

STATE OF MICHIGAN  
COURT OF APPEALS

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CHRISTOPHER D. MOORE,

Plaintiff-Appellant,

v

GORDON FOOD SERVICE, INC.,

Defendant-Appellee.

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UNPUBLISHED

May 29, 1998

No. 202062

Livingston Circuit Court

LC No. 96-015140 CL

Before: Corrigan, C.J., and Hoekstra and Young, Jr., JJ.

PER CURIAM.

Plaintiff sued defendant alleging violation of the Michigan Handicappers' Civil Rights Act (HCRA).<sup>1</sup> The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff now appeals as of right. We affirm.

The record shows that defendant maintains and strictly enforces a policy prohibiting its employees from consuming its product and terminates for theft any employee who violates this policy. Plaintiff is an insulin-dependent diabetic discharged by defendant. While at work, plaintiff began to experience hypoglycemia. Believing that he was medically at risk, plaintiff admits that he then broke into a sealed container of his employer's inventoried product, removed a bottle of orange juice and drank it. Plaintiff did not report his removal or consumption of the juice until confronted by his employer concerning theft, despite the fact that plaintiff saw two supervisory employees immediately following this incident. Defendant terminated plaintiff's employment consistent with its policy of terminating employees who consumed company product. On appeal, plaintiff maintains that defendant discharged him because of his diabetes, and that the discharge based upon theft was merely a pretext for discrimination.

In *Collins v Blue Cross Blue Shield of Michigan*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 200333, issued 3/13/98), slip op p 4, this Court explained that "a disabled employee may be discharged for misconduct, even where the misconduct is a manifestation of the employee's disability." In the present case, there is no evidence that plaintiff was fired because of his diabetes. To the contrary, the undisputed evidence establishes that plaintiff was discharged pursuant to a strictly enforced policy against employees consuming defendant's product.

Accordingly, because plaintiff cannot establish that defendant discharged him with discriminatory intent, plaintiff has failed to establish a prima facie case of discrimination under the HCRA. *Id.* There being no genuine issue of material fact, the trial court properly granted summary disposition to defendant under MCR 2.116(C)(10).

Affirmed.

/s/ Maureen D. Corrigan

/s/ Joel P. Hoekstra

/s/ Robert P. Young, Jr.

<sup>1</sup> MCL 37.1101 *et seq.*; MSA 3.550(101) *et seq.*