STATE OF MICHIGAN

COURT OF APPEALS

KENNETH REESE,

Plaintiff-Appellant,

v

ADIA PERSONNEL SERVICES,

Defendant-Appellee,

and

ROBERT TRUCKING and RAY JENKINS,

Defendants.

UNPUBLISHED
September 15, 2000

No. 210150
Wayne Circuit Court
LC No. 97-700387-NO

Before: Kelly, P.J., and Holbrook, Jr., and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendant, Adia Personnel Services in this disability discrimination case.[1] We affirm.

Plaintiff testified at his deposition that he went to defendant's temporary job placement office after learning of possible job openings through a newspaper advertisement. He sat at a computer terminal and completed a form questionnaire concerning the type of work he was seeking, and also wrote his name, address and social security number on an index card. He was then handed a written examination and, after a cursory glance, asked if he could take the test orally because he is dyslexic. The Adia employee allegedly told plaintiff that he had to take the test by himself and that Adia did not give tests orally. Plaintiff then left the office without attempting to take the test. Although defendant had posted the requisite notice that plaintiff had to notify defendant in writing of his need for accommodation, no written notice was ever given. This action was filed more than two years later.

[1] The complaint also named plaintiff's former employer and immediate supervisor, but the action as to those defendant's was voluntarily dismissed.

Plaintiff's complaint did not state separate counts or separate claims against each defendant, but, rather, recited acts which allegedly violated the Michigan Persons With Disabilities Civil Rights Act (formerly the Michigan Handicappers' Civil Rights Act), MCL 37.1101 *et seq.*; MSA 3.550(101) *et seq.*, specifically section 202 of the act, which prohibits certain discriminatory practices by employers.[2] The express allegations concerning defendant were that other similarly situated job applicants were not required to take a written test, that plaintiff was discriminated against because of his disability, and that defendant refused to represent him because of his disability.

Defendant argued that plaintiff's claim was barred as a matter of law because he failed to give written notice of his need for accommodation, that plaintiff was not disabled because he admitted that he could read, albeit slowly, and that plaintiff's dyslexia interfered with his ability to perform the jobs for which he had applied and, therefore, could not establish disability discrimination. Plaintiff responded that he was disabled because his dyslexia made it more difficult and time consuming to read.

Plaintiff noted in his response to defendant's motion for summary disposition that his was not simply a failure to accommodate claim. He argued that his oral request for accommodation was sufficient because he could not readily read the statutory notice posted on defendant's wall. He supported his claim of disability by submitting a report from the neuro-education center at William Beaumont Hospital that was completed in 1979, and concluded that, at age seventeen, plaintiff had a significant learning disability.

After hearing oral argument, the trial court held that plaintiff presented sufficient evidence of a disability to survive summary disposition on that ground. The court also found that the notice posted by defendant met the requirements of section 210(19), and that the statute did not require a subjective analysis of whether the notice was appropriate for each particular applicant. The court ruled that the action should be dismissed for plaintiff's failure to provide the 182-day written notice as required by section 210(18).

This Court reviews a trial court's grant of a motion for summary disposition de novo. A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The facts must be reviewed in a light most favorable to plaintiff, as the nonmoving party. *Ritchie-Gamester v Berkley*, 461 Mich 73, 75; 597 NW2d 517 (1999).

We first address plaintiff's assertion that "[t]his is not just a failure to accommodate claim." Plaintiff raises this issue in one sentence without further discussion or citation to authority. Although this issue was raised by plaintiff in response to defendant's motion for summary disposition, it was not addressed by the circuit court and therefore it is not preserved for appeal. *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997), citing *Environair, Inc v Steelcase, Inc*, 190 Mich App 289, 295; 475 NW2d 366 (1991). Moreover, plaintiff has waived authority in support of his position. *In re Coe Trusts*, 233 Mich App 525, 536-537; 593 NW2d this issue by not including it as an issue in his

[2] MCL 37.1203; MSA 3.550(203) prohibits employment agencies from discriminating against an individual because of a disability.

statement of questions presented and not citing any 190 (1999); *Marx v Dep't of Commerce*, 220 Mich App 66, 81; 558 NW2d 460 (1996). A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim. *In re Coe*, *supra* at 537.

Notwithstanding plaintiff's failure to preserve and properly brief this issue, we afford it cursory review. To survive a motion for summary disposition filed under MCR 2.116(C)(10), the nonmoving party must present affidavits or other documentary evidence as provided in the court rule to show that a genuine issue of material fact exists. MCR 2.116(G)(4); *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). "The reviewing court should evaluate a motion for summary disposition under MCR 2.116(C)(10) by considering the substantively admissible evidence actually proffered in opposition to the motion." *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999).

Plaintiff supported his claim that he was treated differently by referring to his deposition wherein he stated that an unidentified job applicant, who was in defendant's office on the day plaintiff was there, did not take a written test. The referenced deposition page was not included in the lower court record, but has been provided to this Court by defendant as an attachment to its brief on appeal.[3] This Court is limited to the record established by the trial court. *Trail Clinic, PC v Bloch*, 114 Mich App 700, 713; 319 NW2d 638 (1982); see MCR 7.210. In any case, even if plaintiff had included the deposition page in the record, he did not know the identity of the job applicant who allegedly was not required to take a written test, and he stated no other facts to support his allegation that he was treated differently because of his disability. Consequently, there was little chance that further discovery would uncover support for his discrimination claim; there was no material issue of fact. See *State Treasurer v Sheko*, 218 Mich App 185, 190; 553 NW2d 654 (1996).

Plaintiff argues that the trial court erred in granting summary disposition in favor of defendant on his failure to accommodate claim. Despite his failure to notify defendant in writing of his need for accommodation, plaintiff argues his claim is not barred because defendant did not comply with the notice requirements of MCL 37.1210(19); MSA 3.550(210)(19). We disagree.

MCL 37.1210(18); MSA 3.550(210)(18) provides, "A person with a disability may allege a violation under this article only if the person with a disability notifies the person in writing of the need for accommodation within 182 days after the date the person with a disability knew or reasonably should have known that an accommodation was needed." MCL 37.1210(18); MSA 3.550(210)(18). Plaintiff does not dispute that he never gave written notice of his need for accommodation. He claims, however, that he was not required to give written notice of his need for accommodation because defendant failed to comply with the requirements of section 210(19), which states, "A person shall post notices or use other appropriate means to provide all employees and job applicants with notice of the

[3] At his deposition, plaintiff said that he knew the other applicant was applying for "general labor" work because plaintiff asked him how to spell "general labor" to complete on the computer application. However, the application print out submitted as an exhibit to defendant's motion for summary disposition does not include the words "general labor," and plaintiff did not submit any other documentary evidence to support his allegation.

requirements of (18)." MCL 37.1210(19); MSA 3.550(210)(19). In support of his argument, plaintiff cites MCL 37.1606(5); MSA 3.550(606)(5):

> A person with a disability may not bring a civil action under subsection (1) for a failure to accommodate under article 2 unless he or she has notified the person of the need for accommodation as required under section 210(18). This subsection does not apply if the person failed to comply with the requirements of section 210(19).

Defendant presented the affidavit of Shawn Lilley, president of Adia, wherein he stated that he posted notice of the requirements of MCL 37.1210(18); MSA 3.550(210)(18), and attached a copy of the posting to his affidavit. He stated the notice was posted conspicuously in the reception area of the office. The posting is a standard form provided by the Michigan Department of Civil Rights and contains the following statement: "A handicapper needing accommodations for employment must notify the employer in writing, within 182 days after the need is known." Plaintiff does not dispute defendant's assertion that this sign was posted in the reception area, but instead argues that this notice was not sufficient because it does not notify an applicant who cannot read.

Statutory interpretation is a question of law reviewed de novo on appeal. *Oakland Co Bd of Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998). "The primary goal of statutory interpretation is to give effect to the intent of the Legislature. The first step in that determination is to review the language of the statute itself. If the statute is unambiguous on its face, the Legislature will be presumed to have intended the meaning it expressed, and judicial construction is neither required nor permissible." *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999) (citations omitted).

The language of MCL 37.1210(19); MSA 3.550(210)(19) is clear and unambiguous. The requirements of the statute can be met either by posting notice *or* by using other appropriate means. The statute does not require both posting notice and using other appropriate means of providing notice. Because defendant complied with the requirements of MCL 37.1210(19); MSA 3.550(210)(19), it is unnecessary for this Court to determine what "other appropriate means" would be required to give a dyslexic person notice of MCL 37.1210(18); MSA 3.550(210)(18). Because plaintiff does not contest that defendant posted the notice, there is no genuine issue of material fact and summary disposition was appropriate under MCR 2.116(C)(10).

Affirmed

/s/ Michael J. Kelly
/s/ Donald E. Holbrook, Jr.
/s/ Richard Allen Griffin