STATE OF MICHIGAN

COURT OF APPEALS

MARCIA BOEHM,

Plaintiff-Appellant,

v

PROVIDENCE HOSPITAL,

Defendant-Appellee.

UNPUBLISHED
April 4, 1997

No. 189704
Oakland Circuit Court
LC No. 93-459179

Before: Jansen, P.J., and Reilly and W.C. Buhl*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting partial summary disposition to defendant on her claims of handicap discrimination and breach of just-cause contract. We affirm.

Plaintiff, a handicapped individual, was director of social work and continuing care at defendant hospital. In June, 1992, she was informed that her position had been eliminated as part of a hospital wide reduction in management force. She was given three options: 1) take the job of supervisor of social work and bump the employee who currently held that position; 2) be placed on preferential treatment status for six months; or 3) accept a severance package. Plaintiff did not accept the job of supervisor.[1] Plaintiff also did not accept a severance package, although the evidence revealed that negotiation had occurred in this regard and that the severance package had been enhanced pursuant to plaintiff's wishes. Six months after her position was eliminated, the parties had not reached agreement on a severance package or any other issues, and plaintiff was officially terminated.

Plaintiff first contends that it was error for the trial court to grant summary disposition on her breach of contract claim. Plaintiff claims that she had a just-cause employment contract and that defendant had eliminated her position as a means of circumventing the requirement that she be terminated only for cause.

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

It is undisputed that plaintiff was a just-cause employee. However, the just-cause policies found in the employee handbook only related to suspensions and terminations, not to the elimination of positions. Although plaintiff would have had a cause of action had she been terminated as part of an alleged reduction in work force and proffered evidence to demonstrate that the reduction in force was a pretext for her termination, she was unable to make such a claim based on the facts presented here. See *McCart v J Walter Thompson,* 437 Mich 109, 114; 469 NW2d 284 (1991); *Ewers v Stroh Brewery Co,* 178 Mich App 371; 443 NW2d 504 (1989). Plaintiff was not terminated as part of a reduction in force. Plaintiff's position was eliminated, but she was given the option of taking the next highest available position in her department, that of supervisor. She did not accept that position. She chose not to remain employed. Therefore, she did not allege a valid cause of action that her termination was in violation of her just-cause contract.

Further, there is no recognized cause of action for elimination of a position without good cause. In *Fischhaber v General Motors Corp,* 174 Mich App 450; 436 NW2d 386 (1988), the plaintiff was told that he was being demoted to another position and could either take the other position or be terminated. The plaintiff chose to retire. This Court ruled:

> [W]e cannot agree with plaintiff that a proposed demotion may be equated with termination of employment under *Toussaint v Blue Cross & Blue Shield of Michigan,* 408 Mich 579; 292 NW2d 880 (1980). *Toussaint* was strictly limited to instances of employee discharge, and we find no indication in that case that the court intended its holdings to be expanded to include changes in job assignments. [*Id.* at 455.]

In addition, even if there was such a requirement that changes in job assignments could not occur without just cause, bona fide economic reasons constitute good cause unless challenged. See *McDonald v Stroh Brewery Co,* 191 Mich App 601, 609; 478 NW2d 669 (1991). In this case, defendant did not claim economic necessity, but rather claimed that it had a plan to reduce its management staff in order to become more efficient. This bona fide economic reason was never challenged by plaintiff. Plaintiff never offered any evidence to rebut that defendant had a long term goal of reducing management personnel and eliminated numerous management positions in 1992 and 1993. The trial court correctly granted summary disposition on the ground that there was no genuine issue of material fact as to a breach of contract claim based on the fact that plaintiff's position was eliminated.

Plaintiff next argues that the trial court improperly granted summary disposition on her handicap discrimination claim. Plaintiff argues that she offered sufficient evidence to demonstrate that the reduction in force was a pretext to discriminate against her on the basis of her handicap. However, plaintiff failed to establish a prima facie case of handicap discrimination, which is the first step in a discrimination case. See *Plieth v St Raymond Church,* 210 Mich App 568, 571-572; 534 NW2d 164 (1995).

In order to establish a prima facie case of handicap discrimination for claims brought pursuant to the Michigan Handicappers' Civil Rights Act, MCL 37.1101 *et seq.;* MSA 3.550(101) *et seq.*, a plaintiff must allege and prove that (1) she has a handicap; (2) that the handicap is unrelated to her

ability to perform the duties of her job; and (3) that plaintiff has been discriminated against in one of the ways set forth in the statute. *Hall v Hackley Hospital,* 210 Mich App 48, 54; 532 NW2d 893 (1995). There is no controversy with regard to the first two elements of the prima facie case. However, plaintiff did not offer any evidence from which an inference of discrimination could be made. Based on the testimony, no inference can be made that the elimination of plaintiff's position was related to the move of the department to another building. Plaintiff did not link the move to the elimination of her position or her ultimate termination by any evidence, and her own testimony does not support such an inference.

Plaintiff also presented no evidence that the elimination of her position was related to her handicap. She simply speculated that her handicap was the motivating factor. Plaintiff's bare assertion that she *felt* she was a victim of discrimination is not sufficient to take the case to the jury. See *Bouwman v Chrysler Corp,* 114 Mich App 670, 682; 319 NW2d 621 (1982), and *Fonseca v Michigan State University,* 214 Mich App 28; 524 NW2d 273 (1996). Therefore, the trial court did not err in summarily dismissing plaintiff's handicap discrimination claim.

In her argument, plaintiff essentially ignores her burden to offer a prima facie case. Instead, she argues that the offered reason for her job elimination, management reductions, was a pretext. This question is never reached in a discrimination case unless and until plaintiff first offers evidence of the prima facie case. See *Plieth, supra* at 571-572.

Affirmed.

/s/ Kathleen Jansen
/s/ Maureen Pulte Reilly
/s/ William C. Buhl

[1] The trial court allowed plaintiff's breach of contract action with regard to placement after the elimination of her position to go to trial. The parties litigated the issue of plaintiff's rejection of the supervisor's position at trial, the result of which has not been appealed. This is not an issue on appeal.