

STATE OF MICHIGAN
COURT OF APPEALS

JACQUELYN CONSIDINE,

Plaintiff-Appellant,

v

ALWAYS CHRISTMAS and BOYD STANDART
ALDRIDGE,

Defendants-Appellees.

UNPUBLISHED

August 22, 1997

No. 184801

Oakland Circuit Court

LC No. 93-467695

Before: Hoekstra, P.J., and Marilyn Kelly and J.B. Sullivan,* JJ.

PER CURIAM.

In this employment action, plaintiff appeals as of right from an order granting defendants' motion for summary disposition. We reverse in part and remand.

I

Plaintiff first argues that the trial court erred in dismissing her breach of contract claim, because the employment agreement between plaintiff and defendants was not in writing as mandated by the statute of frauds. We agree.

Plaintiff and defendant Boyd Aldridge allegedly entered into an oral agreement where he agreed to employ plaintiff until her "retirement." Plaintiff defined the term "retirement" as the age at which she could collect social security. Because plaintiff was fifty-one at the time of the contract and would be eligible to collect social security when she turned sixty-two, the trial court assumed the duration of the contract was at least eleven years. The court then reasoned that, because the contract was for a definite term, it must be in writing to be enforceable pursuant to the statute of frauds.

MCL 566.132; MSA 26.922 states in pertinent part:

(1) In the following cases an agreement, contract, or promise is void unless that agreement, contract, or promise, or a note or memorandum of the agreement, contract,

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

or promise is in writing and signed with an authorized signature by the party to be charged with the agreement, contract or promise:

(a) An agreement that, by its terms, is not to be performed within 1 year from the making of the agreement.

A contract for a definite term has generally been regarded as subject to the statute of frauds and is unenforceable unless in writing. MCL 566.132; MSA 26.922.

Before ruling that the statute of frauds applied, the trial court should have determined whether the contract was of a definite or indefinite duration. If it was for an indefinite period, the statute of frauds does not pertain. *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 533; 473 NW2d 652 (1991); *Drummev v Henry*, 115 Mich App 107, 111; 320 NW2d 309 (1982). Employment contracts traditionally have been considered capable of performance within the first year. *Dumas, supra* at 536. However, if the duration is for a period in excess of one year, the contract falls within the statute of frauds and is unenforceable, unless in writing. MCL 566.132; MSA 26.922. Instead of making this preliminary analysis, the court followed defendant's reasoning that the contract was for "at least" eleven years, as defined by plaintiff's interpretation of the word "retirement." It then held the contract was unenforceable, because it had not been reduced to writing as mandated by the statute of frauds.

We find that the trial court erred in failing to determine whether the contract was for a definite or an indefinite term. A trial court may determine the meaning of a contract without more only when the terms are not ambiguous. *SSC Associates Limited Partnership v Detroit Retirement Sys*, 192 Mich App 360, 363; 480 NW2d 275 (1991). If they are subject to two or more reasonable interpretations, a factual development is necessary to reach the intent of the parties, and summary disposition is inappropriate. *Id.* Because the term "retirement" is an ambiguous one and could connote either a definite or an indefinite term, a factual development was necessary to determine the intent of the parties. Therefore, the trial court erred in granting summary disposition in favor of defendants on plaintiff's breach of contract claim.

II

Next, plaintiff argues that the trial court erred in granting summary disposition in favor of defendants on her claim for wrongful discharge, because there was a genuine issue of material fact as to whether she was a just-cause employee.¹ As the trial court did not reach the merits of plaintiff's claim, we decline to address the issue at this time. *Vugterveen Sys, Inc v Olde Millpond Corp*, 210 Mich App 34, 38-39; 533 NW2d 320 (1995).

III

Plaintiff's last contention is that the trial court erred in granting defendants' motion for summary disposition on plaintiff's age discrimination claim pursuant to MCR 2.116(C)(10). We agree.

The Elliott-Larsen Civil Rights Act prohibits discrimination on the basis of age. MCL 37.2202(1)(a); MSA 3.548(202)(1)(a). A prima facie case of age discrimination can be made by

proving either intentional discrimination or disparate treatment. *Id.* Plaintiff alleged that she established a prima facie case of age discrimination by proving intentional discrimination. To establish a prima facie case of age discrimination under the intentional discrimination theory, plaintiff must show that (1) she was a member of a protected class; (2) she had been discharged; (3) she was qualified for the position; and (4) she had been replaced by a younger person. *Barnell v Taubman Co Inc*, 203 Mich App 110, 120; 512 NW2d 13 (1993).

In dismissing plaintiff's age discrimination claim, the trial court noted, "the plaintiff failed to submit evidence to establish she was treated in a discriminatory fashion or that defendants had a discriminatory intent or policy. Plaintiff asserts that, following her discharge, her duties were performed by younger workers. It is well-established law that replacing an older employee with a younger one, by and in and of itself, does not constitute age discrimination." As discussed above, contrary to the trial court's statement, plaintiff did not have to submit evidence to prove she was treated in a discriminatory fashion or that defendants had a discriminatory intent or policy.

Looking at the facts in a light most favorable to plaintiff, we find that she has presented a prima facie case of age discrimination. Plaintiff established that she was a member of a protected class, that she was qualified for the position and that she was discharged. Defendant did not hire another employee to directly replace her. Nonetheless, plaintiff presented evidence that younger people already working for defendant took over her duties following her discharge. We find such evidence sufficient to establish that plaintiff was replaced by younger personnel. Because plaintiff has established a prima facie case, defendant must come forward with a legitimate, nondiscriminatory reason for the discharge.²

Affirmed in part and reversed in part.

/s/ Marilyn Kelly

¹ Plaintiff confuses the issue by referring to "wrongful discharge" as a separate claim when it was actually part of plaintiff's breach of contract claim.

² If defendant chooses, it can continue to assert that plaintiff quit. It would then be for the jury to determine credibility.