STATE OF MICHIGAN

COURT OF APPEALS

RITA SCHMIDT,

Plaintiff-Appellant,

V

GREEKTOWN CASINO,

Defendant-Appellee.

UNPUBLISHED
April 13, 2004

No. 243789
Wayne Circuit Court
LC No. 01-109999-CK

Before: Wilder, P.J., and Hoekstra and Kelly, JJ.

PER CURIAM.

In this employment case arising out of plaintiff's claims of wrongful termination and defamation, plaintiff appeals as of right the order granting defendant summary disposition under MCR 2.116(C)(10). We affirm.

We first address plaintiff's argument that the trial court erred in granting summary disposition to defendant because conflicting provisions in defendant's handbook created ambiguity regarding her employment status; thus, the question whether she had a just-cause contract was a proper determination for a jury. We disagree.

We review de novo a trial court's ruling on a motion for summary disposition. *UAW-GM Human Resources Center v KSL Recreation Corp*, 228 Mich App 486, 490; 579 NW2d 411 (1998). Under MCR 2.116(C)(10), a party may move for dismissal of all or part of a claim based on the assertion that there is no genuine issue with respect to any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. *Universal Underwriters Group v Allstate Ins Co*, 246 Mich App 713, 720; 635 NW2d 52 (2001). When reviewing the motion, the court must consider the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party. *Id.*

"At will" is the presumed employment relationship in Michigan. *Lynas v Maxwell Farms*, 279 Mich 684, 687; 273 NW2d 315 (1937). However, a just-cause employment relationship can be found "as a result of an employee's legitimate expectations grounded in an employer's policy statements." *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 598; 292 NW2d 880 (1980). The proper inquiry is whether the employer, through its employment manual or otherwise, made representations or promises that termination would be only for just cause. *Biggs v Hilton Hotel Corp*, 194 Mich App 239, 241; 486 NW2d 61 (1992).

Plaintiff relies on this Court's decision in *Dalton v Herbruck Egg Sales Corp*, 164 Mich App 543, 547; 417 NW2d 496 (1987), to support her contention that when an employee handbook contains language providing for both just-cause and at-will termination, the question whether a just-cause contract has been formed is a question of fact for a jury. Further, she argues that under *Toussaint*, *supra* at 620-621, it is the province of the jury to determine whether the employer's policies created a legitimate expectation of just-cause terminations.

However, the controlling case in these circumstances is *Lytle v Malady (On Rehearing)*, 458 Mich 153; 579 NW2d 906 (1998). In *Lytle*, *supra* at 162, the employee manual included language suggesting both at-will and just-cause employment, but the manual also included language stating that it was not intended to create any contractual obligations. The Court held that the plaintiff could not assert a legitimate expectation of just-cause employment based on the employer's policy to terminate only for cause where the handbook specifically disclaimed any intent to create contractual or binding obligations to employees. *Id.* at 157, 170-171. Before reaching this holding, however, the Court was careful to distinguish the *Lytle* case from *Toussaint*, in which, as plaintiff points out, the Court held that a jury could find a legitimate expectation of just-cause employment based on policy statements in a handbook. *Id.* at 167 n 13. The cases were distinguishable, the Court explained, because in *Toussaint* the plaintiff relied on evidence other than just a single, controverted policy statement. *Id.*

Moreover, although not specifically overruling *Dalton*, the *Lytle* Court expressly rejected the suggestion that it create a new rule to apply whenever a handbook contained conflicting policies and found instead that a legitimate-expectation claim does not automatically arise whenever a handbook contains mixed messages. *Id.* at 170 n 16. "[T]he plaintiff must still provide sufficient evidence to raise a triable question that the policy arguably instilled a legitimate expectation that superseded the express contractual disclaimer." *Id.*

Here, defendant's employee handbook contains an express contractual disclaimer, which even clarifies that "[o]nly the Chief Operating Officer of the Company has the authority to enter into contracts with team members." Further, plaintiff confirmed that she read, understood, and signed an acknowledgment setting forth a similar disclaimer. And she stated that she had never entered into a contract with the chief operating officer. Thus, under our Supreme Court's holding in *Lytle*, the trial court properly granted summary disposition to defendant because plaintiff could not have had a legitimate expectation of just-cause employment based on a provision contained in defendant's handbook, when defendant's handbook also contained language specifically disclaiming any contractual obligations to employees and plaintiff signed a separate acknowledgment of the disclaimer.

Plaintiff also argued that once a court determines that a just-cause contract exists, it is a jury question whether the employer did in fact have just cause to terminate the employee. Although we agree with this contention, see *Toussaint*, *supra* at 620-621, 624, we need not address this issue any further in light of our holding. Additionally, we also need not address plaintiff's third issue on appeal because not only are plaintiff's contentions that defendant had a progressive disciplinary process inaccurate, but she has effectively abandoned this issue on appeal by failing to provide any support that her denial of a disciplinary review hearing has any bearing on the validity of her termination. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001).

Plaintiff's last issue on appeal is that the trial court erred in dismissing her defamation claim because a statement made to the Michigan Gaming Control Board was untrue, and defendant would have known this if it had performed a proper investigation; thus, it acted in reckless disregard for the truth. We disagree.

Plaintiff testified that after her termination, she called the Michigan Gaming Control Board to find out if she still had a license. She was told that she still had a license, but she was also told that Greektown had reported to the board that she had been terminated for "failure to protect company assets." Plaintiff argues that her reputation in the gaming industry has been harmed because of the report, and because the statement is now a permanent part of her employment record, it essentially forecloses her future employment within the gaming industry.

To prove defamation, the following elements must be proven: (a) a false and defamatory statement concerning plaintiff; (b) an unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of the publisher; and (d) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by the publication (defamation *per quod*). Restatement of Torts 2d, § 558; *Ledl v Quik Pik Food Stores, Inc*, 133 Mich App 583, 589; 349 NW2d 529 (1984). Further, with respect to the first element, truth is an absolute defense to a defamation claim. *Porter v City of Royal Oak*, 214 Mich App 478, 486; 542 NW2d 905 (1995).

There appears to be no dispute that the cheating took place or that plaintiff failed to detect three out the four incidents. There is also no dispute that as a result of plaintiff's failure to detect the cheating, she ended up paying out over $20,000 to the cheater. Further, plaintiff admitted that it was her responsibility to pay strict attention to the players at her end of the table, and she confirmed that catching cheaters was an important part of her job responsibilities. She agreed that catching cheaters would be considered "protecting company assets" and that allowing an individual to cheat is a serious offense. She stated that one of the most prevalent ways to cheat is past posting, and she understood that the reason she was terminated was because a person was past posting on her game.

By plaintiff's own admission, it is true that the reason she was fired was because she failed to detect three incidents of cheating, and she confirmed that this failure could be described as a failure to protect company assets. Therefore, the trial court properly dismissed plaintiff's claim based on the absolute defense of truth.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly