

STATE OF MICHIGAN  
COURT OF APPEALS

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RONALD SMITH,

Plaintiff-Appellant,

v

NEW CENTER STAMPING COMPANY,

Defendant,

and

CENTURION STAFFING, INC.,

Defendant-Appellee.

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UNPUBLISHED

April 23, 2002

No. 224285

Wayne Circuit Court

LC No. 98-829824-NO

Before: Talbot, P.J., and Smolenski and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court order granting summary disposition in favor of defendant Centurion Staffing, Inc. We affirm.

Defendant Centurion is a staffing company engaged in the business of providing temporary employees to fill staffing needs at other companies. Defendant New Center Stamping Company, one of Centurion's clients, makes metal stampings for the automotive industry. While employed by Centurion, plaintiff performed work at New Center's facility. Below, plaintiff alleged that Centurion illegally discriminated against him on the basis of a disability, when Centurion terminated his employment at New Center. The circuit court granted summary disposition to Centurion, ruling that Centurion had never terminated plaintiff's employment. Plaintiff challenges that ruling on appeal.

We review a trial court's grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When considering a motion for summary disposition under MCR 2.116(C)(10), this Court considers the affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties, in the light most favorable to the nonmoving party. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if there is no genuine issue of material fact, entitling the moving party to judgment as a matter of law. *Id.*

The terms of an employment application constitute part of the contract of employment between an employee and employer. *Timko v Oakwood Custom Coating, Inc.*, 244 Mich App 234, 244; 625 NW2d 101 (2001). Further, employment contracts are subject to the same rules of construction as other contracts. *Bruno v Detroit Institute of Technology*, 36 Mich App 61, 64; 193 NW2d 322 (1971). The main goal in the interpretation of contracts is to honor the intent of the parties. *Mikonczyk v Detroit Newspapers, Inc.*, 238 Mich App 347, 349-350; 605 NW2d 360 (1999). Courts must look for the intent of the parties in the words used in the contract itself. *UAW-GM Human Resource Center v KSL Recreation Corp.*, 228 Mich App 486, 491; 579 NW2d 411 (1998). If the language of a contract is subject to two reasonable interpretations, factual development is necessary to determine the intent of the parties and summary disposition is inappropriate. *Meagher v Wayne State University*, 222 Mich App 700, 722; 565 NW2d 401 (1997). When contractual language is clear, its construction is a question of law for the courts. *Id.* at 721. Courts must not create ambiguity where one does not exist. *UAW-GM, supra* at 491.

Below, plaintiff argued that he never understood that he was an employee of Centurion, rather than New Center. Further, plaintiff argued that when he was told to leave the New Center assignment, he believed that he was being terminated from employment. Plaintiff claimed that he did not understand that he worked for a temporary staffing company, and that he did not know that he could receive an assignment from Centurion, other than his initial placement at New Center. However, the lower court record demonstrates that plaintiff completed an employment application with Centurion. That application states, in relevant part:

I understand that I am not required to wait at this office for a work assignment, that I may feel free to report here if I so desire, that pay starts when I report to Centurion Staffing's customer ready for work; that I am not required to return to this office at the end of a work assignment, that I may mail in my time slip when my work assignment is completed for the week. If I do not contact the temporary services office after completing an assignment, the temporary services [sic] may assume that I am no longer ready, willing, or able or otherwise available for work.

“The law presumes that the parties understand the import of a written contract and had the intention manifested by its terms.” *Zurcher v Herveat*, 238 Mich App 267, 299; 605 NW2d 329 (1999), quoting *Zurich Ins Co v CCR & Co (On Rehearing)*, 226 Mich App 599, 604; 576 NW2d 392 (1997). When contract language is clear, unambiguous, and has a definite meaning, courts do not have the ability to write a different contract for the parties, or to consider extrinsic testimony to determine the parties' intent. *UAW-GM, supra* at 491. Given the clear and unambiguous language of plaintiff's employment application, the circuit court properly presumed that plaintiff understood (1) that he worked for Centurion and (2) that he was a temporary employee who could be assigned to a new worksite by contacting Centurion's office. Further, the circuit court could not consider extrinsic testimony that defendant did not know he could receive other assignments from Centurion. *Id.* Therefore, the circuit court appropriately

ruled that plaintiff had been dismissed from his temporary placement with New Center, but had not been terminated by Centurion.<sup>1</sup>

Finally, plaintiff argues that the circuit court demonstrated prejudice in its rulings and that the circuit court judge should have been disqualified from participation in this case. We disagree. We review the factual findings underlying a ruling on a motion for disqualification for an abuse of discretion, while we review application of the facts to the law de novo. *Cain v Dep't of Corrections*, 451 Mich 470, 503 n 38; 548 NW2d 210 (1996). We conclude that the circuit court did not err when it denied plaintiff's motion for judicial disqualification.

Grounds exist for the disqualification of a trial judge when he cannot impartially hear a case, including situations where the judge is personally biased or prejudiced for or against a party or attorney. MCR 2.003(B)(1); *In re Forfeiture of \$1,159,420*, 194 Mich App 134, 151; 486 NW2d 326 (1992). Generally, a showing of actual personal prejudice on the part of the judge is required to disqualify a judge under the court rule. *Cain, supra* at 495. The party asserting judicial partiality bears a heavy burden of overcoming the presumption of impartiality. *Id.* at 497.

Plaintiff asserts that the trial judge was prejudiced against him because the judge had a predisposition against persons addicted to drugs. However, plaintiff provides no evidence whatsoever to support his argument. Because a showing of actual bias or prejudice on the part of the judge is required to support disqualification, and because plaintiff provided no such evidence, plaintiff has not overcome the presumption of impartiality. *Id.* Furthermore, the fact that plaintiff was using drugs was a central issue to this case, and the circuit court was required to make rulings based on that fact.

Affirmed.

/s/ Michael J. Talbot  
/s/ Michael R. Smolenski  
/s/ Kurtis T. Wilder

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<sup>1</sup> Given our resolution of this issue, we need not address plaintiff's other arguments regarding application of the Persons With Disabilities Civil Rights ACT (PWDCRA), MCL 37.1103 *et seq.*, to the present case.