

STATE OF MICHIGAN
COURT OF APPEALS

MONROE WASHINGTON,

Plaintiff-Appellant,

v

WILLIE PAYNE, MARK SANFORD, and
HENRY FORD HEALTH SYSTEM, doing
business as HENRY FORD HOSPITAL,

Defendants-Appellees.

UNPUBLISHED
February 24, 2004

No. 243260
Wayne Circuit Court
LC No. 01-128483-CZ

Before: Smolenski, P.J., and Saad and Kelly, JJ.

PER CURIAM.

In this employment case arising out of plaintiff's discharge from Henry Ford Hospital, plaintiff appeals as of right an order granting defendants summary disposition. We affirm.

I. Standard of Review

We review de novo a trial court's ruling on a motion for summary disposition under MCR 2.116(C)(8) and MCR 2.116(C)(10). *UAW-GM Human Resources Center v KSL Recreation Corp*, 228 Mich App 486, 490; 579 NW2d 411 (1998).

Under MCR 2.116(C)(8), the legal basis of the complaint is tested by the pleadings alone. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). All factual allegations are taken as true, and any reasonable inferences or conclusions that can be drawn from the facts are construed in the light most favorable to the nonmoving party. *Id.* The motion should be denied unless the claim is so clearly unenforceable as a matter of law that no factual development can possibly justify recovery. *Id.* Under MCR 2.116(C)(10), where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Id.* at 120-121. When reviewing the motion, the court must consider the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party. *Id.*

II. "At Will" or "Just-Cause"

Plaintiff first argues that the trial court erred in granting summary disposition to defendants because the conditional reinstatement agreement he signed in October 1995 and oral

statements made to him by the human resource manager provided him with clear contractual employment rights. We disagree.

“At will” is the presumed employment relationship in Michigan. *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 596; 292 NW2d 880 (1980). But a just-cause employment relationship may be found where the employer has made an “express agreement, oral or written” that termination would be only for just cause. *Id.* at 598.

Here, nothing in the conditional reinstatement agreement created any contractual rights to just-cause employment. The agreement merely placed conditions on plaintiff’s continued employment indicating that if he failed to meet the conditions within the year following the agreement, he would be terminated.

Similarly, nothing in the manager’s statements created any contractual rights to just-cause employment. The statements were not “specific statements with regard to duration of employment or grounds for termination,” and they did not indicate “actual negotiation or an intent to contract for permanent or just-cause employment.” *Lytle v Malady (On Rehearing)*, 458 Mich 153, 172; 579 NW2d 906 (1998).

At the time of the second incident in 1998, plaintiff was subject to the broader scope of the chemical impairment policy. And under its terms, if an employee who has successfully completed a conditional reinstatement period tests positive again within three years, the employee will be terminated with no rights to the disciplinary grievance procedure. Here, plaintiff tested positive within three years of the first incident, and he was accordingly terminated. Plaintiff was properly discharged under the terms of the chemical impairment policy. Therefore, the trial court did not err in granting summary disposition on this basis.

III. Right to Purchase Alcohol

Plaintiff next argues that the trial court erred in granting summary disposition to defendants because his discharge was in retaliation for his exercise of a right conferred by a well-established legislative enactment. *Vagts v Perry Drug Stores, Inc*, 204 Mich App 481, 484; 516 NW2d 102 (1994). We disagree.

Specifically, defendant relies on his statutory “right” to purchase and consume alcohol as an adult over the age of twenty-one. Although plaintiff failed to cite a specific statute, we presume he is relying on MCL 436.1703, which provides that a “minor shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, or possess or attempt to possess alcoholic liquor” A “minor” is a person less than 21 years of age. MCL 436.1109. The purpose of this law, however, is not to grant adults the right to drink, rather it punishes minors for the mere possession of alcohol despite the fact that older individuals are not subject to penalty. *People v Haynes*, 256 Mich App 341, 347; 664 NW2d 225 (2003). Plaintiff’s termination was not against public policy because it was not in violation of a statutorily conferred right. Therefore, the trial court did not err in granting summary disposition on this basis.

IV. MPDCRA

Plaintiff next argues that the trial court erred in granting summary disposition to defendants because plaintiff's discharge was illegally based on his alcoholism, a recognized disability under the Michigan Persons with Disabilities Civil Rights Act (MPDCRA), MCL 37.1101 *et seq.* We disagree.

To prove a claim under the MPDCRA, a plaintiff first must show that he is disabled as defined in the act. *Chmielewski v Xermac, Inc*, 457 Mich 593, 602; 580 NW2d 817 (1998). Although this Court has recognized that alcoholism may be a disability with respect to employment discrimination, *Cole v West Side Auto Employees Federal Credit Union*, 229 Mich App 639, 647-648; 583 NW2d 226 (1998); *Stevens v Inland Watters, Inc*, 220 Mich App 212, 218-219; 559 NW2d 61 (1996); MCL 37.1103(f)(ii), plaintiff denied under oath that he is a alcoholic. Because there was no genuine issue with respect to the material fact of plaintiff's alcoholism, the trial court did not err in granting summary disposition on this basis.

V. Gross Negligence

Plaintiff next argues that the trial court erred in granting summary disposition to defendants because they were grossly negligent in terminating plaintiff. We decline to address this issue because plaintiff failed to appropriately cite authority or factual support. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

VI. Tortious Interference with Business Relations

Plaintiff finally argues that the trial court erred in granting summary disposition to defendants because he presented sufficient evidence to create a genuine issue of material fact with respect to whether defendants intentionally interfered with plaintiff's employment with Henry Ford Health System by terminating him. We disagree.

The elements of a claim of tortious interference with business relations are: (1) the existence of a valid business relationship; (2) knowledge of the relationship on the part of the interferer; (3) an intentional interference inducing or causing a breach or termination of the relationship; and (4) resultant damage to the party whose relationship has been disrupted. *Lakeshore Community Hospital, Inc v Perry*, 212 Mich App 396, 401; 538 NW2d 24 (1995).

There appears to be no dispute between the parties that the first two elements are met. The third element, however, requires allegations of the intentional doing of a per se wrongful act or the intentional doing of a lawful act with malice and unjustified in law for the purpose of invading plaintiff's business relationship. *Feldman v Green*, 138 Mich App 360, 369; 360 NW2d 881 (1984). Moreover, plaintiff must demonstrate, with specificity, affirmative acts by the defendant that corroborate the unlawful purpose of the interference. *Id.* at 369-370. We conclude that plaintiff failed to allege facts or present evidence to support the allegation that defendants engaged in an intentional, inherently wrongful act or acted with malice for the purpose of interfering with his business relationship. Therefore, the trial court did not err in granting summary disposition on this basis.

Affirmed.

/s/ Michael R. Smolenski
/s/ Henry William Saad
/s/ Kirsten Frank Kelly