STATE OF MICHIGAN

COURT OF APPEALS

MARSHA HARRISON,

Plaintiff-Appellant,

v

GERONTOLOGY NETWORK SERVICES OF KENT COUNTY, THOMAS A. HARTWIG, and ROGER FISHER,

Defendants-Appellees.

UNPUBLISHED
May 5, 2000

No. 214568
Kent Circuit Court
LC No. 97-004251-CK

Before: Jansen, P.J., and Hoekstra and Collins, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's grant of summary disposition in favor of defendants under MCR 2.116(C)(10). We affirm.

Plaintiff first argues that the trial court erred in granting summary disposition in favor of defendants on her breach of employment contract claim by concluding that plaintiff was an at-will employee. We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Russell v Dep't of Corrections*, 234 Mich App 135, 136; 592 NW2d 125 (1999). This Court reviews the record in the same manner as the trial court to determine whether the moving party was entitled to judgment as a matter of law. *Phillips v Deihm*, 213 Mich App 389, 398; 541 NW2d 566 (1995).

In the present case, plaintiff cites no law in support of her argument of breach of contract and thus has abandoned this issue. *Schellenberg v Rochester Michigan Lodge No 2225 of Benev and Protective Order of Elks of USA*, 228 Mich App 20, 49; 577 NW2d 163 (1998) ("This Court will not search for authority either to sustain or reject a party's position. Where a party fails to cite any supporting legal authority for its position, the issue is effectively abandoned.")

Nonetheless, plaintiff's argument is without merit. Upon review of the record, it is apparent that plaintiff's employment was terminable at will and could be terminated for any reason or no reason. See *Rood v General Dynamics Corp*, 444 Mich 107, 116; 507 NW2d 591 (1993); *Clement-Rowe v*

Michigan Health Care Corp, 212 Mich App 503, 506; 538 NW2d 20 (1995). Plaintiff's assertion that defendant Hartwig implied that she would be employed with GNS for at least five years because he asked her if she would be willing to work for GNS for at least five or six years is insufficient to overcome the presumption of at-will employment, especially where plaintiff admitted that she made an assumption based on Hartwig's question. See *Rood, supra*; *Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627, 645; 473 NW2d 268 (1991) ("[O]ral statements of job security must be clear and unequivocal to overcome the presumption of employment at will."); see also *Clement-Rowe, supra*.

To the extent that plaintiff argues that GNS was a "satisfaction employer" and was not justified in terminating her because GNS was not in good faith dissatisfied with her performance, we find her argument without merit. Even if her employment contract contained "satisfaction employer" language, when such is combined with other language giving an employer broader authority to discharge, the contract language controls and the employer has the broader authority to discharge. *Meagher v Wayne State University*, 222 Mich App 700, 722-723; 565 NW2d 401 (1997). Because GNS reserved the right to terminate at will, although not specifically using the term "at will," we find that the trial court reached the proper conclusion when it dismissed this claim.

Plaintiff next argues that the trial court erred in ruling that there was no evidence to support her claim that defendants' alleged reasons for terminating her employment were a pretext for sex (gender) discrimination in violation of Michigan's Civil Rights Act, MCL 37.2202(1)(a); MSA 3.548(202)(1)(a). Plaintiff claims that defendants discriminated against her in determining which employees to keep and which employees to let go during a reduction in GNS' workforce.

Even assuming that plaintiff presented a prima facie case of gender discrimination and therefore a presumption of discrimination arose,[1] defendants have presented a legitimate nondiscriminatory reason for the adverse employment action—budgetary setbacks that resulted in the need to lay off employees to reduce the workforce. See *Town v Michigan Bell Telephone Co*, 455 Mich 688, 702; 568 NW2d 64 (1997) ("A layoff in the context of an overall workforce reduction provides a nondiscriminatory explanation for the plaintiff's discharge."). Further, defendants offered evidence that the position to which a male employee was reassigned required computer experience, which plaintiff did not have. As such, the burden shifted to plaintiff "to show, by a preponderance of admissible direct or circumstantial evidence, that there was a triable issue that the employer's proffered reasons were not true reasons, but were a mere pretext for discrimination." *Lytle v Malady (On Rehearing)*, 458 Mich 153, 174; 579 NW2d 906 (1998); *Hall v McRea Corp*, 238 Mich App 361, 371; 605 NW2d 354 (1999).

In order to meet her burden of showing that defendants' reasons are pretextual, plaintiff makes the following representations. First, plaintiff claims that she was more qualified than the male employee for the position to which he was reassigned. Where two employees are qualified for a position, the selection of one qualified employee over another to fill a position merely raises a question about defendants' business judgment. *Town, supra* at 704. From our review of the evidence, it is apparent that plaintiff's evidence at best establishes that she and the male employee were both qualified for the position at issue. Consequently, plaintiff did not create an issue of fact regarding whether defendants' nondiscriminatory reasons for the adverse employment action was a pretext, much less a pretext for gender discrimination. *Id.*

Next, plaintiff argues that she presented circumstantial evidence that there existed a "good ole boy" attitude among the senior management; specifically, among the individual defendants Hartwig and Fisher. For example, to support her claim plaintiff cites a conversation she had with Fisher regarding health benefits for her spouse. Plaintiff alleges that Fisher responded by stating that the policy was only intended to cover wives of husbands employed by GNS, and not husbands of wives employed by GNS. Nevertheless, plaintiff admits that she did not suffer any direct discrimination based on the policy; in fact, she admits that she obtained health insurance coverage for her husband and children through GNS and that she was aware of no other eligible employee whose family was denied coverage by GNS. We conclude that such a statement, even if made, is not evidence of discriminatory animus. Nor does the other circumstantial evidence proffered by plaintiff rise to the level of evidence of discriminatory animus.

Finally, plaintiff claims that defendants' violation of their own affirmative action policies by giving preferential treatment to a male employee is sufficient evidence that defendants' proffered reasons for discharging plaintiff are pretext. However, this Court has already rejected such an argument. *Balwinski v Bay City*, 168 Mich App 766, 771; 425 NW2d 218 (1988) ("[T]he existence of an affirmative action plan does not prove that [an employer] engaged in discriminatory hiring practices.").

Accordingly, we find that plaintiff has failed to meet her burden of proof to demonstrate that defendants' legitimate nondiscriminatory reasons for their decision to discharge plaintiff were pretext for gender discrimination because the circumstantial evidence offered by plaintiff is not sufficient to permit a reasonable trier of fact to conclude that discrimination was a motivating factor. See *Lytle, supra*.

Affirmed.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Jeffrey G. Collins

[1] "To establish a prima facie case of [gender] discrimination, plaintiff must prove by a preponderance of the evidence that (1) she was a member of the protected class; (2) she suffered an adverse employment action … ; (3) she was qualified for the position; but (4) she was discharged under circumstances that give rise to an inference of unlawful discrimination. Once plaintiff has sufficiently established a prima facie case, a presumption of discrimination arises." *Lytle v Malady (On Rehearing)*, 458 Mich 153, 172-173; 579 NW2d 906 (1998).