

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD J. LITOW,

Plaintiff-Appellee,

v

TRINITY HEALTH-MICHIGAN, f/k/a MERCY
HEALTH SERVICES, d/b/a ST. JOSEPH
MERCY HOSPITAL,

Defendant-Appellant.

UNPUBLISHED

January 27, 2004

No. 242922

Washtenaw Circuit Court

LC No. 00-001065-NZ

Before: Sawyer, P.J., and Griffin and Smolenski, JJ.

PER CURIAM.

Defendant appeals, by leave granted, from the trial court's order denying its motion for summary disposition on plaintiff's claim for unlawful termination. We reverse and remand.

Plaintiff was employed by defendant as a phlebotomist. He was placed on unpaid leave after a coworker accused plaintiff of having raped her in the workplace. Although plaintiff was apparently not criminally charged in the incident, his accuser did file a civil suit against both plaintiff and defendant.

Furthermore, it is not clear that defendant ever formally took action after investigating the allegation, leaving plaintiff on an indefinite suspension without pay. At some point, however, plaintiff's status appears to have changed to being on unpaid medical leave. Ann Holsey, defendant's manager of employee relations, testified in her deposition that plaintiff was no longer suspended without pay, but was shown as being on a medical leave of absence. Plaintiff had previously requested a medical leave, although Holsey testified that she did not know whether plaintiff had ever been informed that his request had been granted.

Defendant moved for summary disposition on plaintiff's various claims. The trial court granted summary disposition on all claims except for the "unlawful termination" claim, upon which the trial court concluded that there was a genuine issue of material fact. We review a decision regarding summary disposition de novo. *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 357; 597 NW2d 250 (1999).

Plaintiff must establish not only that he was discharged from his employment with defendant, but also that that discharge was wrongful. With respect to the first question, whether

plaintiff was actually discharged, we agree with defendant that we need not reach that issue because, even assuming that plaintiff was constructively discharged, there is no genuine issue of material fact that he was an at-will employee and, therefore, could be discharged at any time for any reason, or for no reason.

The presumption in Michigan is that an employment for an indefinite term is for employment at will absent distinguishing features to the contrary. *Dolan v Continental Airlines/Continental Express*, 454 Mich 373, 383; 563 NW2d 23 (1997). Evidence to the contrary, including company policies and procedures, may be offered to show an intent to create job security with termination for just cause only. *Id.* at 383-384. While such evidence may be found in an employee manual, *id.* at 384-385, the mere dissemination of a manual that implies a just-cause discharge policy is insufficient as a matter of law to establish that employment is no longer at will unless the surrounding circumstances clearly and unambiguously indicate that the parties intended to create a just-cause employment relationship by doing so. *Id.* at 386. Furthermore, the mere establishment of a disciplinary policy does not preclude an employer from retaining the right to discharge an employee at will. *Id.* at 386-388.

This matter is easily resolved by reading the second sentence of plaintiff's argument in his brief on appeal: "While it is clearly admitted by everyone that the employee handbook defines all of the hospital employees as at-will employees, the handbook also articulates a standard for investigations regarding alleged sexual harassment." By plaintiff's own admission, his status was that of at-will employee, a status that was reserved by defendant in the handbook despite having created a disciplinary policy. As discussed above, an employer can establish a general disciplinary policy, yet retain the right to discharge an employee at will without following the policy. See *id.* Accepting for purposes of this appeal plaintiff's argument that at some point his indefinite suspension without pay constituted a constructive discharge, then it is merely a case of defendant exercising the right to discharge an at-will employee without completing the disciplinary process outlined in the employee handbook.

In short, there is no genuine issue of material fact regarding plaintiff's status as an at-will employee and, therefore, plaintiff cannot establish that his discharge was actionable. The trial court erred in denying defendant summary disposition.

Reversed and remanded to the trial court with instructions to enter an order of summary disposition in favor of defendant on plaintiff's "unlawful termination" claim. We do not retain jurisdiction. Defendant may tax costs.

/s/ David H. Sawyer
/s/ Richard Allen Griffin
/s/ Michael R. Smolenski