

STATE OF MICHIGAN
COURT OF APPEALS

LANCE SIMMONS,

Plaintiff-Appellant,

v

COUNTY OF WAYNE,

Defendant-Appellee.

UNPUBLISHED

June 21, 2012

No. 303318

Wayne Circuit Court

LC No. 10-004108-NZ

Before: SERVITTO, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition in this discrimination and retaliation case filed under the Michigan Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.* (MELCRA). Because plaintiff's claims are barred by the applicable statute of limitations, we affirm.

Plaintiff began employment at the Wayne County Department of Environment in 1978, eventually working his way up to the position of foreman. In 2006 the department went through a reorganizing process, through which plaintiff and several other employees were moved to other facilities and their job titles and responsibilities changed. Plaintiff retired from his employment in December 2008. He initiated the instant lawsuit on April 6, 2010, alleging that in implementing the reorganization, defendant engaged in age discrimination and that defendant retaliated against plaintiff when he contacted the Michigan Department of Civil Rights.

On appeal, plaintiff argues that the trial court erred in granting defendant's motion for summary disposition. Specifically, he contends that the trial court abused its discretion because plaintiff provided direct evidence of discrimination and that he presented genuine issues of material fact regarding his claims of age discrimination and retaliation. We disagree.

The trial court granted defendant's motion for summary disposition reasoning that plaintiff's claims were barred by the statute of limitations. This Court reviews de novo a trial court's decision on a motion for summary disposition. *Zwiers v Growney*, 286 Mich App 38, 41; 778 NW2d 81 (2009). This Court also reviews de novo the issue of whether a court properly dismissed an action on the basis of the statute of limitations. *Id.* at 41-42, citing *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003). Summary disposition is proper under MCR 2.116(C)(7) when a "claim is barred because of . . . [the] statute of limitations . . ." The following principles are applicable to motions brought pursuant to MCR 2.116(C)(7):

[T]his Court must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties. The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. This Court must consider the documentary evidence in a light most favorable to the nonmoving party. If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. If a factual dispute exists, however, summary disposition is not appropriate. [*RDM Holdings, Ltd v Continental Plastics Co*, 281 Mich App 678, 687; 762 NW2d 529 (2008) (citations omitted).]

Plaintiff's complaint alleged age discrimination and retaliation in violation of the MELCRA. Plaintiff identified specific acts of discrimination that took place between March 2006 and May 2006, when he was relocated to another work facility and reclassified from foreman to a department supervisor. Plaintiff's claim of retaliation arises from an incident on April 26, 2006 wherein his desk was removed and his personal belongings were placed in a box after he filed two grievances protesting his relocation and reclassification.

A claim under the MELCRA is governed by a three year period of limitations. MCL 600.5805(10). *Magee v DaimlerChrysler Corp*, 472 Mich 108, 113; 693 NW2d 166 (2005). Plaintiff filed his complaint on April 6, 2010. The alleged discriminatory and retaliatory conduct occurred between March 2006 and May 2006; therefore, plaintiff's claims expired three years from May 2006. During the hearing on defendant's motion for summary disposition, the trial court asked plaintiff whether he could allege any discriminatory or retaliatory conduct beyond the incidents in May 2006, and plaintiff could not. Accordingly, as the trial court held, plaintiff's April 6, 2010, complaint alleging violations of the MELCRA was untimely. The trial court properly granted defendant's motion for summary disposition.

We note that plaintiff's brief on appeal raises several arguments regarding the factual sufficiency of his complaint; however, the trial court never reached these issues. The trial court granted defendant's motion solely based upon MCR 2.116(C)(7), and therefore, plaintiff's other arguments are not properly before this Court. See *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999) (holding that an issue is properly preserved if it is raised before, and addressed and decided by, the trial court). Furthermore, because plaintiff's claims are barred by the statute of limitations, we need not address these arguments.

Affirmed.

/s/ Deborah A. Servitto
/s/ Patrick M. Meter
/s/ Karen Fort Hood