STATE OF MICHIGAN

COURT OF APPEALS

DAPHNIE BOBO,

Plaintiff-Appellant,

v

THORN APPLE VALLEY, INC., and JOHN COOL,

Defendants-Appellees.

UNPUBLISHED
September 2, 1997

No. 184775
Wayne Circuit Court
LC No. 94-427024-CZ

Before: Marilyn Kelly, P.J., and MacKenzie and J. R. Ernst*, JJ.

PER CURIAM.

In this employment discrimination and retaliatory discharge case, plaintiff, Daphnie Bobo, appeals as of right from an order granting summary disposition to defendants, Thorn Apple Valley, Inc. and John Cool, pursuant to MCR 2.116(C)(7). Plaintiff argues that the six-month period of limitation contained in defendant Thorn Apple Valley's employee handbook is unenforceable and that the trial court, therefore, erred in dismissing her case upon finding that the limitations period had expired. We affirm.

I

In 1981, plaintiff was hired by Thorn Apple Valley as a production worker. During the course of her employment she became a salaried employee when she took a position as a quality control technician. On September 1, 1990, Thorn Apple revised its Salaried Employee Handbook. The revised version contained the following provision:

> It is also mutually understood by the Corporation and by our employees that whenever there is a dispute concerning an employee's termination, it is in the best interest of everyone that the dispute be resolved quickly. For this reason, both the Corporation and each employee understand and agree that they will not commence any action, charge or suit relating to the employee's employment with Thorn Apple Valley, Inc.,

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

> more than six (6) months after the date on which such employment terminates. Both the Corporation and each employee expressly waive any statute of limitations which is longer than the foregoing.

On September 14, 1990, plaintiff went to the company office to receive her paycheck. She was handed a document captioned "Salaried Employee Acceptance Form". Plaintiff was not given her check until she signed the form.

On December 31, 1992, plaintiff's supervisor, John Cool, terminated her employment on the basis that she allegedly attempted to steal sausages. On September 13, 1994, plaintiff filed this cause of action against defendants alleging wrongful, discriminatory, and retaliatory discharge as well as defamation.

Defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(7). They argued that plaintiff's defamation claim was barred by the one-year statutory period of limitations. MCL 600.5805(7); MSA 27A.5805(7). Furthermore, they asserted that the remainder of plaintiff's claims were barred by the contractual six-month limitation period contained in the employee handbook.

The trial court found that the language of the handbook was clear and that plaintiff assented to its terms by signing the acceptance form. Additionally, the trial court held that the waiver of the limitations period in a civil rights action does not require that the party being bound have actual notice of the terms in the contract; an agreement to be bound by them is sufficient. Therefore, the trial court granted defendants' motion. Plaintiff now challenges the trial court's dismissal of her discriminatory and retaliatory discharge claims.

II

First, plaintiff argues that the six-month limitation period specified in the handbook is not enforceable because, absent plaintiff's assent, there was no contract between the parties. We disagree.

In order to have an enforceable contract, both parties must mutually assent to be bound. *Rood v General Dynamics Corp*, 444 Mich 107, 118; 507 NW2d 591 (1993). In determining whether a party has assented to a contract, this Court follows an objective theory. *Id.* at 119. We look to all the relevant circumstances surrounding the transaction, including all writings, oral statements and other conduct by which the parties manifested their intent. *Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627, 641; 473 NW2d 268 (1991).

Here, plaintiff signed the handbook acceptance form that expressly stated that she received a copy of the handbook and accepted its terms. At no time after receipt of the handbook did plaintiff question any of the terms.

Plaintiff argues that, even though she signed the acceptance form, there was no assent because neither the acceptance form nor the handbook clearly conveyed that she was entering into a contract. We disagree.

A person who signs a written agreement is presumed to know the nature of the document and understand its contents. *McKinstry v Valley Obstetrics-Gynecology Clinic, PC,* 428 Mich 167, 184; 405 NW2d 88 (1987). The acceptance form signed by plaintiff stated, "I have received a copy of the Handbook, and I accept its terms." The language on the form was sufficient to put plaintiff on notice that she was not simply signing to acknowledge receipt of the handbook, but was agreeing to be bound by its terms.

Moreover, the language contained in the handbook reaffirms that the terms written there were intended to be binding on both the employer and the employees. The foreword of the handbook states:

> While it is not intended that this booklet create a contract of employment for any definite period of time, *it is intended that the policies contained in it be binding on both our employees, and on the Company.* (Emphasis added.)

Additionally, the specific language of the clause limiting the period for bringing suit to six months uses language such as "understand and agree" and "expressly waive", which would also place plaintiff on notice that she was bound to the handbook terms. Therefore, the trial court did not clearly err in finding that plaintiff assented to the terms of the handbook.

III

Next, plaintiff argues that her assent was invalid, as she did not read the handbook and was coerced into signing the acceptance form.

A party who signs a written agreement is presumed to have understood its terms. *McKinstry, supra.* A party's failure to read is generally not a basis for rescission unless the failure was induced by "some stratagem, trick or artifice by the parties seeking enforcement". *Moffit v Sederlund,* 145 Mich App 1, 8; 378 NW2d 491 (1985).

As previously discussed, plaintiff signed the acceptance form which expressly provides that she accepted the handbook's terms. There is no basis for her assertion that the nature of the acceptance form was misrepresented to her, or that her failure to read was the result of her misunderstanding that she was in fact entering into a binding contract. See *Hungerman v McCord Gasket Corp,* 189 Mich App 675, 677; 473 NW2d 720 (1991).

However, plaintiff asserts that she signed the acceptance form without reading it or the handbook because of economic duress. There are two basic elements of economic duress. The party alleging economic duress must show that (1) he or she has been the victim of a wrongful or unlawful act or threat, and (2) such act or threat must be one which deprives the victim of his or her unfettered will. *Barnett v International Tennis Corporation,* 80 Mich App 396, 406; 263 NW2d 908 (1978). Furthermore, the party threatened must not have an adequate legal remedy available. *Hungerman, supra* at 677.

We find that defendants' threat to withhold her wages was insufficient to overcome plaintiff's free will. Plaintiff was still free to refuse to sign the release, and she had a readily available legal remedy

to recover her earned wages. *Id.* Therefore, the trial court did not clearly err in finding that plaintiff's assent was validly obtained.

IV

Plaintiff argues that Michigan law does not allow an employer to unilaterally create an enforceable contract lessening the time period for bringing a cause of action by merely promulgating an employment handbook containing such a provision. Even though plaintiff raised this issue below, the trial court refused to address it. However, we find it unnecessary to remand to the trial court for consideration of this question in light of our disposition of the remaining issues raised by plaintiff.

V

Plaintiff also argues in her reply brief that the six-month limitation period is unenforceable because it is inherently unreasonable. Parties may contract for a period of limitation shorter that the applicable statute of limitation, but the contractually specified time period must be reasonable. *Camelot Excavating Co, Inc v St Paul Fire & Marine Ins Co*, 410 Mich 118, 126-127; 301 NW2d 275 (1981); *Herweyer v Clark Highway Services, Inc*, 455 Mich 14; ___ NW2d ___ (1997).

Plaintiff has failed to preserve this issue for appellate review. In the trial court, plaintiff conceded in her response to defendant's motion for summary disposition that the contractual limitation period was reasonable. A party may not take a position in the trial court and later seek redress in an appellate court that is based on a position contrary to that taken in the trial court. *Living Alternatives for the Developmentally Disabled, Inc v Dep't of Mental Health*, 207 Mich App 482, 484; 525 NW2d 466 (1994). Plaintiff's concession of the issue also means that it has been raised for the first time on appeal and was not addressed by the trial court. Issues raised for the first time on appeal are not subject to appellate review. *Garavaglia v Centra, Inc*, 211 Mich App 625, 628; 536 NW2d 805 (1995). A party who fails to raise an issue before the trial court has failed to preserve the issue for appellate review. See *Burgess v Clark*, 215 Mich App 542, 548; 547 NW2d 59 (1996). Because this issue was never raised below, there is nothing for us to review.

VI

Finally, plaintiff argues that the trial court erred in holding that Michigan law does not require a knowing and voluntary waiver of the three-year statute of limitation for bringing a cause of action alleging discrimination and retaliation under Michigan's civil rights statutes.

Plaintiff cites several federal cases as her supporting authority. Although not binding, federal decisions in the area of civil rights law are highly persuasive. *Langlois v McDonald's*, 149 Mich App 309, 312; 385 NW2d 778 (1986).

In *Alexander v Gardner-Denver Co*, 415 US 36; 94 S Ct 1011; 39 L Ed 2d 147 (1974), the United States Supreme Court held that the plaintiff did not waive Title VII rights by first submitting a claim of wrongful discharge to arbitration under a collective bargaining agreement. The Court noted that it was possible to waive Title VII rights. However, the waiver must be voluntary and knowing.

Likewise, other federal courts have observed that a waiver of civil rights claims must be voluntary and knowing. *Watkins v Scott Paper Co*, 530 F2d 1159, 1172 (CA 5, 1976); *Cox v Allied Chemical Corp*, 538 F2d 1094 (CA 5, 1976).

The Sixth Circuit has addressed a case analogous to the one before this Court. *Myers v Western-Southern Life Ins Co*, 849 F2d 259 (CA 6, 1988). In *Myers*, the plaintiff signed an employment contract with a provision similar to the one contained in the handbook here. He was required to bring suit against his employer not more than six months after the date of termination and was required to waive any statute of limitations to the contrary. *Id.* at 260. He argued that because civil rights actions are normally afforded a heightened scrutiny, civil rights claims cannot be restricted or limited without a knowing and intelligent waiver by the aggrieved party. *Id.* at 262. The Court stated:

> [T]he heightened scrutiny which is applied to civil rights cases in this context involves the knowing and voluntary nature of the waiver of civil rights claims.…Thus, in order to benefit from the heightened scrutiny afforded civil rights actions, Myers would be required to demonstrate that his waiver of the statute of limitations was not knowing and voluntary. [849 F2d 261.]

We adopt this view. The Michigan Constitution provides:

> No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation. [Const 1963, art 1, § 2.]

A primary mission of this provision was to ensure equal opportunity in the pursuit of employment. See *Heurtebise v Reliable Business Computers*, 452 Mich 405, 427; 550 NW2d 243 (1996) (Cavanagh, J.). This provision "elevated an employee's statutory right under the FEPA to the status of a constitutional right."[1] *Id.*, quoting *Boscaglia v Michigan Bell Telephone Co*, 420 Mich 308, 314, n 8; 362 NW2d 642 (1984). Constitutional rights can be waived, but only if the waiver is knowingly and intelligently made. *Verbison v Auto Club Ins Ass'n*, 201 Mich App 635, 642; 506 NW2d 920 (1993). Therefore, we believe that a waiver of a civil rights claim or a waiver of the time frame under which a civil rights claim must be brought, must be carefully scrutinized for voluntariness. *Myers, supra.* The trial court erred in holding otherwise.

Nevertheless, we are convinced that the error was harmless. Under *Myers, supra*, to benefit from the heightened scrutiny afforded civil rights actions, plaintiff had to make a showing that her waiver of the statute of limitations was not knowing and voluntary. In this regard, the *Myers* court offered the following analysis:

> Although waivers in civil rights cases ought to be carefully scrutinized for voluntariness…it does appear that the waiver in this case was knowing and voluntary. The contractual language is quite clear; moreover, if Myers believed that the terms were unreasonable, he clearly had the option of not signing the agreement. Indeed, the only

> evidence of compulsion is Myer's conclusionary [sic] affidavit to that effect. Under these circumstances, we cannot say that the waiver of the applicable statute of limitations was unknowing or unintelligent. [849 F2d 262; citations omitted.]

In this case, as previously noted, the language of the form that plaintiff signed was sufficiently clear to put her on notice that she was entering into a binding contract regarding the terms of her employment as stated in the handbook. Additionally, as previously noted, there is no basis to plaintiff's claims of misrepresentation, misunderstanding, or that she signed the form involuntarily while under "economic duress." Under these circumstances, plaintiff has failed to offer facts giving rise to a showing that her waiver of the applicable statute of limitations was unknowing or unintelligent.

Affirmed.

/s/ J. Richard Ernst
/s/ Barbara B. MacKenzie

[1] The FEPA (Fair Employment Practices Act), MCL 423.301 *et seq.*; MSA 17.458 *et seq.*, was repealed by 1976 PA 453 and replaced by the Michigan Civil Rights Act. MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*