STATE OF MICHIGAN

COURT OF APPEALS

DEBORAH PETER,

Plaintiff-Appellant,

v

THREE RIVERS JOINT HOSPITAL AUTHORITY d/b/a THREE RIVERS AREA HOSPITAL,

Defendant-Appellee.

UNPUBLISHED
June 10, 1997

No. 194930
St. Joseph Circuit Court
LC No. 92-000556 CL

Before: Young, P.J., and Doctoroff and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting defendant's motion for summary disposition of plaintiff's wrongful discharge claim. We affirm.

Plaintiff was hired by defendant hospital on May 5, 1987, to work as a full-time radiologic technologist. On May 27, 1987, plaintiff was provided with an employee handbook and signed a letter of agreement addressing certain conditions of her employment. Plaintiff's employment was terminated by defendant on or about January 21, 1992. On July, 21 1992, plaintiff filed a complaint alleging that defendant's termination of her employment was without just cause as required by defendant's employment policies. Defendant asserted that plaintiff's claim is barred by the express at-will disclaimer contained in the personnel policy handbook.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10) on July 8, 1993. The trial court granted defendant's motion on the grounds that the language found in defendant's employee handbook and in the letter of agreement signed by plaintiff is unambiguous and does not create a reasonable expectation of job security. The trial court denied plaintiff's motion for reconsideration.

I

Plaintiff first contends that a question of fact exists as to whether the combination of defendant's employee handbook, its written policies, its disciplinary forms, its progressive disciplinary policy, and its past practices created a legitimate expectation of just-cause employment.

Employment contracts for an indefinite duration are presumptively terminable at the will of either party for any or no reason at all. The presumption may be overcome by proof of an express contract for a definite term or a provision forbidding discharge in the absence of just cause. *Rood v General Dynamics Corp*, 444 Mich 107, 116-117; 507 NW2d 591 (1993). Employer policies and procedures may also become a legally enforceable part of an employment relationship if such policies and procedures instill "legitimate expectations" of job security in the employees. *Id*. at 117-118; see *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 614-615; 292 NW2d 880 (1980).

In this case, plaintiff expressly states that she is relying on the legitimate expectations, or public policy, theory of enforceability. The first step in analyzing a legitimate expectations claim is to determine what, if anything, the employer has promised. *Rood, supra* at 138. If it is determined that a promise has been made, the second step is to determine whether the promise is reasonably capable of instilling a legitimate expectation of just-cause employment in the employer's employees. *Id*. at 139. The *Rood* Court also stated that in all claims brought under the legitimate expectations theory, the trial court should examine employer policy statements concerning employee discharge to determine, as a threshold matter, whether such policies are reasonably capable of being interpreted as promises of just-cause employment. If the employer policies are incapable of such interpretation, then the court should dismiss the plaintiff's complaint on the defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). If, however, the employer's policies relating to employee discharge are capable of two reasonable interpretations, the issue is for the jury. *Id*. at 140-141.

Reliance on a disciplinary scheme established in an employment manual does not establish a promise of termination for just cause only or create any legitimate expectation of a discharge-for-cause policy. *Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627, 645-646; 473 NW2d 268 (1991); *Biggs v Hilton Hotel Corp*, 194 Mich App 239, 241; 486 NW2d 61 (1992). While defendant's employee handbook reserves to defendant the right to "discipline employees for cause," this is not inconsistent with at-will employment. The concept of employment-at-will means that an employer may provide a disciplinary system and terminate its employees for enumerated causes, but may also terminate its employees for any other reason. *Id*. at 242.

While defendant reserved the right to terminate plaintiff's employment "at any time," it did not state that such termination could be without cause or without notice, as did the disclaimer in *Rowe*. However, this Court stated in *Biggs* that where the employment manual explicitly stated that it was not an employment contract but only a guideline of the policies and benefits provided by defendant, it was of no moment that the manual did not explicitly state that employment was at will and that termination was not limited to those instances where just cause is shown. The presumption is that employment is at will, and the proper inquiry is whether the employer made representations or promises that termination

would be only for just cause. No such representations can be found where the manual stated explicitly that it was not a contract but merely a guideline. *Biggs, supra* at 241.

In the present case, defendant expressly stated that neither the employee handbook nor the letter of agreement created an employment contract, and that plaintiff's employment could be terminated at any time. Further, although defendant had established a progressive disciplinary procedure, defendant did not suggest that the conduct identified in the disciplinary procedure was the only basis for dismissal. "The fact that defendant had established a disciplinary system for its employees and, apparently, obligated plaintiff to abide by that disciplinary system in dealing with his subordinates does not establish unequivocally plaintiff's position that he was a just-cause employee rather than an at-will employee." *Id*. at 241-242. While defendant's employee handbook did not explicitly state that plaintiff's employment was at will and that termination was not limited to those instances where just cause is shown, defendant did inform plaintiff that her employment could be terminated at any time. Moreover, defendant made no representations or promises that termination would be only for just cause. Therefore, defendant's employment policy statements are incapable of being interpreted as promises of just-cause employment, and the trial court properly dismissed plaintiff's complaint on defendant's motion for summary disposition. See *Rood, supra* at 140.

II

Next, plaintiff argues that the trial court erred and did not view the evidence in a light most favorable to plaintiff by not presuming that defendant's progressive disciplinary policy applied to plaintiff and that defendant was obligated to follow its written employment policies.

On appeal, an order granting or denying summary disposition is reviewed de novo. A motion for summary disposition may be granted pursuant to MCR 2.116(C)(10) when, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Giving the benefit of reasonable doubt to the nonmovant, the trial court must determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Plieth v St Raymond Church*, 210 Mich App 568, 571; 534 NW2d 164 (1995).

Because this Court will review the trial court's decision de novo, and will view the facts in a light most favorable to plaintiff, it is of no consequence to the outcome of plaintiff's appeal whether the trial court applied this standard. There is no factual issue in dispute regarding the applicability of the disciplinary policy to plaintiff. Reliance on a disciplinary scheme established in an employment manual does not establish a promise of termination for just cause only. *Biggs, supra* at 241. An expectation of job security can be found where the employer creates an environment in which the employee believes that, whatever the personnel policies and practices, they are established and official at any given time, purport to be fair, and are applied consistently and uniformly to each employee. *Toussaint, supra* at 613. In all claims brought under the legitimate expectations theory, the trial court should examine employer policy statements concerning employee discharge to determine whether such policies are reasonably capable of being interpreted as promises of just-cause employment. *Rood, supra* at 140.

The parties do not dispute that plaintiff was subject to the progressive disciplinary policy. This policy was outlined in the employee handbook which had been provided to plaintiff. While plaintiff may not have been in receipt of all of defendant's policies relating to the implementation of the discipline procedure, she was aware of the progressive disciplinary policy. Neither party contends that plaintiff was not subject to the discipline policy; defendant claims only that plaintiff should not be allowed to rely on policy statements of which she was unaware during her employment. These policy statements were considered in Issue I and this Court determined that plaintiff did not have a legitimate expectation of just-cause employment. Therefore, there is no factual issue in dispute regarding the applicability of the disciplinary policy to plaintiff and defendant is entitled to judgment as a matter of law.

Plaintiff's argument that the trial court was required to presume that defendant was obligated to follow its employment polices is also without merit. Such a rule would require this Court to presume that a just-cause employment relationship had been established. The presumption is that employment is at will, and the proper inquiry is whether the employer made representations or promises that termination would be only for just cause. *Biggs*, *supra* at 241. Defendant's obligation under its employment policies was discussed in Issue I and this Court determined that defendant was free to terminate plaintiff's employment either for cause under the discipline policy or for any other reason. Therefore, neither the trial court nor this Court is required to presume that defendant was obligated to follow its progressive discipline policy.

Affirmed.

/s/ Robert P. Young, Jr.
/s/ Martin M. Doctoroff
/s/ Mark J. Cavangh