STATE OF MICHIGAN

COURT OF APPEALS

SHIRLEY D. VINSON,

Plaintiff-Appellant,

v

ABN AMRO MORTGAGE GROUP, INC.,

Defendant-Appellee.

UNPUBLISHED
October 14, 2010

No. 292579
Oakland Circuit Court
LC No. 2008-0088623-CZ

Before: SAWYER, P.J., and FITZGERALD and SAAD, JJ.

PER CURIAM.

Plaintiff appeals by delayed application[1] from the trial court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) and dismissing her claim for employment discrimination under the Michigan Persons with Disabilities Civil Rights Act ("PWDCRA"), MCL 37.1101 *et seq*. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff began working for defendant's predecessor in 1983. In 1993, plaintiff was diagnosed with multiple sclerosis, and the disease eventually severely impacted her lower torso and her ability to walk. Plaintiff has not driven a car since 1999 and mainly uses a wheelchair to get around. Beginning in 1999, at plaintiff's request, she began working for defendant fulltime from her home. Plaintiff worked as a "loss mitigation solicitor," calling defendant's delinquent mortgage customers in order to collect the mortgage arrearages or arrange payment options. Plaintiff contacted the customers using a manual dialing system that required her to dial the telephone numbers by hand. In January 2006, defendant replaced the manual dialing system with an auto dialing system for all employees located in the office. Defendant asserted, and plaintiff never disputed, that such a system could only be operated in the office, not from an employee's home. In May 2006, defendant terminated plaintiff's employment, explaining that it "must undergo a job elimination and reduction in workforce."

[1] This Court initially denied plaintiff's application for delayed appeal. But plaintiff filed a leave application with the Supreme Court, which, in lieu of granting the application, remanded the case to this Court for consideration as on leave granted. 486 Mich 868; 780 NW2d 571 (2010).

On appeal, plaintiff claims the trial court erred in granting summary disposition to defendant because there was a genuine issue of material fact as to whether (1) her disability was unrelated to her ability to use the auto dialing system, (2) defendant's stated reason for her discharge was merely a pretext for discrimination, and (3) defendant failed to accommodate her disability and train her on the new system. We disagree.

Plaintiff failed to make out a prima facie case of discrimination under the PWDCRA because there was no genuine issue of material fact that she suffered an adverse employment action. *Peden v Detroit*, 470 Mich 195, 204; 680 NW2d 857 (2004); *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 132; 666 NW2d 186 (2003). Plaintiff was terminated from her employment because the auto dialing system, which replaced the manual dialing system used by plaintiff, could only be operated in the office. The proofs established that plaintiff was unable to work fulltime in the office. Thus, plaintiff did not show that her disability was unrelated to her ability to perform the job of a loss mitigation solicitor using the auto dialing system. Even assuming plaintiff did make out a prima facie case, defendant provided a non-discriminatory explanation for plaintiff's termination (i.e., eliminating the manual dialing system and utilizing the more cost-efficient auto dialing system), which plaintiff did not refute by providing evidence that she was capable of working fulltime in the office.

Contrary to plaintiff's argument, there was nothing inconsistent in the reasons given by defendant for her termination (i.e., workforce reduction, poor performance, and technology inaccessibility) to suggest that those reasons were a mere pretext for discrimination. The issue of poor performance related to plaintiff's operation of the manual dialing system. Therefore, it was not inconsistent with the reason for her discharge when defendant transitioned to the auto dialing system. The reasons of workforce reduction and technology inaccessibility were entirely consistent. Plaintiff could only work fulltime from home and the auto dialing system could only be operated from defendant's offices (technology accessibility). Therefore, her position was eliminated (workforce reduction).

Plaintiff also did not show there was a genuine issue of material fact on her failure to accommodate and failure to train claims. The PWDCRA requires only reasonable accommodation of a person's disability. *Bachman v Swan Harbour Assoc*, 252 Mich App 400, 417; 653 NW2d 415 (2002); *Buck v Thomas M Cooley Law School*, 272 Mich App 93; 723 NW2d 485 (2006). Allowing plaintiff to work a part-time schedule in the office,[2] as suggested by her attorney at the motion hearing, does not constitute a reasonable accommodation. MCL 37.1210(15) ("Job restructuring and altering the schedule of employees under this article applies only to minor or infrequent duties relating to the particular job held by the person with a disability"). Operation of the auto dialing system would not be a minor or infrequent duty of the position; rather, it would be the primary duty. Because plaintiff could not work fulltime from the

[2] We note that plaintiff never actually requested a part-time work schedule in the office. Rather, her attorney simply stated that she might have considered such an option had she known her position would be eliminated.

office, defendant had no obligation to train her on the auto dialing system, which could only be used in the office.

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Henry William Saad