STATE OF MICHIGAN

COURT OF APPEALS

RONDA L. BLANK, Plaintiff-Appellant/Cross-Appellee,	UNPUBLISHED June 17, 2008
v	No. 275338 Lucie Circuit Court
PATHWAYS COMMUNITY MENTAL HEALTH, Defendant-Appellee/Cross-Appellant.	LC No. 05-004486-CD

Before: Davis, P.J., and Murray and Beckering, JJ.

PER CURIAM.

Plaintiff, Ronda L. Blank, appeals as of right the trial court's December 12, 2006, order granting defendant's motion for summary disposition. We affirm.

I. Facts and Procedural History

Defendant, who provided mental health services and assistance to mentally or developmentally disabled clients, hired plaintiff as a life skills technician (LST) in 1999. When plaintiff was hired she reviewed and signed a job description, which included language that "transportation" was an "essential function" of her job.

On April 4, 2002, defendant sent plaintiff a letter informing her that her Family Medical Leave Act (FMLA) time was going to exhaust on April 6, 2002 (plaintiff had taken three stints of FMLA leave since February 26, 2001), and that if she needed to be off until April 29, 2002 (a date her doctor had suggested), she would need to fill out a "request for leave without pay" form. The letter additionally stated that if plaintiff failed to return to work on April 30, 2002 (without prior approval) she might be terminated. Plaintiff filled out the appropriate documents, and her leave without pay was approved.

On April 5, 2002, plaintiff received MRI test results, suggesting that she might be suffering from multiple sclerosis (MS). Plaintiff informed defendant that she might have MS. On April 24, 2002, defendant sent plaintiff another letter stating that she was expected to return to work on April 30, 2002, and upon return should provide her supervisor, Vicki Derusha, with "a return to work slip from [her] physician" noting any applicable restrictions. Defendant noted that it would consider allowing plaintiff to work on a part-time basis as long as she could

perform all "essential functions" of her job. Plaintiff and her husband, Kevin Blank, claim that plaintiff subsequently submitted a return to work slip to one of defendant's secretaries ("either Jill or Michelle"),[1] indicating that plaintiff "would be able to return to work on a part-time basis [on April 30, 2002] but [would] not be able to drive or do heavy lifting." Plaintiff stated that Derusha responded that defendant could not accommodate her driving restriction because driving was an essential part of plaintiff's job. Barbara Elliot, defendant's human resources (HR) manager, stated that defendant never received the return to work slip.

On April 30, 2002, plaintiff requested that her unpaid leave be extended one more week so that she could see how she was going to react to the medication that her physician put her on. Defendant approved plaintiff's request. Plaintiff alleges that she prepared and submitted another request for leave without pay on May 6, 2002, requesting approximately four months off. Although the letter was dated May 6, 2002, Elliot stated that she did not receive the letter until May 10, 2006. On May 8, 2002, defendant sent plaintiff a letter stating that since she had not returned to work, nor submitted required paperwork, it was "terminating [plaintiff's] employment."

Subsequent to plaintiff's termination, she applied for and was awarded Social Security disability benefits (SSDB). Plaintiff's application for SSDB indicated that she gets easily confused, has trouble remembering things, cannot drive well, has trouble walking, and needs help with basic daily activities such as bathing, lifting objects, cooking and cleaning. On February 19, 2003, plaintiff additionally filed a charge of discrimination against defendant with the Equal Employment Opportunity Commission (EEOC). After failed attempts to negotiate a settlement, the charge was referred to the Department of Justice, who eventually issued plaintiff a right-to-sue letter on February 24, 2005.

Plaintiff filed a complaint (May 19, 2005), and amended complaint (May 23, 2005), alleging that defendant violated the Persons with Disabilities Civil Rights Act (PWDCRA), and the Americans with Disabilities Act (ADA) when it refused to accommodate her disability. After engaging in discovery, defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing, in relevant part, that there were no genuine issues of material fact regarding whether driving was an essential function of plaintiff's job, and thus, plaintiff was not a qualified individual under the ADA, and defendant was therefore entitled to dismissal of plaintiff's complaint.[2]

Ruling from the bench, the trial court specifically found that "as a matter of law the – this record supports the – the fact that aside from any exacerbation due to loss of employment, reasonable minds cannot differ that the ability to drive based on the scope of the LST duties was and is an essential function which plaintiff could not do, and leaving the defendant under no duty

---

[1] It should be noted that neither Jill nor Michelle still worked for defendant at this point in time.

[2] In plaintiff's response to defendant's motion for summary disposition, she abandoned her PWDCRA claim, admitting that it was barred by the statute of limitations.

to accommodate." The trial court granted defendant's motion in a December 12, 2006, order, "for reasons stated on the record."

II. Analysis

On appeal, plaintiff argues that the trial court erred when it granted defendant's motion for summary disposition based on its erroneous finding that driving was an essential function of her job that could not be accommodated. We review a trial court's decision to grant or deny a motion for summary disposition de novo, *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003), viewing the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in a light most favorable to the nonmoving party, *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 the documentary evidence shows that there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 164; 645 NW2d 643 (2002).

Under the ADA, a covered entity may not discharge or otherwise discriminate against a qualified individual with a disability. 42 USC § 12112(a); *Peden v Detroit*, 470 Mich 195, 202; 680 NW2d 857 (2004). A plaintiff alleging a violation of the ADA bears the burden of proving that she is *a qualified individual* with a disability who has been discriminated against. *Id*. 42 USC § 12111(8) defines *a qualified individual* with a disability as:

> [A]n individual with a disability who, with or without reasonable accommodation,[3] *can perform the essential functions of the employment position that such individual holds or desires*. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job. [(Emphasis added.)]

Here, the parties do not dispute that plaintiff has a disability (MS), nor do they dispute that plaintiff cannot drive. Therefore, if the trial court properly determined that driving was an "essential function" of plaintiff's job that could not be accommodated without undue hardship to defendant, it follows that the trial court did not err when it granted defendant's motion for summary disposition. 42 USC § 12111(8); 42 USC § 12112(b)(5)(A); See also *Collins v Blue Cross & Blue Shield of Michigan*, 228 Mich App 560, 570-571; 579 NW2d 435 (1998).

---

[3] Reasonable accommodations may include:

> job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities. [42 USC § 12111(9).]

A plaintiff bears the burden of proving that a challenged function is not an "essential function" of his or her job. *Peden, supra* at 208. As previously discussed, 42 USC § 12111(8) provides that an employer's "written description," and an "employer's judgment" shall be considered in determining whether a questioned function is considered "essential." Moreover, the EEOC regulations provide that in addition to considering the two factors discussed in 42 USC § 12111(8), a court should also consider "(iii) The amount of time spent on the job performing the function; (iv) The consequences of not requiring the incumbent to perform the function; (v) The terms of a collective bargaining agreement; (vi) The work experience of past incumbents in the job; and/or (vii) The current work experience of incumbents in similar jobs." 29 CFR 1630.2(n)(3); *Peden, supra* at 207.

Here, plaintiff's job description included language that "transportation" was an "essential function" of her job, and additionally listed "transporting [clients] to placement sites" under the title "other functions," and "ability to transport residents as needed," and a valid driver's license as "other requirements," while noting that the listed qualifications "are intended to represent the minimum skills and experience levels associated with performing the duties and responsibilities contained in this job description." Under "physical requirements" the job description additionally stated that the "physical demands described here . . . must be met by an employee to successfully perform the essential functions of this job," such as having the "ability to transport recipients from place to place such as appointments." It is therefore quite clear that defendant's judgment, as evidenced by its written job description, was that driving was an "essential function" of an LST's job.

Furthermore, the duties of past and current LST's have included driving, which is evidenced by plaintiff's co-worker's testimony, as well as plaintiff and her husband's testimony.[4] Finally, although Brenda Shoebottom, a program coordinator for defendant, agreed that driving composed approximately only ten percent of an LST's duties, an LST would not be able to perform the remaining 90 percent of their job if he or she could not pick up their clients and bring them to the requisite location. We therefore hold that the trial court did not err when it found as a matter of law that driving was an "essential function" of plaintiff's job. 42 USC § 12111(8); 29 CFR 1630.2(n)(3); *Peden, supra* at 207. See also *Kapche v City of San Antonio*, 176 F3d 840, 843 (CA 5, 1999) (holding that although many police officers hold desk jobs, given that the plaintiff's training included various aspects of driving and that plaintiffs' job description stated that he would be required to use a police vehicle, driving was an essential part of the job).

Moreover, "the mere fact that a disabled person can perform 'some' job is not relevant; rather, he must be able to perform *the* job he held" at the time the alleged violation occurred, "and any accommodation must be directed toward enabling the plaintiff to perform the duties" of

---

[4] Plaintiff and her husband acknowledged that plaintiff's job included picking up clients at their homes and transporting them to places in the community or a "drop-in location" where she and the client would perform activities together. Furthermore, when plaintiff was asked whether driving was an essential function of her job, although she replied that she felt her inability to drive could be accommodated, she did admit that driving was an essential part of an LST's job and that all LST's drove.

the job he held. *Peden, supra* at 206, n 9 (emphasis in original). It is therefore irrelevant whether plaintiff could have performed some other job as she suggests. *Id.* Furthermore, requiring other LST's to perform all of plaintiff's driving duties would be an undue hardship to defendant because it would require defendant to make sure that plaintiff always worked with another LST, thereby hindering defendant's ability to maximize the use of its staff by having them all work on their own with individual clients. We therefore hold that the trial court likewise did not err when it found that defendant did not have to accommodate plaintiff's inability to drive. See *Basith v Cook County*, 241 F 3d 919, 932 (CA 7, 2001) (holding that "an employer is not required to reallocate the essential functions of a job"). It follows that plaintiff was not a qualified individual with a disability under the ADA. 42 USC § 12111(8). Accordingly, the trial court did not err when it granted defendant's motion for summary disposition. *Peden, supra* at 202.

Given our resolution of plaintiff's appeal, we need not address the arguments raised by defendant in its cross-appeal.

Affirmed.

/s/ Alton T. Davis
/s/ Christopher M. Murray
/s/ Jane M. Beckering