

STATE OF MICHIGAN
COURT OF APPEALS

DAPHNIE BOBO,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 184775

Wayne Circuit Court

LC No. 94427024 CZ

THORN APPLE VALLEY, INC. a Michigan
corporation, and JOHN COOL,

Defendant-Appellee.

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

MARILYN KELLY, P.J. (*dissenting*).

I respectfully dissent.

The trial court erred in ruling that a waiver of the time for bringing a civil rights claim need not be treated differently from waivers for other types of claims. Although I agree with the majority's finding of error, I disagree that the error was harmless.

Employers and employees often do not deal at arms length when negotiating employment contracts, such as the one in this case. Recently, the Michigan Supreme Court held that these contracts deserve close judicial scrutiny. *Herweyer v Clark Highway Services, Inc*, 455 Mich 14, 21; 564 NW2d 857 (1997). Because of the trial court's erroneous summary disposition ruling, it never addressed whether plaintiff knowingly and voluntarily waived her right to sue more than six months after her employment terminated. Therefore, the contract's abbreviated limitation period did not receive the judicial scrutiny required by *Herweyer*.

Moreover, it is unclear whether plaintiff voluntarily and knowingly agreed to waive the three-year statutory period for bringing suit. She testified that, when she signed the acceptance form, she had not been given a copy of the handbook and did not have the opportunity to read it before signing. The facts of this case differ significantly from those of *Myers v Western-Southern Life Ins Co*,¹ relied upon by the majority. In *Myers*, the plaintiff had ample time to read the terms of the employment contract before he signed. I would remand for further discovery and a hearing.

/s/ Marilyn Kelly

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

¹ 849 F2d 259 (CA 6, 1988).