 (1993). This presumption can be overcome by presenting proof of: (1) an express contract for a definite term or a provision forbidding discharge absent just cause; (2) an express agreement, either oral or written, regarding job security; or (3) a contractual provision by which an employer's policies and procedures instill a legitimate expectation of job security in the employee. *Lytle, supra* at 164. The policies and procedures on which a legitimate expectation claim is based must be reasonably related to employee termination. *Rood, supra* at 139.

Plaintiff did not have a contract for a definite term of employment. Further, there was no express provision in the CBA that forbade discharge of an employee absent just cause. Plaintiff has not claimed that he and defendants had an express oral or written agreement regarding job security. Rather, plaintiff contends that various provisions of the CBA created a legitimate expectation of job security. However, the provisions plaintiff points to are not reasonably related to employee termination. *Id.*

In *Lytle, supra* at 161, 165-166, the plaintiff claimed that she was wrongfully discharged without just cause, and relied on a provision in the employee handbook that stated that no employee would be terminated without proper cause or reason. The *Lytle* Court found that this statement was insufficient to overcome the presumption of employment at will, especially in light of the fact the handbook stated that its contents were not intended to form an employment contract between the defendant and its employees. *Id.* at 166. The *Lytle* Court concluded that the disclaimer rendered the proper cause statement too vague to create a legitimate expectation of job security. *Id.* at 165-166.

The CBA provisions that plaintiff relies upon in this case make no general statement related to termination and are even less specific than the statement found to be too vague in *Lytle, supra*. The CBA contained no restrictions related to the discharge of an employee. Because the CBA's provisions failed to give plaintiff a legitimate expectation that he could only be discharged for just cause, the trial court properly granted summary disposition.

Affirmed.

/s/ Michael J. Talbot
/s/ Jessica R. Cooper
/s/ Daniel P. Ryan