

STATE OF MICHIGAN
COURT OF APPEALS

KIMBERLY SWICK, ERIC JACOBSON and
LYNN WELLETTE,

UNPUBLISHED
January 12, 2001

Plaintiffs-Appellants,

v

MICHIGAN DEPARTMENT OF
CORRECTIONS, MICHIGAN DEPARTMENT
OF CIVIL SERVICE, and STATE OF
MICHIGAN,

No. 220690
Ingham Circuit Court
LC No. 98-089410-NZ

Defendants-Appellees.

Before: Markey, P.J., and Whitbeck and J. L. Martlew*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for summary disposition. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Plaintiffs, former employees of the Department of Corrections (DOC), filed suit alleging that defendants violated the Civil Rights Act (CRA)¹ by retaliating against them for having filed other complaints. Plaintiffs claimed that defendants blacklisted them from Civil Service, denied them reemployment with the state, and harassed them in various ways, including denying them unspecified benefits.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(7) and (8). The trial court granted the motion pursuant to MCR 2.116(C)(8) and did not address defendants'

¹ MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*

* Circuit judge, sitting on the Court of Appeals by assignment.

arguments under MCR 2.116(C)(7). The trial court denied plaintiffs' oral motion to amend their complaint.

II. Discrimination Under The CRA

A. Standard Of Review

We review a trial court's decision on a motion for summary disposition de novo.²

B. Legal Standard

A trial court may grant a motion for summary disposition when "[t]he opposing party has failed to state a claim on which relief can be granted."³ A motion for summary disposition pursuant to MCR 2.116(C)(8) tests whether a claim is sufficient as a matter of law.⁴ In other words, the court deciding the motion "determines whether the plaintiff's pleadings allege a prima facie case."⁵ Pursuant to MCR 2.116(G)(5), a court may only consider the pleadings, "accepting all well pleaded facts as true."⁶ In its analysis the Court may make reasonable inferences from the allegations in the pleadings.⁷

C. Establishment Of A Prima Facie Case Of Retaliation

To establish a prima facie case of retaliation under the CRA, a plaintiff must show: (1) that he engaged in a protected activity; (2) that this fact was known by the defendant; (3) that the defendant took employment action that was adverse to the plaintiff; and (4) that a causal connection existed between the protected activity and the adverse employment action.⁸ To be adverse, an employment action must consist of "more than 'mere inconvenience or an alteration of job responsibilities.'"⁹ There must be an objective basis for demonstrating that the change is adverse.¹⁰

The complaint alleged that plaintiffs were not considered for other state positions in retaliation for their participation in litigation. However, the complaint did not allege facts

² *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

³ MCR 2.116(C)(8).

⁴ *Stott v Wayne County*, 224 Mich App 422, 426; 569 NW2d 633 (1997), aff'd on other grounds 459 Mich 992 (1999).

⁵ *Garvelink v Detroit News*, 206 Mich App 604, 608; 522 NW2d 883 (1994).

⁶ *New Hampshire Ins Group v Labombard*, 155 Mich App 369, 372; 399 NW2d 527 (1986).

⁷ *Harrison*, *supra* at 449-450.

⁸ *DeFlaviis v Lord & Taylor, Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997).

⁹ *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 364; 597 NW2d 250 (1999), quoting *Crady v Liberty Nat'l Bank & Trust Co*, 993 F2d 132, 136 (CA 7, 1993).

¹⁰ *Wilcoxon*, *supra*, at 364.

demonstrating that plaintiffs were eligible for reemployment or consideration for Civil Service positions, or were in fact on the Civil Service list. The complaint did not allege specific jobs for which plaintiffs were eligible but not considered. The complaint alleged no facts establishing a causal link between plaintiffs' protected activities and adverse employment action, if any, by defendants. Accordingly, plaintiffs did not make out a prima facie case of retaliation in violation of the CRA and summary disposition was proper.¹¹

Further, we hold that the trial court did not abuse its discretion by denying plaintiffs' motion to amend their complaint.¹² Plaintiffs have not demonstrated that they could allege facts that would state a prima facie case of retaliation under the CRA. Under these circumstances, amendment would be futile.¹³

Affirmed.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Jeffrey L. Martlew

¹¹ *DeFlaviis, supra*.

¹² *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997); MCR 2.116(I)(5).

¹³ *Hakari v Ski Brule, Inc*, 230 Mich App 352, 355; 584 NW2d 345 (1998).