STATE OF MICHIGAN

COURT OF APPEALS

HORA S. LOLOEE,

Plaintiff/Counterdefendant-Appellant,

v

NASIR ALI, MIR ASGHAR, and MID-MICHIGAN AMBULATORY PHYSICIAN, P.L.C., doing business as ADVANCE URGENT CARE & WALK IN CLINIC,

Defendants/Counterplaintiffs-Appellees.

UNPUBLISHED
April 6, 2010

No. 284881
Livingston Circuit Court
LC No. 06-022431-CZ

Before: Jansen, P.J., and Fort Hood and Gleicher, JJ.

PER CURIAM.

In this action alleging breach of contract, employment discrimination, and retaliatory discharge, plaintiff Hora S. Loloee appeals as of right circuit court orders granting defendants' motions for summary disposition and awarding defendants attorney fees and costs. We affirm in part, reverse in part, and remand for further proceedings.

I. Underlying Facts and Procedure

Plaintiff is a registered medical assistant. Defendants Nasir Ali and Mir Asghar are physicians and principals in defendant Mid-Michigan Ambulatory Physician, P.L.C. (MMAP). Plaintiff met Ali when she worked at the Delta Medical Center in Okemos, where Ali "moonlight[ed]" on weekends before he and Asghar formed MMAP. In January 2005, Ali informed plaintiff that he and Asghar intended to open an urgent care center in Brighton, and inquired whether plaintiff would consider working as the new venture's office manager. Plaintiff expressed interest and began negotiating with Ali the terms of her employment. Ali suggested that plaintiff should invest in the new business. Plaintiff subsequently wrote Ali a check for $20,000, which entitled her to a 20% share in the enterprise.

At plaintiff's deposition, she recounted Ali's proposal that she draft an employment agreement, which Ali's wife, an attorney, would review. Around May 2005, plaintiff presented Ali with contract outlining the terms of her employment. Ali forwarded the contract to Asghar, who initialed each page and signed the agreement on June 3, 2005. Ali gave back to plaintiff the

contract signed by Asghar, although neither plaintiff nor Ali signed the document. At some point after June 3, 2005, Ali and Asghar drafted a replacement employment agreement and asked plaintiff to sign it. On August 15, 2005, plaintiff emailed Ali and Asghar a revised version of the replacement agreement. Plaintiff's handwritten modifications included a higher hourly wage rate and the elimination of a paragraph permitting at will termination. Neither Ali nor Asghar signed the revised employment contract.

Around August 20, 2005, plaintiff commenced employment as the office manager and a medical assistant at Advance Urgent Care & Walk In Clinic, an assumed name of MMAP. Ali and Asghar soon became dissatisfied with plaintiff's performance in both her office manager and medical assistant capacities. On September 15, 2005, Asghar criticized plaintiff as she attempted to perform an EKG; Asghar accused plaintiff of wasting time by unnecessarily shaving the patient's chest and failing to recognize that the EKG machine contained no paper. Asghar sent Ali a "Letter of Concern" detailing these events, and on September 16, 2005, Ali forwarded the letter to plaintiff. Plaintiff responded with in an email that with regard to the EKG machine, "we [are] all guilty of not having the machine checked and ready to go." On September 20, 2005, Ali and Asghar advised plaintiff in a letter that "as of this time you are not qualified for the position of Office Manager," in light of plaintiff's "[p]oor communication skills," "[u]nsatisfactory operational skills," "[l]ack of knowledge with respect to clinic inventory," and "[i]nability to follow directions from physicians." Ali and Asghar's letter further declared that plaintiff would no longer serve as the clinic's office manager, but that they would continue plaintiff's medical assistant employment "as an employee at will with an additional three month probationary period," at a reduced rate of pay. With the letter, Ali and Asghar enclosed a certified check for $20,000.

On September 28, 2005, an attorney for plaintiff sent Ali and Asghar a letter advising them that their September 20, 2005 correspondence "evidences [thei]r intention to breach the [employment] contract." The attorney's letter urged Ali and Asghar to restore plaintiff's office manager position and her higher pay rate, and to "acknowledge in writing that [plaintiff] remains eligible for the bonus called for by paragraph 6 of the Agreement."[1] On the same day, events at the clinic deepened Ali's and Asghar's dissatisfaction with plaintiff's professional abilities. On September 28, 2005, plaintiff took an x-ray of a patient's injured elbow. A radiologist who reviewed the x-ray films concluded that the lateral views "are not true lateral views compromising interpretation." The radiologist further opined that the "AP views are also technically suboptimal." When repeated two days later, x-ray films of the patient's elbow revealed a fracture.

Plaintiff's affidavit asserts that on October 4, 2005, she met with Ali "to apprise him of concerns [she] had about comments Dr. Asghar had made." Plaintiff recounted that Asghar "had, on several occasions, made comments about the body shapes of other women who worked

[1] The June 2005 employment agreement guaranteed plaintiff a 10% annual bonus "irrespective of whether or not employee continues her employment beyond the required minimum of 3 years of employment . . . ."

for the defendants. He speculated about what they would look like naked and wondered out loud, 'How their husbands touched them or what do they touch.'" On October 6, 2005, Ali sent plaintiff a letter terminating her employment. The letter advised plaintiff that she was unqualified "for the position of Medical Assistant," based on "the following shortcomings":

> a. Unsatisfactory operational skills (i.e. setup and running of EKG; priority of patients);
>
> b. Unsatisfactory administration of x-rays; and
>
> [c]. Inability to follow directions from physicians.

On October 11, 2006, plaintiff filed in the Livingston Circuit Court a complaint setting forth claims for breach of contract, religious and national origin discrimination in violation of the Civil Rights Act (CRA), MCL 37.2101 *et seq*, gender discrimination in violation of the CRA, and retaliation in violation of the CRA. In April 2007, defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). The motion asserted that (1) that parties had never entered into a binding, enforceable employment contract, (2) plaintiff's lack of qualification for her medical assistant position precluded her discrimination claims, (3) defendants terminated plaintiff for legitimate, nondiscriminatory reasons, and (4) because plaintiff never complained of discrimination before her termination, she could not establish the elements of a retaliatory discharge claim. In June 2007, the circuit court ruled from the bench that it would grant the motion for summary disposition in part and deny the motion in part:

> On the contract, clear to me there's no meeting of the minds. No, those e-mails do not add up to an actual contract such as contemplated and argued for on behalf of the Plaintiff, and I grant the summary disposition. There's no meeting of the minds. It's clear from the deposition and otherwise.
>
> Number two, as far as the discrimination clause, I'm going to grant summary disposition on that also. In fact, and it's clear from the evidence, that it was a legitimate non-discriminatory reason set forth for the discharge and there's no adequate answer to that such as would show . . . that this was a pretext. I grant summary disposition on that.
>
> I'm not going to grant it on the retaliation at this time. I do note that she did talk about complaining and being fired. The fact that she did hear these things, according to her affidavit, herself and other women employees, she says, complained to her seems to me that this could in fact be the kind of retaliatory firing that is contemplated. I will in fact deny the motion for summary disposition on that count.

In September 2007, defendants again sought summary disposition of plaintiff's retaliation claim under MCR 2.116(C)(10), arguing that the evidence undisputedly established that defendants had fired plaintiff for legitimate, nondiscriminatory reasons. In October 2007, the circuit court granted defendants' motion, opining from the bench that plaintiff failed to demonstrate that defendants' proffered explanation for her discharge amounted to a pretext. The circuit court added, "Not only am I going to grant summary disposition, I will tell you that I will

seriously consider attorneys fees in this matter. I think that this case warrants that." Defendants thereafter moved for attorney fees and costs pursuant to MCL 600.2591. At the conclusion of a December 2007 hearing, the circuit court ruled that "this was a frivolous lawsuit from the beginning." The parties then stipulated that the amount of defendants' attorney fees and costs totaled $24,213.42. Plaintiff specifically reserved her right to appeal defendants' entitlement to any attorney fees or costs.

II. Issues Presented and Analysis

We review de novo a circuit court's summary disposition ruling. *Robertson v Blue Water Oil Co*, 268 Mich App 588, 592; 708 NW2d 749 (2005).[2] "The existence and interpretation of a contract are questions of law [that we also] review[] de novo." *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006). A motion brought pursuant to MCR 2.116(C)(10) "tests the factual support of a plaintiff's claim." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). "Summary disposition is appropriate 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." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh*, 263 Mich App at 621. "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 might differ." *West*, 469 Mich at 183.

A. Breach of Contract

Plaintiff first challenges the circuit court's ruling that because there the parties reached no "meeting of the minds" with respect to the essential terms of plaintiff's employment, the parties never entered a binding employment agreement. Plaintiff asserts that contrary to the circuit court's ruling, the parties agreed to be bound by the June 3, 2005 employment agreement that Asghar signed. "[A]n employment contract is just a contract." *Thomas v John Deere Corp*, 205 Mich App 91, 93; 517 NW2d 265 (1994). Negotiations and discussions "cannot . . . substitute for the formal requirements of a contract." *Eerdmans v Maki*, 226 Mich App 360, 364; 573 NW2d 329 (1997). A valid contract demands the existence of both an offer and an acceptance. "[A]n acceptance sufficient to create a contract arises where the individual to whom an offer is extended manifests an intent to be bound by the offer, and all legal consequences flowing from the offer, through voluntarily undertaking some unequivocal act sufficient for the purpose." *Kraus v Gerrish Twp*, 205 Mich App 25, 45; 517 NW2d 756 (1994), aff'd in part and remanded in part on other grounds in *Kraus v Dep't of Commerce*, 451 Mich 420; 547 NW2d 870 (1996).

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[2] Defendants moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). The circuit court did not specify under which subrule it found summary disposition appropriate, but because the parties plainly referenced documentary evidence beyond the pleadings as relevant to plaintiff's claims, subrule (C)(10) governs our analysis. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

An acceptance converts an offer into a binding contract. *Baller v Spivack*, 213 Mich 436, 441; 182 NW 70 (1921).

"Contractual liability is consensual. A basic requirement of contract formation is that the parties mutually assent to be bound." *Rood v Gen Dynamics Corp*, 444 Mich 107, 118; 507 NW2d 591 (1993) (citation omitted). In *Rood*, *id*. at 119, the Supreme Court described as follows the analysis governing a mutuality determination:

> In deciding whether a party has assented to a contract, we follow the objective theory of assent, focusing on how a reasonable person in the position of the promisee would have interpreted the promisor's statements or conduct. Calamari & Perillo, Contracts (3d ed), § 2-2, p 27. As Professor Farnsworth stated:
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> "Since it is difficult for a workable system of contract law to take account of assent unless there has been an overt expression of it, courts have required that assent to the formation of a contract be manifested in some way, by words or other conduct, if it is to be effective." (*Id*. at § 3.1, pp 160-161).
>
> Otherwise stated, to determine whether there was mutual assent to a contract, we use an objective test, looking to the expressed words of the parties and their visible acts, and ask whether a reasonable person could have interpreted the words or conduct in the manner that is alleged. Thus, we begin our analysis by looking to all the relevant circumstances surrounding the transaction, including all writings, oral statements, and other conduct by which the parties manifested their intent. [Internal quotation omitted.]

Similarly, Professor Corbin describes mutual assent as follows:

> Agreement consists of mutual expressions; it does not consist of harmonious intentions or states of mind. . . . At present, however, what we observe for judicial purposes is the conduct of the parties. We observe this conduct and we describe it as the expression of a state of mind. It is by the conduct of two parties, by their bodily manifestations, that we must determine the existence of what is called agreement. . . . This is what is meant by mutual assent. [1 Corbin, Contracts (1993 ed), § 1.9, pp 25-26.]

The record evidence here agrees that (1) the employment agreement plaintiff prepared and gave to Ali and Asghar constituted an offer of employment, (2) the agreement contained no term expressly requiring mutual signatures, (3) Asghar signed the document without modifying any of its terms, and (4) in August 2005, the parties commenced mutual performance under the terms of the contract. Plaintiff rendered services as defendants' office manager and a registered medical assistant, and defendants paid plaintiff the salary set forth in the employment agreement. This undisputed evidence of mutual conduct in conformity with the terms of the June 2005 employment agreement establishes mutual assent to the contract, and a "meeting of the minds." Plaintiff's neglect to sign the contract does not alter our conclusion. "If a written draft of an agreement is prepared, submitted to both parties, and each of them expresses unconditional assent thereto, there is a written contract." 1 Corbin, Contracts (1993 ed), § 2.10, p 165. Under

the common law, "there need be no signatures unless the parties have made them necessary at the time they express their assent and as a condition modifying that assent." *Id.*

Defendants maintain that plaintiff's admissions during her deposition prove that "there was never an agreeable offer and acceptance." Defendants refer to the following excerpt in support of their position:

> *Defense counsel*: Was there ever a time that you guys came to an agreement on language of the contract for everybody to sign?
>
> *Plaintiff's counsel*: *After Exhibit 10 [plaintiff's proposed revisions to defendants' proffered August 2005 replacement employment contract]*?
>
> *Defense counsel*: Um-humm. Yes.
>
> *Plaintiff*: I believe so.
>
> *Defense counsel*: Okay. Show me.
>
> *Plaintiff*: We never—
>
> * * *
>
> *Plaintiff's counsel*: *He's talking about after you sent Exhibit 10,* did you come to an agreement on anything after you sent Exhibit 10?
>
> *Plaintiff*: No.
>
> *Defense counsel*: Okay.
>
> *Plaintiff*: We never—
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> *Defense counsel*: So that there was never a meeting of the minds with regard to the specific employment contract between you and Dr. Ali or his organization after you had sent him your requested revisions in Exhibit 10, correct?
>
> *Plaintiff*: No.
>
> *Defense counsel*: Is that correct or incorrect?
>
> *Plaintiff*: *We never agree on anything after that, no.*
>
> *Defense counsel*: So in other words, the changes that you'd requested in Exhibit 10 on the Employment Agreement you E-mailed over to my client were never made, correct, because you never agreed on those things, isn't that correct?
>
> *Plaintiff*: No. *After the revised contract they send me and we made some changes in it, never agree on it, no.* [Emphasis added.]

Viewed in the light most favorable to plaintiff, the cited deposition testimony supports that after the parties' entry into the June 3, 2005 contract, they did not thereafter achieve a meeting of the minds concerning a replacement contract or any contractual *modifications* of the June 3, 2005 agreement. "[W]here there is no mutual agreement to enter into a new contract modifying a previous contract, there is no new contract and, thus, no modification." *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 372-373; 666 NW2d 251 (2003).[3] Moreover, even were we to conclude that plaintiff expressed in her deposition dissatisfaction with the initial contract signed by Asghar or that she believed that it lacked any essential provisions, an objective analysis of the relevant circumstances reveals that the parties agreed to be bound by the terms of the June 3, 2005 agreement. "A meeting of the minds can be found from performance and acquiescence in that performance." *Sanchez v Eagle Alloy, Inc*, 254 Mich App 651, 666; 658 NW2d 510 (2003). Plaintiff quit her job at the Delta Medical Center, gave defendants a $20,000 loan, and assumed responsibility as defendants' office manager and a clinic medical assistant. Defendants empowered plaintiff to be their office manager and a medical assistant, and paid her according to the terms of the written agreement. The record of the parties' performance supports that with regard to the June 3, 2005 agreement, the parties achieved a meeting of the minds. Consequently, the circuit court incorrectly granted defendants summary disposition of plaintiff's breach of contract count on the ground that no enforceable agreement existed.

Nevertheless, we reject plaintiff's assertion that defendants breached the contract by firing her "without just cause and without notice or warning." The June 3, 2005 contract reads in ¶ 9,

> This contract of employment may not be terminate [sic] unless upon the occurrence of any of the following events: (a) the death of the Employee; (b) the failure of the Employee to perform her duties satisfactorily after notice or warning thereof; (c) economic reasons of the Employers which may arise during the term of this Agreement and which may be beyond the control of the Employers.

Plaintiff does not dispute that on September 16, 2005, Ali and Asghar notified her in writing that she had not appropriately performed an EKG and had neglected to properly maintain the EKG equipment. On October 6, 2005, Ali and Asghar terminated plaintiff, citing the events surrounding the EKG and plaintiff's subsequent "unsatisfactory administration" of the elbow x-

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[3] We note that ¶ 13 of the June 3, 2005 agreement governed contractual modifications:

> No waiver or modification of this employment agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. Furthermore, no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this agreement, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid. . . .

ray. By the clear and unambiguous terms of the June 3, 2005 agreement, the contract authorized defendants to terminate plaintiff's employment, after notice, on the basis of her failures to satisfactorily perform her duties. Viewing the evidence in the light most favorable to plaintiff, we conclude that no reasonable juror could find that defendants breached the contract's termination clause. Accordingly, we conclude that, although for different reasons, the circuit court correctly granted defendants summary disposition of the portion of plaintiff's breach of contract claim arising from her termination.

Plaintiff's complaint additionally asserted that defendants breached their contractual obligation pursuant to the agreement's bonus provision, ¶ 6, which states:

> In addition to the foregoing, employers will guarantee employee 10% of the net profits earned yearly, as a "Bonus." Employee shall continues [sic] to receive this bonus annually irrespective of whether or not employee continues her employment beyond the required minimum of 3 years of employment, unless she request [sic] repayment of the good faith loan she made to employers on may [sic] 2005[.]

Paragraph 8 of the agreement delineated the following conditions surrounding "Termination of [plaintiff's] Bonus":

> The Employee shall not be eligible for the above-mentioned "Bonus," if she quits her job before three complete years of employment or upon request for return of the good faith loan. However, after minimum of three years of employment, she shall continue to receive the above-mentioned "Bonus" even if she does not work in the above-mentioned medical center, but as long as she has not made request for return of the good faith loan.

Defendants do not challenge plaintiff's assertions that she never quit her job or requested repayment of her $20,000 "good faith loan."[4] The plain, unambiguous language of the bonus terms therefore entitled plaintiff to an annual bonus, "irrespective" whether her employment continued beyond three years. Although inartfully drafted, none of the conditions contained in the "Termination of Bonus" paragraph preclude plaintiff's eligibility for the bonus payments. We thus conclude that the circuit court erred by granting defendants summary disposition regarding the unpaid bonus aspect of plaintiff's breach of contract claim.

B. Discrimination

Plaintiff next challenges the circuit court's finding that she failed to rebut defendants' claim that legitimate, nondiscriminatory reasons warranted her termination. Plaintiff submits that defendants discriminated against her because of her gender and her Shiite Muslim faith. Defendants reply that because plaintiff did not possess the requisite qualifications for her position as the clinic's office manager, she failed to present a prima facie discrimination claim.

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[4] Notably, defendants' brief entirely fails to address the contractual bonus language.

We need not consider whether plaintiff established a prima facie discrimination claim, given that the circuit court correctly held that plaintiff did not rebut the legitimate, nondiscriminatory reasons proffered in support of her termination. After presenting a prima facie case of discrimination under the CRA, the plaintiff must nevertheless "proceed through the familiar steps set forth in *McDonnell Douglas* [*Corp v Green*, 411 US 792, 802-803; 93 S Ct 1817; 36 L Ed 2d 668 (1973).]" *Hazle v Ford Motor Co*, 464 Mich 456, 462; 628 NW2d 515 (2001). "[O]nce a plaintiff establishes a prima facie case of discrimination, the defendant has the opportunity to articulate a legitimate, nondiscriminatory reason for its employment decision in an effort to rebut the presumption created by the plaintiff's prima facie case." *Id*. at 464. If the defendant produces a legitimate, nondiscriminatory reason for its action, "the plaintiff must demonstrate that the evidence in the case, when construed in the plaintiff's favor, is 'sufficient to permit a reasonable trier of fact to conclude that discrimination was a motivating factor for the adverse action taken by the employer toward the plaintiff.'" *Id*. at 465, quoting *Lytle v Malady (On Rehearing)*, 458 Mich 153, 176; 579 NW2d 906 (1998). A plaintiff can establish pretext by substantiating that the proffered reasons for the adverse employment action (1) had no basis in fact, (2) were not the actual factors motivating the decision, or (3) were insufficient to justify the decision. *Dubey v Stroh Brewery Co*, 185 Mich App 561, 565-566; 462 NW2d 758 (1990).

Defendants introduced evidence tending to prove that they fired plaintiff because she did not follow their orders, neglected to perform necessary office management tasks, performed x-rays improperly, and lacked requisite communication skills. Defendants' advancement of these legitimate, nondiscriminatory reasons for terminating plaintiff's employment shifted to her the burden to articulate evidence that, when viewed in the light most favorable to her, would permit a reasonable fact finder to conclude that defendants' proffered reasons for their decision constituted pretexts. *Texas Dep't of Community Affairs v Burdine*, 450 US 248, 253; 101 S Ct 1089; 67 L Ed 2d 207 (1981). Plaintiff theorizes that defendants' justifications for her termination qualify as pretexts in light of the facts that they failed to inform her of any deficiencies in her performance after the warning issued in September 2005, and they did not fire another employee who also had neglected to put paper in the EKG machine. Our review of the record leads us to conclude that plaintiff has presented no evidence from which a fact finder could reasonably conclude that defendants' articulated reasons for her termination constituted pretexts. Plaintiff conceded at her deposition that defendants' criticisms of her x-ray performance and her disregard of physician orders possessed merit and amounted to appropriate bases for her termination. Plaintiff has not demonstrated pretext arising from defendants' treatment of her coworker because she and the other employee were not similarly situated. To show that two employees are similarly situated, a plaintiff must establish the near identity of all relevant aspects of the other person's employment situation. *Smith v Goodwill Industries of West Michigan, Inc*, 243 Mich App 438, 449; 622 NW2d 337 (2000). Because plaintiff served as defendants' office manager and a medical assistant, she and her coworker were not similarly situated. In conclusion, the circuit court correctly granted defendants summary disposition of plaintiff's discrimination claims.

For substantially similar reasons, we also reject plaintiff's argument that the circuit court erred by dismissing her retaliation claim. Plaintiff complains that defendants terminated her on the day after she complained of Asghar's references to the appearance and sexual practices of other female employees. The antiretaliation portion of the CRA cautions that

> [t]wo or more persons shall not conspire to, or a person shall not:
>
> (a) Retaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act. [MCL 37.2701.]

To establish a prima facie case of retaliation under the CRA, a plaintiff must show

> (1) that he engaged in a protected activity; (2) that this was known by the defendant; (3) that the defendant took an employment action adverse to the plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action. [*Garg v Macomb Co Community Mental Health Services*, 472 Mich 263, 273; 696 NW2d 646, amended 473 Mich 1205 (2005) (internal quotation omitted).]

"To establish causation [when bringing a retaliation claim under the CRA], the plaintiff must show that his participation in activity protected by the CRA was a 'significant factor' in the employer's adverse employment action, not just that there was a causal link between the two." *Barrett v Kirtland Community College*, 245 Mich App 306, 315; 628 NW2d 63 (2001). Even assuming that plaintiff crossed this hurdle and established a prima facie retaliation case, she has nevertheless failed to carry her burden of proving that defendants' articulated reasons for firing her qualified as pretexts. When viewed in the light most favorable to plaintiff, the record evidence demonstrates that plaintiff did not create an issue of fact for the jury regarding whether defendants' proffered reasons for her discharge constituted mere pretexts. Plaintiff has put forward no evidence that defendants' justifications had no basis in fact, insufficiently explained her discharge, or were not the actual factors motivating her termination. Defendants presented abundant evidence that plaintiff did not possess the professional skills necessary to serve as either their office manager or a medical assistant. The circuit court thus properly granted defendants summary disposition of the retaliation claim.

Lastly, plaintiff challenges the circuit court's award of attorney fees and costs. In light of our decision to reverse the circuit court's grant of summary disposition on one aspect of plaintiff's breach of contract claim, we reverse the circuit court's finding that plaintiff's action was frivolous under MCR 2.625 or MCL 600.2591, and we vacate the award of attorney fees and costs.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Costs to neither party.

/s/ Kathleen Jansen
/s/ Karen M. Fort Hood
/s/ Elizabeth L. Gleicher