STATE OF MICHIGAN

COURT OF APPEALS

JOYCE A. MAKSIMUK,

Plaintiff-Appellant,

v

ED RINKE CHEVROLET CO., JAMES PENROD and EDGAR RINKE, JR.,

Defendants-Appellees.

UNPUBLISHED
May 24, 2005

No. 251895
Macomb Circuit Court
LC No. 01-005541-NZ

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order of dismissal based on a jury verdict of no cause of action. On appeal, plaintiff argues that the trial court improperly granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) on Count III of plaintiff's four-count complaint. This case is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

On appeal, plaintiff claims that summary disposition was improperly granted on her claim filed under Michigan's Bullard-Plawecki employee right to know act (BPRKA), MCL 423.501, because there was factual support to show that she was discharged in violation of the BPRKA. We disagree.

We review de novo a trial court's ruling on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Review is limited to the evidence presented to the trial court at the time the motion was decided. *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003). When deciding a motion for summary disposition under MCR 2.116(C)(10), a court must consider the entire record in the light most favorable to the nonmoving party, including affidavits, pleadings, depositions, admissions and other evidence submitted by the parties. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Summary disposition is proper under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id*. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

The BPRKA provides, in pertinent part, that "[a]n employer . . . shall provide the employee with an opportunity to periodically review . . . the employee's personnel record." MCL 423.503. Also, "[i]f either the employer or employee knowingly places in the personnel record information which is false, then the employer or employee, whichever is appropriate, shall have remedy through legal action to have that information expunged." MCL 423.505. The BPRKA further provides an employee with a statutory right to "submit a written statement explaining the employee's position. The statement shall . . . be included when the information is divulged to a third party and as long as the original information is a part of the file." MCL 423.505. Finally, the BPRKA provides that "[i]f an employer violates this act, an employee may commence an action in the circuit court to compel compliance with this act." MCL 423 511. The court shall award an employee who prevails under the act actual damages plus costs. MCL 423.511(a).

Here, no evidence was provided that Ed Rinke Chevrolet Co. denied plaintiff an opportunity to review her personnel file. Furthermore, no evidence was provided that plaintiff's written statement explaining her version of events was not placed in her personnel file. And, finally, though plaintiff makes a futile argument to the contrary, no evidence was provided that Ed Rinke Chevrolet Co. knowingly placed false information in plaintiff's personnel file. Plaintiff admitted that she handed out hearts on Valentine's Day, stating that each was a "heart-on" for the recipient, and also admitted that she smoked in the bathroom against company policy. Thus, the information in question that was placed in plaintiff's file was true by her own admission. Therefore, no evidence has been presented to show that the BPRKA was violated.

Plaintiff argues that she was wrongfully fired because she exercised her statutory right under the BPRKA to include her version of events in her personnel file. In Michigan, employment contracts are generally terminable at-will, with or without cause, at any time for any or no reason. *Chandler v Dowell Schlumberger, Inc*, 214 Mich App 111, 122; 542 NW2d 310 (1995). However, there are certain situations where discharge is so contrary to public policy that it is actionable even though the employment is at-will. *Edelberg v Leco Corp*, 236 Mich App 177, 180; 599 NW2d 785 (1999). A public policy exception to the at-will termination doctrine may apply when the employee is discharged for exercising a right conferred by a well-established legislative enactment. *Id.* The discharge of an at-will employee may be actionable as contrary to public policy if: (1) the employee was engaged in protected activity stemming from a statutorily granted right, (2) the employee was discharged, and (3) a causal connection exists between the protected activity and the discharge. *Clifford v Cactus Drilling Corp*, 419 Mich 356, 368-369; 353 NW2d 469 (1984) (Williams, C.J., dissenting).

The BPRKA provides that an employee has the right to add her own version of events to her personnel file. MCL 423.505. Therefore, if it was found that plaintiff was discharged because she exercised her statutorily granted right, a public policy exception to the at-will termination doctrine might apply under the BPRKA. However, to establish causation, the plaintiff must show that her participation in a protected activity was a "significant factor" in her termination, not just that there was a causal link between the two events. See, e.g., *Barrett v Kirtland Community College*, 245 Mich App 306, 315; 628 NW2d 63 (2001). Further, a temporal relationship, standing alone, does not demonstrate a causal connection between the protected activity and the discharge—something more is required to show causation, and, in the

absence of such a showing, summary disposition is appropriate. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 384; 689 NW2d 145 (2004).

Here, the evidence presented does not suggest that plaintiff's submission of a letter to her personnel file was a "significant factor" in her termination, nor does it suggest that there was a causal connection between her submission and her termination. Therefore, we need not determine if the BPRKA creates a public policy exception to at-will termination. Plaintiff did not present any direct evidence that showed that her termination was a result of her exercising her statutory right to include her version of events in her personnel file. Indeed, the evidence presented is quite to the contrary. James Penrod specifically stated that plaintiff's letter had nothing to do with her being terminated, and that Peter Ruggirello and Edgar Rinke, Jr. were not upset about plaintiff's decision to submit the letter. Further, evidence was provided that plaintiff violated the company's sexual harassment and smoking policies and that her overall attitude was defiant to her superiors and even outwardly rude.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter