STATE OF MICHIGAN

COURT OF APPEALS

SUSAN THOMAS UNDERWOOD,

Plaintiff-Appellant,

v

DAIMLER CHRYSLER CORPORATION,

Defendant-Appellee.

UNPUBLISHED
December 13, 2002

No. 240208
Macomb Circuit Court
LC No. 01-005253-CZ

Before: Neff, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of summary disposition pursuant to MCR 2.116(C)(7) in favor of defendant. We affirm.

In October 1999, defendant hired plaintiff to work in one of its facilities. On or about December 1, 1999, plaintiff, who has epilepsy, suffered a seizure while at work. Days later, plaintiff's doctor provided her a release to return to work and defendant thereafter reassigned her temporarily to general office work. After working a couple of days in that position, she was laid off indefinitely because of lack of work. Sometime in the fall or winter of 2000, defendant rehired plaintiff, but in early January 2001, she and apparently other employees were laid off.

Meanwhile, on January 24, 2000, plaintiff filed a complaint with the United States Equal Employment Opportunity Commission (EEOC) alleging that she was "denied work and wrongfully laid off because of [her] disability and in violation of Title I of the Americans with Disabilities Act of 1990." With regard to when the alleged discrimination took place, plaintiff listed December 1, 1999, as the earliest date and December 9, 1999, as the latest date. Less than two months after plaintiff filed the EEOC claim, on March 20, 2000, the EEOC dismissed plaintiff's claim, noting that based on its investigation, it was unable to conclude that the information obtained established violations of the statutes. Over a year and a half later, on December 5, 2001, plaintiff filed the instant complaint. According to plaintiff, she was wrongfully discharged on the basis of her epilepsy. Plaintiff alleged in her complaint that defendant violated the Michigan Civil Rights Act, MCL 37.1102(1); MCL 37.1202(1), by discriminating against her because of an apparent or perceived disability, although plaintiff was at all times able to perform her job duties, with or without accommodation. Plaintiff also claimed that defendant's conduct amounted to intentional infliction of emotional distress.

On January 22, 2002, defendant moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that in her employment application plaintiff signed a waiver agreeing to file any lawsuit arising from her employment with defendant "no more than six (6) months after the date of the employment action that is the subject of the claim or lawsuit." After oral argument, the trial court granted the motion and dismissed the complaint with prejudice, ruling that the waiver that plaintiff had signed was not unreasonably vague and that *Timko v Oakwood Custom Coating, Inc*, 244 Mich App 234; 625 NW2d 101 (2001), is applicable. This appeal ensued.

On appeal, plaintiff presents the following question: "Is the statute of limitations waiver effective when the plaintiff files an EEOC complaint within the agreed upon time period." In essence, plaintiff argues that the trial court erred in granting summary disposition because she complied with the limitation period by filing her EEOC claim within the six-month limitation period, that the six-month limitation period as applied to this case is vague and ambiguous, and that the six-month limitation period as applied in this case is unreasonable.

We review de novo a trial court's grant of summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In reviewing a decision granting summary disposition pursuant to MCR 2.116(C)(7), this Court reviews the affidavits, pleadings, and other documentary evidence that the parties submitted and, where appropriate, construes the pleadings in favor of the nonmoving party. *Timko, supra* at 238; *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000). A motion brought under that subsection should be granted only if no factual development could provide a basis for recovery. *Cole, supra* at 7.

Defendant's application for employment, which plaintiff completed, signed, and dated September 30, 1999, contains the following pertinent paragraph:

> 8. In consideration of Chrysler's review of my application, I agree that any claim or lawsuit arising out of my employment with, or my application for employment with, Chrysler Corporation or any of its subsidiaries must be filed no more than six (6) months after the date of the employment action that is the subject of the claim or lawsuit. While I understand that the statute of limitations for claims arising out of an employment action may be longer than six (6) months, I agree to be bound by the six (6) month period of limitations set forth herein, and I **WAIVE ANY STATUTE OF LIMITATIONS TO THE CONTRARY**. Should a court determine in some future lawsuit that this provision allows an unreasonably short period of time to commence a lawsuit, the court shall enforce this provision as far as possible and shall declare the lawsuit barred unless it was brought within the minimum reasonable time within which the suit should have been commenced. [Emphasis in original.]

Contrary to plaintiff's argument on appeal, we do not find this language vague or ambiguous. The paragraph refers to *any claim or lawsuit*, not just the first claim or lawsuit filed. Further, read as a whole, the paragraph clearly indicates that the waiver applies with respect to the filing of a lawsuit. Plaintiff's assertion that the filing of her EEOC claim complied with the limitation period and thus her lawsuit did not have to comply with it is without merit.

To the extent that plaintiff argues that the six-month limitations period contained in the employment agreement is unreasonable as applied to this case, we disagree. Parties may contract for a period of limitation shorter than the applicable statute of limitation, provided that the abbreviated period remains reasonable. *Herweyer v Clark Hwy Services, Inc*, 455 Mich 14, 20; 564 NW2d 857 (1997). A period of limitation is reasonable if (1) the claimant has sufficient opportunity to investigate and file an action, (2) the time is not so short as to work a practical abrogation of the right of action, and (3) the action is not barred before the loss or damage can be ascertained. *Id.*, citing *Camelot Excavating Co, Inc v St Paul Fire & Marine Ins Co*, 410 Mich 118, 127; 301 NW2d 275 (1981); see also *Timko, supra* at 239-240. Here, plaintiff has presented no persuasive argument that the six-month limitation period is unreasonable under the facts of this case. See *Timko, supra* at 242 ("no inherent unreasonableness accompanies a six-month period of limitation" in an employment context). The trial court properly granted summary disposition to defendant.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell

I concur in result only.

/s/ Janet T. Neff