STATE OF MICHIGAN

COURT OF APPEALS

LONNIE PERRY,

Plaintiff-Appellant,

v

RPM'S OF BATTLE CREEK, INC. d/b/a PABLO'S, a Michigan corporation,

Defendant-Appellee.

UNPUBLISHED
May 2, 1997

No. 190447
Calhoun Circuit Court
LC No. 95-002040 NZ

Before: Doctoroff, P.J., and MJ Kelly and Young, JJ.

PER CURIAM.

Plaintiff appeals as of right the October 18, 1995, order granting defendant's motion for summary disposition. We affirm.

In June 1995, plaintiff Lonnie Perry was prohibited from entering defendant's nightclub, Pablo's, while wearing a baseball cap. Pablo's has a policy prohibiting men from wearing hats, other than cowboy hats, inside the nightclub. Women are not prohibited from wearing hats in the nightclub. Plaintiff filed suit, arguing that defendant's refusal to allow plaintiff to enter Pablo's wearing a baseball cap constituted sex discrimination. Plaintiff also claimed handicap discrimination pursuant to the Michigan's Handicappers' Civil Rights Act (HCRA), MCL 37.1101 *et seq*.; MSA 3.550(101) *et seq*. Plaintiff contended that the cap was necessary to cover an unseemly condition on the front of his head caused by a poorly performed maintenance procedure on a hair replacement weave, and that such condition constituted a "handicap" as defined by the HCRA. Defendant maintained that the hat policy was instituted to prevent gang activity from occurring inside Pablo's and that plaintiff was denied access to Pablo's because he was intoxicated and belligerent.

On September 18, 1995, the trial court held a hearing on defendant's motion for summary disposition. The court found that defendant's hat policy did not relate to an immutable characteristic and was therefore not encompassed by Michigan's Civil Rights Act, MCL 37.2101 *et seq*.; MSA 3.548(101) *et seq*. Accordingly, summary disposition was granted in favor of defendant on plaintiff's claim of sex discrimination. Summary disposition was also granted on plaintiff's handicap discrimination

claim on the ground that the condition on plaintiff's head did not constitute a handicap as defined by the HCRA. The trial court thus dismissed plaintiff's claims by order dated October 18, 1995.

I.

On appeal, plaintiff first argues that defendant's policy prohibiting men from wearing hats other than cowboy hats in Pablo's, while imposing no such restriction on women, constitutes sex discrimination prohibited by the Civil Rights Act. Plaintiff's claim is based specifically on MCL 37.2302; MSA 3.548(302), which states in pertinent part:

> Except where permitted by law, a person shall not:
>
> (a) Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service because of religion, race, color, national origin, age, sex, or marital status.

In *Bedker v Domino's Pizza*, 195 Mich App 725; 491 NW2d 275 (1992), this Court stated that "Michigan's Civil Rights Act is substantially the same as title VII with regard to its sex discrimination provisions" and that "federal civil rights cases interpreting title VII are persuasive authority for resolving cases brought pursuant to the Michigan act." *Id.* at 728; *Northville Public Schools v Civil Rights Comm*, 118 Mich App 573, 576; 325 NW2d 497 (1982). While the claim in *Bedker* alleged sex discrimination in employment, both *Bedker* and the present case raised sex discrimination claims based on required standards of appearance. This Court did not limit its holding in *Bedker* to employment discrimination claims, but rather focused on the similarity between the sex discrimination provisions of title VII and Michigan's Civil Rights Act. Therefore, this Court's holding in *Bedker* is decisive to this case.

Pursuant to *Bedker*, protection against sex discrimination under the Civil Rights Act does not encompass those characteristics not inherently immutable, such as different standards of appearance for men and women. *Bedker, supra,* 729. This Court followed the reasoning of the federal courts that title VII was never intended to interfere with grooming policies that have no significant effect upon the employment opportunities afforded one sex in favor of the other. *Id.* A policy prohibiting men from wearing certain hats does not relate to an inherently immutable characteristic. Additionally, Pablo's policy of prohibiting men from wearing hats other than cowboy hats has no significant effect on the ability to gain entrance to Pablo's in favor of either sex. Men remain free to enter Pablo's either without a hat or with a cowboy hat. Therefore, defendant's sex-differentiated policy prohibiting men from wearing certain hats inside its establishment does not constitute sex discrimination pursuant to the Civil Rights Act and defendant is entitled to judgment as a matter of law.

II.

Next, plaintiff argues that he has a "temporary, disfiguring, unseemly dermatologic problem in the front portion of his head caused by a poorly performed maintenance procedure on a hair

replacement weave that constituted a handicap." Plaintiff states that he obtained the hair replacement weave to cover his premature baldness, which was caused in part by an injury to plaintiff's head and in part by natural hair loss. Plaintiff wore a hat in public to cover the front portion of his head. Plaintiff contends that defendant discriminated against him by refusing to allow plaintiff to enter Pablo's on the basis of this handicap, in violation of the HCRA.

Plaintiff's handicap discrimination claim is based on section 302 of the Handicappers' Act which prohibits the following practices:

> Except where permitted by law, a person shall not:
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> (a) Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation or public service because of a handicap that is unrelated to the individual's ability to utilize and benefit from the goods, services, facilities, privileges, advantages, or accommodations or because of the use by an individual of adaptive devices or aids. [MCL 37.1302(a); MSA 3.550(302)(a).]

The Handicappers' Act defines "handicap" as follows:

> (b) "Handicap" means a determinable physical or mental characteristic of an individual or a history of the characteristic which may result from disease, injury, congenital condition of birth, or functional disorder which characteristic:
>
> * * *
>
> (ii) For purposes of article 3 (sections 37.1301 to 37.1303), is unrelated to the individual's ability to utilize and benefit from a place of public accommodation or public service. [MCL 37.1103(b)(ii); MSA 3.550(103)(b)(ii).]

There is no case law addressing whether the condition of which plaintiff complains constitutes a handicap. Plaintiff notes that he is not arguing that baldness is a handicap, but rather that the condition of his head following a treatment which was required due to his baldness constitutes a handicap. However, resolution of this issue does not require a determination of whether defendant's condition constitutes a handicap. Plaintiff presents no evidence that he was denied service because of his baldness or hair weave, but rather because he was wearing a baseball cap. Even if plaintiff's condition constitutes a handicap, plaintiff was free to enter Pablo's in spite of such condition. Plaintiff was only required to remove his cap, which by plaintiff's own admission he desired to wear to make a "positive social impression." Therefore, defendant is entitled to judgment as a matter of law.

As a final matter, we note that we find this appeal to be vexatious and wholly without merit. Appellant raised no issue on which he could have had a reasonable basis for belief that there was a meritorious issue to be determined on appeal. This Court has gone to great lengths to avoid and reduce the backlog while providing a timely disposition of its docket. However, frivolous appeals such as this divert our judicial resources from the task of expeditiously dispensing justice to worthy litigants. We wish to impress upon the parties our disapproval of this meritless appellate claim. Accordingly, upon our own motion, and pursuant to MCR 7.216(C)(1), we assess sanctions against plaintiff/appellant in the amount of $500.00 to be paid to the Michigan Court of Appeals.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Michael J. Kelly
/s/ Robert P. Young, Jr.