

STATE OF MICHIGAN
COURT OF APPEALS

LORETTA RODGERS,

Plaintiff–Appellant,

v

DETROIT EDISON COMPANY,

Defendant–Appellee.

UNPUBLISHED

August 20, 1996

No. 182044

LC No. 92-225836 NO

Before: Jansen, P.J., and Reilly and M.E. Kobza,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court’s orders granting defendant summary disposition pursuant to MCR 2.116(C)(10). We affirm.

I.

This is a case in which plaintiff alleges claims under the Handicappers’ Civil Rights Act (HCRA), MCL 37.1101 *et seq.*; MSA 3.550(101) *et seq.* and breach of employment contract. On December 25, 1988, plaintiff, who had been employed with defendant for approximately nine years, went on maternity leave. During the birth of her child on January 29, 1989, plaintiff ruptured a disc in her back. After sustaining this injury, plaintiff received 99 days of paid illness leave. Subsequently, pursuant to defendant’s policy, plaintiff requested and received an additional 99 days of unpaid leave.

On September 25, 1989, plaintiff received a letter from defendant indicating that she had exhausted all available leave time. As a result, she was ordered to return to work on October 13, 1989, or be terminated. On October 2, 1989, plaintiff wrote a letter to defendant requesting a six-month leave of absence so that her body could heal. This request was denied. Thus, in order to save her job plaintiff intended to return to work as ordered. However, because plaintiff could not obtain a release from her doctor, plaintiff was told that she would not be allowed to report for work on October 13, 1989. As a result, plaintiff’s employment was terminated.

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

Plaintiff filed her complaint against defendant alleging that defendant's actions were in violation of the HCRA and of her legitimate expectation of a just cause employment contract. In two separate orders, the trial court granted summary disposition in favor of defendant under MCR 2.116(C)(10).

II.

On appeal, plaintiff raises two issues challenging the trial court's orders granting defendant summary disposition regarding her Handicappers' Civil Rights claim. Plaintiff first argues that the trial court erred in finding that she was unable to perform her duties on the day that she was terminated. Second, she argues that defendant was obliged to reasonably accommodate her even if she was temporarily disabled to allow her sufficient time to heal and return to work.

We review the trial court's decision on a motion for summary disposition de novo. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). A motion under MCR 2.116(C)(10) tests the factual support underlying the plaintiff's claim. *Id.* MCR 2.116(C)(10) permits summary disposition when, except with regard to the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to judgment as a matter of law. *Id.* The court must consider the affidavits, pleadings, depositions, admissions, and any other documentary evidence submitted to it. MCR 2.116(G)(5). The court's task is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

In order to recover under the HCRA, a plaintiff must prove that (1) the plaintiff is handicapped as defined in the HCRA, (2) the handicap is unrelated to the plaintiff's ability to perform the duties of the particular job, and (3) the plaintiff has been discriminated against in one of the ways set forth in the statute. *Hall v Hackley Hospital*, 210 Mich App 48, 53-54; 532 NW2d 893 (1995).

Plaintiff first contends that the trial court erred in finding that there was no question that she was not able to perform the job on October 13, 1989, when she was ordered to return to work. We disagree. On September 6, 1989, a letter from plaintiff's treating physician indicated that plaintiff was unable to work and that she might require an additional six months of time off before she could return. Further, plaintiff was unable to obtain a medical release from her doctor in October, 1989, because her doctor did not believe that she was capable of working. Moreover, from June 29, 1989, until November 1, 1990, plaintiff received long term disability benefits which are paid to employees who can medically demonstrate that they are unable to perform their jobs. In light of this evidence, although plaintiff indicated that she was willing to return to work on October 13, 1989, there was no question that she was unable to perform her job duties. Accordingly, the trial court did not err in determining that plaintiff failed to raise a material factual dispute that she was actually able to perform her job in spite of the ruptured disc.

Next, plaintiff contends that the trial court erred in finding that defendant did not have an obligation to reasonably accommodate her because defendant was required to allow her a reasonable

time to heal. Under the HCRA, an employer is required to give a temporarily disabled employee who cannot perform her job duties a reasonable time to heal under like conditions as other employees, so long as the delay does not impede getting the employer's work done. *Rymar v Michigan Bell Telephone Co*, 190 Mich App 504; 476 NW2d 451 (1991). Pursuant to Administrative Order 1996-4, *Rymar* is the controlling authority and we are bound to follow it. However, we find that the evidence set forth in this case is distinguishable from *Rymar* and that defendant was not obliged to provide any additional time to heal under the HCRA.

Given the facts of this case, there was no question that defendant allowed plaintiff a reasonable time to heal under like conditions as other employees. Pursuant to defendant's policy, plaintiff was given 99 days of paid illness leave and 99 days of unpaid illness leave. As a result, plaintiff exhausted all available leave time. Under defendant's policy, employees who are unable to return to work following an illness leave are terminated, and it is not defendant's policy to grant an employee personal leave because of illness.¹ Therefore, the trial court did not err in finding that defendant was not obliged to allow plaintiff any additional time to heal because defendant granted plaintiff all permissible time under its policy.

III.

Plaintiff also argues that the trial court erred in granting defendant summary disposition regarding her claim made under a theory of legitimate expectation of just cause employment. Under Michigan law, indefinite employment contracts are presumed to be terminable at will. *Rood v General Dynamics Corp*, 444 Mich 107, 116; 507 NW2d 591 (1993). To overcome the presumption of employment at will, a party must present sufficient proof either of a contractual provision for a definite term of employment or a provision forbidding discharge absent just cause. *Id.*, p 117. Plaintiff's claim is premised on the legitimate expectations theory which recognizes that employer policies and procedures may become a legally enforceable part of an employment relationship if those policies and procedures instill a legitimate expectation of job security in employees. *Id.*, pp 117-118.

Plaintiff contends that statements made in defendant's employee handbook created a legitimate expectation of just cause employment. In making this argument, plaintiff specifically relies on the provision in the handbook which states:

If you use up your allowable absence days, you may be discharged even though there is good cause for your absence or disability. Such cases will be carefully reviewed before dismissal or other appropriate action is taken.

There is, however, nothing in the language which plaintiff cites suggesting that defendant would only terminate an employee for just cause where that employee used up all his or her absence days. Rather, the language indicates that the employee can be discharged even if there is good cause *for the disability*. Because there is no question that defendant's policy does not contain language sufficient to

create a legitimate expectation of just cause employment, the trial court did not err in granting defendant's motion for summary disposition on plaintiff's breach of employment contract claim.

Affirmed.

/s/ Kathleen Jansen
/s/ Maureen Pulte Reilly
/s/ Michael Eugene Kobza

¹ Although plaintiff identified two employees to whom personal leave was granted because of illness, these employees, unlike plaintiff, were union employees whose conditions of employment were governed by a collective bargaining agreement. Therefore, these employees were not comparable to plaintiff or were not in a like position as plaintiff.