STATE OF MICHIGAN

COURT OF APPEALS

CANDY L. DETROYER,

Plaintiff-Appellant,

V

OAKLAND COMMUNITY COLLEGE,

Defendant-Appellee.

UNPUBLISHED
August 24, 2001

No. 220893
Oakland Circuit Court
LC No. 98-004264-NO

Before: Bandstra, C.J., and Whitbeck and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition for defendant ("the college") pursuant to MCR 2.116(C)(10). Her lawsuit alleged that the college failed to properly accommodate her disabilities, contrary to the Persons with Disabilities Civil Rights Act ("PWDCRA"), MCL 37.1101 *et seq.* We affirm.

Plaintiff contended that the college failed to accommodate her disabilities: dyslexia and attention deficit disorder ("ADD"). Specifically, plaintiff alleged that the college failed to notify her instructors that she required reasonable accommodations, such as alternate testing arrangements and spelling aids. She further alleged that one particular instructor improperly discouraged her from entering the college's mental health program, refused to allow her to take a combination of classes that a non-disabled student was allowed to take, and stated that plaintiff could not use her disabilities as an excuse. Following a verbal altercation with the instructor, plaintiff was suspended from the college's mental health program.

The trial court noted that the college made accommodations for plaintiff by allowing her to correct spelling errors, and that plaintiff was denied only one opportunity to take a particular examination outside the classroom because that examination was given by a substitute teacher who did not know of her disabilities. The trial court further noted that plaintiff was suspended from the college's mental health program for verbally assaulting her instructor, not because of her disabilities. Accordingly, the trial court concluded that the college reasonably accommodated plaintiff's disabilities, and was, therefore, entitled to summary disposition.

Plaintiff contends that the trial court erred by granting defendant's motion for summary disposition. We review de novo the grant or denial of a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When reviewing a ruling on a

motion for summary disposition pursuant to MCR 2.116(C)(10), we must consider the entire lower court record, including pleadings, affidavits, depositions, admissions and other documentary evidence submitted, in the light most favorable to the nonmoving party. *Id.* at 119-121. Summary disposition is appropriate if the evidence shows that there is no genuine issue with respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Id.* at 120.

Plaintiff argues that the evidence established, at a minimum, a question of fact concerning whether the college violated §§ 102 and 402 of the PWDCRA by failing to provide plaintiff with the full benefit of her enrollment in the college, failing to accommodate her disabilities, and by suspending her enrollment in the college's mental health programs because of her dyslexia and ADD. Subsection 102(1) provides that "[t]he opportunity to obtain . . . full and equal utilization of . . . educational facilities without discrimination because of a disability is guaranteed by this act and is a civil right." Subsection 402 provides a list of prohibited practices.

It should be noted that it was plaintiff's burden to prove that the college failed to accommodate her disabilities and that, consequently, plaintiff was not afforded an equal opportunity to secure her education. MCL 37.1102(2); *Lindberg v Livonia Public Schools*, 219 Mich App 364, 367; 556 NW2d 509 (1996). Only if plaintiff successfully demonstrated that defendant failed to accommodate her would the burden have shifted to defendant to prove that it was unable to accommodate plaintiff without undue hardship. See *Rourk v Oakwood Hospital Corp*, 458 Mich 25, 28; 580 NW2d 397 (1998).

Here, the evidence shows that the college, through its Programs for Academic Support Services office (the "PASS" office) agreed to accommodate plaintiff's disabilities. For example, plaintiff was allowed access to the college's resources, such as a computer, to check her spelling. Plaintiff was also allowed to take tests in the PASS office. Although plaintiff's request to take one particular test in the PASS office was denied, this was because a substitute teacher had not received notice of plaintiff's disabilities. We do not believe that such a miscommunication can form the basis of a PWDCRA violation.

Plaintiff noted that one instructor refused to ignore her spelling mistakes for grading purposes; however the evidence suggests that this instructor was willing to allow plaintiff the opportunity to correct her mistakes and regain any missed points. In addition, there was evidence that a PASS office employee was willing to assist plaintiff in making the corrections. Regardless, we do not believe that the PWDCRA mandates that an educational institution lower its grading standards. Indeed, such a requirement would not be a reasonable accommodation. In fact, we do not believe that there is a material factual dispute regarding the reasonableness of the college's efforts to accommodate plaintiff. Therefore, plaintiff failed to meet her burden of proving that the college failed to reasonably accommodate her disabilities, as required by MCL 37.1102(2). Consequently, we conclude that the trial court did not err by granting defendant's motion for summary disposition.

Next, plaintiff contends that the trial court judge should have been disqualified pursuant to MCR 2.003(B)(2) because he had personal knowledge of the facts of this case. In order to preserve for appellate review a judge's qualifications to hear a case, the challenging party must move for disqualification before the challenged judge and, if the motion is denied, seek review

by the chief judge. MCR 2.003(C)(3)(a); *Welch v Dist Court*, 215 Mich App 253, 258; 545 NW2d 15 (1996). Because plaintiff failed to challenge Judge Mester's qualifications before the trial court, she failed to preserve this issue and we decline to address it on appeal. We would note, however, that we find no merit in plaintiff's argument that the trial court relied on facts outside the evidence in this case.

Affirmed.

/s/ Richard A. Bandstra
/s/ William C. Whitbeck
/s/ Donald S. Owens