STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL ARSLANIAN,

Plaintiff-Appellant,

v

OAKWOOD UNITED HOSPITALS, INC., d/b/a HERITAGE HOSPITAL, CYNTHIA ENGLISH, KAROLINE MCKINZIE, and DONNA LEVALLEY,

Defendants-Appellees.

UNPUBLISHED
October 3, 1997

No. 189349
Wayne Circuit Court
LC No. 94-427964-NO

Before: Murphy, P.J., and Michael J. Kelly and Gribbs, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of summary disposition in favor of defendants.

The issue we must address is what effect does a previous arbitration proceeding, held pursuant to a collective-bargaining agreement, which requires arbitration of employment related disputes and contains an anti-discrimination clause, have on a subsequently filed circuit court action claiming, inter alia, gender discrimination in violation of the Michigan Civil Rights Act (CRA), MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq*. We hold that the previous proceeding bars plaintiff's defamation, intentional infliction of emotional distress, and interference with contract claims, but does not bar his CRA based discrimination and retaliatory discharge claims.[1] Accordingly, we affirm in part, reverse in part, and remand for further proceedings.

I

Plaintiff worked for defendant Oakwood United Hospitals, initially as a nurses aide, and then in the housekeeping department. In May 1993, plaintiff allegedly assaulted another employee, defendant McKinzie. Plaintiff denied the assault but was suspended pending an investigation. In July 1993, plaintiff was discharged. Defendant Oakwood United Hospitals contends that the discharge was based on plaintiff's assault of defendant McKinzie and plaintiff's previous disciplinary record. Pursuant to the collective-bargaining agreement, plaintiff filed a grievance and an arbitration hearing was held.[2] The

arbitrator denied plaintiff's grievance, finding that McKinzie's account was truthful and plaintiff's was not.

Subsequently, plaintiff filed the instant action in circuit court. Plaintiff's complaint alleges gender discrimination contrary to the CRA retaliatory discharge, defamation, intentional infliction of emotional distress, and interference with plaintiff's employment contract. Defendants moved for summary disposition arguing that, as a result of the previous arbitration proceedings, plaintiff's claims were either barred by res judicata because they were or could have been brought in the arbitration proceedings, or were essentially barred by collateral estoppel because the dispositive facts had been determined by the arbitrator. The trial court agreed with defendant.

II

The preclusion doctrines of res judicata and collateral estoppel serve an important function in resolving disputes by imposing a state of finality to litigation where the same parties have previously had a full and fair opportunity to adjudicate their claims. *Nummer v Dep't of Treasury*, 448 Mich 534, 541; 533 NW2d 250 (1995). However, these doctrines are to be qualified or rejected when their application would contravene a substantial public policy. *Horn v Dep't of Corrections*, 216 Mich App 58, 64; 548 Nw2d 660 (1996).

Defendants cite *Fulghum v United Parcel Service, Inc*, 130 Mich App 375; 343 NW2d 559 (1983), aff'd 424 Mich 89 (1985) in support of their argument that plaintiff's claims are barred. In *Fulghum*, after being discharged, the plaintiffs brought a grievance pursuant to a collective-bargaining agreement. Their grievance was unsuccessful. Subsequently, the plaintiffs brought an action in circuit court for defamation, invasion of privacy, and intentional infliction of emotional distress. Both this Court and the Supreme Court held that where a collective-bargaining agreement provides a method by which disputes are to be resolved, there is a strong policy in favor of deference to that method of resolution, and that policy can only be effectuated if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given full play. 424 Mich at 92-93, citing 130 Mich App at 377-378. Upon review of the record in this case, we see no reason not to follow *Fulghum* as it relates to plaintiff's defamation, intentional infliction of emotional distress, and interference with plaintiff's employment contract claims. See also *Renny v Port Huron Hosp*, 427 Mich 415, 435-438; 398 NW2d 327 (1986) (discussing the "elementary fairness" necessary to give arbitral determinations preclusive effect). The trial court properly granted summary disposition on these claims.

However, as stated in *Fulghum*, federal courts recognize an exception to the rule of finality in the context of a Title VII employment discrimination claim. *Fulghum, supra* at 93 citing *Alexander v Gardner-Denver Co*, 415 US 36; 94 S Ct 1011; 39 L Ed 2d 147 (1947). While the *Fulghum* Court did not need to address whether to recognize such an exception in Michigan, this Court recently held that the public policy of this state entitles a plaintiff to direct and immediate review of civil rights claims in circuit court, and that policy cannot be abrogated by contract. *Rushton v Meijer, Inc*, __ Mich App __; __ NW2d __ (Docket No. 199684, issued August 19, 1997, slip op p 4). As a result, in regard to civil rights claims, we are precluded from enforcing prospective arbitration agreements in employment

contracts. *Id*. at 6. While *Rushton* dealt with an individual employment contract and the case at bar deals with a collective-bargaining agreement, we see no reason not to, and in fact feel compelled to, apply the broad policy statements in *Rushton* to this case as well. Applying collateral estoppel and res judicata to plaintiff's civil rights claims would effectively contravene this substantial public policy. As a result, the trial court erred in granting summary disposition on plaintiff's CRA-based discrimination and retaliatory discharge claims.

Affirmed in part and reversed in part. Remanded for proceedings consistent with this opinion.

/s/ William B. Murphy
/s/ Michael J. Kelly
/s/ Roman S. Gribbs

[1] For our purposes, we feel that the retaliation claim is analogous to plaintiff's gender discrimination claim because it is a CRA claim and is based on his assertion of his right to be free from discrimination. See *McLemore v Detroit Receiving Hosp & University Medical Center*, 196 Mich App 391, 395-396; 493 NW2d 441 (1992) (The CRA "prohibits employers from retaliating against an employee for making a charge, filing a complaint, testifying, assisting, or participating in an investigation, proceeding, or hearing under the act."). In this case, plaintiff's complaint alleges that he was suspended after filing a claim of gender discrimination with the Michigan Department of Civil Rights. According to the arbitrator's written opinion, plaintiff later withdrew his complaint.

[2] The collective-bargaining agreement provided that the procedures set forth therein were to provide "final and binding resolution of disputes arising under the terms and/or working conditions of employment."

In this case, plaintiff actually filed two grievances, one following his suspension and one following his discharge. However, both grievances were addressed at the same time.