

STATE OF MICHIGAN
COURT OF APPEALS

BRUCE KING,

Plaintiff-Cross-Appellee,

v

INGHAM REGIONAL MEDICAL CENTER,
a/k/a MICHIGAN AFFILIATED HEALTHCARE
SYSTEM, INC.,

Defendant-Cross-Appellant,

and

MCLAREN HEALTH CARE CORPORATION,

Defendant.

UNPUBLISHED

October 7, 2004

No. 248146

Eaton Circuit Court

LC No. 99-001189-CZ

Before: Griffin, P.J., and Saad and O'Connell, JJ.

MEMORANDUM.

Defendant cross-appeals by right the judgment for plaintiff.¹ We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff originally brought this action under the Whistleblower's Protection Act, MCL 15.361, *et seq.*, asserting that defendant took adverse employment action against him based on his complaints about certain acts that violated the Public Health Code, MCL 333.1101, *et seq.* After the trial court granted defendant's motion for summary disposition under MCR 2.116(C)(10), plaintiff moved to amend his complaint to add a public policy claim. The trial court granted the motion to amend, and the jury returned a verdict in favor of plaintiff.

Defendant argues that the trial court erred in granting the motion to amend because the amendment was futile. We disagree. MCR 2.116(I)(5) provides that if a motion for summary

¹ Plaintiff's appeal was dismissed based on his failure to timely file a brief on appeal, but the Court's order stated that the cross-appeal would continue.

disposition is “based on subrule (C)(8), (9), or (10), the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified.” “Leave to amend should be denied only for particularized reasons, such as undue delay, bad faith or dilatory motive on the movant’s part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party, or where amendment would be futile.” *Noyd v Claxton, Morgan, Flockhart & VanLiere*, 186 Mich App 333, 340; 463 NW2d 268 (1990). We review for abuse of discretion a trial court’s grant or denial of a motion to amend. *Id.*

A motion to amend must be decided on the evidence before the court at the time of the motion. Defendant misplaces its reliance on a subsequent amendment to the Public Health Code and opinions this Court issued after the motion was granted. While it is questionable whether plaintiff’s public policy claim remains viable, here we are only interested in whether the trial court abused its discretion under the circumstances facing it at the motion hearing. Given the state of the law and the material presented to the trial court at the time of the motion to amend, the court did not abuse its discretion in granting the motion.

Affirmed.

/s/ Richard Allen Griffin
/s/ Henry William Saad
/s/ Peter D. O’Connell