

STATE OF MICHIGAN
COURT OF APPEALS

JAMES ALVIN SMITH,

Plaintiff-Appellant,

v

KCK TOOL & DIE COMPANY,

Defendant-Appellee.

UNPUBLISHED

February 4, 1997

No. 184778

LC No. 94-487994-CZ

Before: Cavanagh, P.J., and Reilly and C.D. Corwin,* JJ.

PER CURIAM.

Plaintiff filed a complaint under the Michigan Handicappers' Civil Rights Act (HCRA), MCL 37.1101 *et seq.*; MSA 3.550(101) *et seq.*, alleging that defendant terminated his employment because of a handicap that was not related to his ability to perform his job. The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(8). Plaintiff appeals as of right. We reverse and remand.

On appeal, an order granting or denying summary disposition is reviewed de novo. *Plieth v St Raymond Church*, 210 Mich App 568, 571; 534 NW2d 164 (1995). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. It should be granted only if the claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Ladd v Ford Consumer Finance Co, Inc*, 217 Mich App 119, 125; 550 NW2d 826 (1996).

Plaintiff argues that the trial court erred in granting defendant's motion for summary disposition. After reviewing plaintiff's complaint, we agree. Although plaintiff's legal theory is not artfully presented, the complaint does set forth a prima facie case of discrimination under the HCRA.

Under the HCRA, an employer shall not "[d]ischarge or otherwise discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment, because of a handicap that it unrelated to the individual's ability to perform the duties of a particular job or

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

position.” MCL 37.1202(1)(b); MSA 3.550(202)(1)(b). In order to establish a prima facie case of discrimination under the HCRA, the plaintiff must show (1) that he is handicapped within the meaning of the HCRA, (2) that the handicap is unrelated to his ability to perform the duties of a particular job, and (3) that he had been discriminated against in one of the ways set forth in the statute. *Merillat v Michigan State Univ*, 207 Mich App 240, 244; 523 NW2d 802 (1994).

The trial court granted defendant’s motion because it believed that plaintiff was cured of carpal tunnel syndrome after he was off work for thirty days or, alternatively, that plaintiff’s carpal tunnel syndrome affected his ability to perform his job since he was required to take time off for the condition to heal. We believe the trial court misconstrued the definition of “handicap” found at MCL 37.1103(e); MSA 3.550(103)(e).

The HCRA defines the term “handicap” as follows:

(e) Except as provided under subdivision (f), “handicap” means 1 or more of the following:

(i) A determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic:

(A) For purposes of article 2 [MCL 37.1201 *et seq.*; MSA 3.550(201) *et seq.*], substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual’s ability to perform the duties of a particular job or position or substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual’s qualifications for employment or promotion.

* * *

(ii) A history of a determinable physical or mental characteristic described in subparagraph (i).

(iii) Being regarded as having a determinable physical or mental characteristic described in subparagraph (i). [MCL 37.1103(e); MSA 3.550(103)(e).]

In his complaint, plaintiff stated a cause of action for a handicap under MCL 37.1103(e)(ii); MSA 3.550(103)(e)(ii) because he had a history of carpal tunnel syndrome.¹ The trial court erroneously believed that, if plaintiff were cured of carpal tunnel syndrome and able to return to work, the HCRA no longer protected him against discrimination. However, MCL 37.1103(e)(ii); MSA 3.550(103)(e)(ii) clearly prohibits discrimination based on an employee’s past medical condition that does not affect his ability to perform his job. Plaintiff alleged that he was discriminated against by defendant when he returned from a medical leave. Therefore, plaintiff pleaded a valid claim under the HCRA.

In addition, the HCRA protects an employee from discriminatory action taken by an employer because of the perception, even if erroneous, that the employee has a handicap. *Sanchez v Lagoudakis*, 440 Mich 496, 502-506; 486 NW2d 657 (1992); *Merillat, supra* at 245. Thus, if plaintiff were cured of carpal tunnel when he returned to work, the HCRA protected him from discrimination by defendant based upon the belief that plaintiff still suffered from carpal tunnel syndrome.

Furthermore, the trial court erred in making the factual determination that because plaintiff had required a medical leave, plaintiff could not perform his job when he actively suffered from carpal tunnel. Plaintiff alleged in his complaint that at the time of his dismissal, he was able to perform his job without problems. Thus, the allegations in plaintiff's complaint were sufficient to survive a motion for summary disposition pursuant to MCR 2.116(C)(8).

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Maureen Pulte Reilly
/s/ Charles D. Corwin

¹ Defendant does not dispute that plaintiff's carpal tunnel syndrome qualifies as a determinable physical condition that affects a major life activity. The allegations in plaintiff's complaint satisfy the definition in MCL 37.1103(e)(i)(A); MSA 3.550(103)(e)(i)(A), although it is unclear from plaintiff's complaint if his carpal tunnel is completely cured or if his condition had merely healed sufficiently to allow his return to work, either with or without accommodation for his condition.