STATE OF MICHIGAN

COURT OF APPEALS

RHONDA YEARY,

Plaintiff-Appellant,

v

MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED
January 26, 1999

No. 203398
Branch Circuit Court
LC No. 95-006352 CZ

Before: Hood, P.J., and Neff and Markey, JJ.

PER CURIAM.

Plaintiff filed suit against defendant alleging in part that it discharged her from her position at its Cotton Correctional Facility in violation of the Handicappers' Civil Rights Act, MCL 37.1101 *et seq*.; MSA 3.550(101) *et seq*. Following a bench trial on the issue of liability only, the trial court concluded that plaintiff failed to prove a prima facie case of handicap discrimination and rendered a verdict of no cause of action in favor of defendant. Plaintiff appeals by right. We affirm.

The Handicappers' Civil Rights Act [hereinafter "HCRA"] guarantees employees the "opportunity to obtain employment . . . without discrimination because of a handicap." MCL 37.1102(1); MSA 3.550(102(1). To establish a prima facie case of handicap discrimination, an employee must prove (1) that she is "handicapped" within the meaning of the HCRA, (2) that her handicap is unrelated to her ability to perform the duties of her particular job, and (3) that the employer discriminated against her in some way prohibited under the HCRA. *Hall v Hackley Hospital*, 210 Mich App 48, 53-54; 532 NW2d 893 (1995). At issue in this case is the trial court's conclusion that plaintiff failed to prove the final two elements of her prima facie case. We review de novo the court's application of the law to the facts. See *Brucker v McKinlay Transport, Inc (On Remand)*, 225 Mich App 442, 448; 571 NW2d 548 (1997).

Plaintiff first claims that the trial court erred when it concluded that her handicap was related to her ability to perform her job. We disagree. An employee's handicap is related to her ability to perform her job when, with or without accommodation, the handicap "prevent[s] the employee from . .

. performing the duties of [her] particular job or position." See MCL 37.1103(l)(*i*); MSA 3.550(103)(l)(*i*). As the trial court found,

> [a]fter being assigned to the Cotton Facility and working for a period of time, the [p]laintiff again was forced to take sick leave. She was notified that she had to return to work by a date certain. [She s]howed up with a slip that was rejected because it did not address any limitations or suggest[ ] that she could return to work without any such limitations. [She w]as required to return with such a note [but d]id not. And indeed, another note soon thereafter indicated that she was, indeed, unable to return to work.

Plaintiff presented no evidence that she was capable of returning to work. An employee who is unable to report to work because of her handicap is "unable to perform her job because of her [handicap]." *Rymar v Michigan Bell Telephone Co*, 190 Mich App 504, 506; 476 NW2d 451 (1991); *Ashworth v Jefferson Screw Products, Inc*, 176 Mich App 737, 743; 440 NW2d 101 (1989). Here, on the date of her termination, plaintiff was unable to perform her job due to her disability. *Rymar, supra* at 506-507. Accordingly, the trial court did not err when it concluded that plaintiff's handicap was related to her ability to perform her job.

Plaintiff next claims that the trial court erred when it concluded that defendant accommodated her handicap. We disagree. The HCRA obligates employers to "accommodate a handicapper for purposes of employment . . . unless the [employer] demonstrates that the accommodation would impose an undue hardship." MCL 37.1102(2); MSA 3.550(102)(2). Stated somewhat differently, the HCRA obligates employers to afford handicappers the full and fair opportunity to secure employment. *Lindberg v Livonia Public Schools*, 219 Mich App 364, 367-368; 556 NW2d 509 (1996). Although the HCRA does not define the scope of the accommodation, "[i]t is not reasonable to expect that an institution or an employer will be better aware of the needs of a handicapped [employee] than the [employee herself]." *Id.* at 367. The HCRA simply does not impose upon employers the "additional obligation to determine which accommodations are necessary." *Id*. at 367-368. When an employer has not denied the employee anything in terms of her special requests, this Court is hesitant to find that the employer has failed to accommodate the employee. *Id*. at 367.

Here, the trial court found,

> [defendant] had a fairly firm policy limiting an employee to accumulative [sic] total of six months long-term leave over the course of his or her career. . . . [W]hile the [p]laintiff was still assigned to the Lakeland Facility, [defendant] had begun to take steps already to terminate her for exceeding the six-month sick leave limit. But, as was testified to, the central office intervened and ultimately sought the transfer of the [p]laintiff to the Cotton Facility as a reasonable accommodation. At the time of the transfer, it was also clear that the [p]laintiff already had far exceeded the six-month limit and, as was testified to, as well, again, another accommodation was to ignore [the] excess of two months that exceeded already [sic] the six-month limit.

Plaintiff presented no evidence that she requested any accommodation beyond a transfer to a different facility or that defendant denied her a full and fair opportunity to secure her employment. The record reveals that despite the fact that plaintiff's handicap prevented her from performing her duties and, therefore, she was not protected under the HCRA, defendant did accommodate her in different ways. Accordingly, the trial court did not err in finding that plaintiff failed to prove a prima facie case of handicap discrimination and in accordance rendering a verdict of no cause of action.

We affirm.

/s/ Harold Hood
/s/ Janet T. Neff
/s/ Jane E. Markey