

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH SANDERS,

Plaintiff-Appellant,

v

K MART CORPORATION,

Defendant-Appellee.

UNPUBLISHED

December 11, 1998

No. 204526

Oakland Circuit Court

LC No. 95-490899 NZ

Before: O'Connell, P.J., and Gribbs and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court orders granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) and denying his motion for reconsideration. We affirm.

This Court reviews a grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Id.*; *Barr v Mt Brighton*, 215 Mich App 512, 515; 546 NW2d 273 (1996). MCR 2.116(C)(10) permits summary disposition when, except regarding the amount of damages, there is no genuine issue with regard to any material fact and the moving party is entitled to judgment as a matter of law. *Id.*

Plaintiff claims that he is handicapped as defined by the Michigan Handicappers' Civil Rights Act, (HCRA), MCL 37.1101 *et seq.*, MSA 3.550(101) *et seq.* Plaintiff argues that in refusing to transfer him to a different, less stressful job within defendant corporation, defendant failed to accommodate him as required by MCL 37.1102(2); MSA 3.550(102)(2), which provides:

Except as otherwise provided in article 2, a person shall accommodate a handicapper for purposes of employment, public accommodation, public service, education, or housing unless the person demonstrates that the accommodation would impose an undue hardship.

However, the Michigan Supreme Court recently held that an employer's duty under the HCRA to accommodate a handicapped employee does not include the duty to transfer that employee to a

different job or position. *Rourk v Oakwood Hospital Corp*, 458 Mich 25, 27; 580 NW2d 397 (1998). Therefore, we find that plaintiff failed to establish a genuine issue of material fact concerning defendant's duty to accommodate his handicap pursuant to the HCRA and summary disposition was appropriate.

Plaintiff also argues on appeal that, notwithstanding the provisions of the HCRA, because defendant has an established policy and procedure for transferring individuals with permanent disabilities, there is a genuine issue of material fact regarding the transfer rights of plaintiff. However, because plaintiff did not plead in his complaint that defendant owed him a duty based on its alleged corporate policy of reassigning disabled salaried employees or argue that theory in opposition to defendant's motion for summary disposition, the trial court did not address the issue. Therefore, it is not preserved for appeal and we decline to review it. *McCready v Hoffius*, 222 Mich App 210, 218; 564 NW2d 493 (1997).

Finally, plaintiff argues that the trial court erred in denying his motion for reconsideration wherein he claimed palpable error based on the trial court's failure to consider whether he had established a genuine issue of material fact under a corporate policy theory. A trial court's grant or denial of a motion for reconsideration is reviewed for abuse of discretion. *Charbeneau v Wayne Co Hospital*, 158 Mich App 730, 733; 405 NW2d 151 (1987). We find that because plaintiff did not plead discrimination based on defendant's corporate policy, the trial court did not abuse its discretion in denying plaintiff's motion for reconsideration. See *id.*

Affirmed.

/s/ Peter D. O'Connell

/s/ Roman S. Gibbs

/s/ Michael J. Talbot