STATE OF MICHIGAN

COURT OF APPEALS

DAVID E. GOODWIN,

Plaintiff-Appellant,

v

AMERITECH, a successor corporation of MICHIGAN BELL, and JAMIE DYLENSKI,

Defendants-Appellees.

UNPUBLISHED
October 21, 1997

No. 192825
Genesee Circuit Court
LC No. 94-028025-CL

Before: Corrigan, C.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of no cause of action in favor of defendants entered after a jury returned a verdict finding no liability on plaintiff's claim of age discrimination brought pursuant to the Elliott-Larsen Civil Rights Act (CRA), MCL 37.2101 *et seq.*; MSA 3.548 *et seq.* On appeal, plaintiff challenges (1) the trial court's order granting defendants' pretrial motion for summary disposition on plaintiff's wrongful discharge claim and (2) the trial court's order denying plaintiff's posttrial motion for judgment notwithstanding the verdict on his age discrimination claim. We affirm.

Plaintiff first argues that the trial court erred in granting defendants' motion for summary disposition on plaintiff's claim that Ameritech breached a contract providing that plaintiff could be terminated only for just cause. We disagree. A trial court's decision to grant a motion for summary disposition is reviewed de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). Defendants brought their motion pursuant to MCR 2.116(C)(10). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim. *Panich v Iron Wood Products Corp*, 179 Mich App 136, 139; 445 NW2d 795 (1989). In deciding such a motion, the trial court must consider the pleadings, depositions, affidavits, admissions, and other documentary evidence, MCR 2.115(G)(5), and must give the nonmoving party the benefit of every reasonable doubt. *Radtke v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993); *Rice v ISI Mfg, Inc*, 207 Mich App 634, 635-636; 525 NW2d 533 (1994); *Morganroth v Whitall*, 161 Mich App 785, 788; 411 NW2d 859 (1987). Although the court should be liberal in finding genuine issues of material fact, summary disposition is appropriate when the party opposing the

motion fails to provide evidence to establish a material

factual dispute. *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991); *Mascarenas v Union Carbide Corp*, 196 Mich App 240, 243; 492 NW2d 512 (1992); *Porter v Royal Oak*, 214 Mich App 478, 484-485; 542 NW2d 905 (1995).

Employment contracts for an indefinite duration are presumed to be terminable at the will of either party for any reason or no reason at all. *Rood v General Dynamics Corp*, 444 Mich 107, 116; 507 NW2d 591 (1993). A party can overcome the presumption of at-will employment by presenting sufficient proof of a provision forbidding discharge absent just cause. *Rood, supra* at 117, citing *Rowe v Montgomery Ward & Co*, 437 Mich 627, 636-637; 473 NW2d 268 (1991). Under certain circumstances, oral assurances of job security may be sufficient to establish a contract for just-cause employment. See, e.g., *Rood supra*, at 124-125, citing *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 640-641; 292 NW2d 880 (1980) (Ryan, J., dissenting); *Rowe, supra* at 641-644; *Barnell v Taubman Co Inc*, 203 Mich App 110, 116-117; 512 NW2d 13 (1993). However, we need not determine whether such a contract was formed in the instant case, because in 1992, plaintiff signed a disclaimer acknowledging his status as an at-will employee. Once an employee signs a disclaimer providing for at-will employment, the employee may be terminated for any reason or no reason at all. *Scholz v Montgomery Ward & Co*, 437 Mich 83, 94; 468 NW2d 845 (1991); cf. *Barnell, supra* at 119. Accordingly, we hold that the trial court did not err in granting defendants' motion for summary disposition as to plaintiff's contractual claim of wrongful discharge.

Next, plaintiff argues that the trial court erred in denying plaintiff's motion for judgment notwithstanding the verdict on plaintiff's claim of age discrimination. We disagree. When reviewing a denial of a motion for judgment notwithstanding the verdict, this Court examines the evidence and all legitimate inferences that may be drawn from the evidence in the light most favorable to the nonmoving party. If the evidence is such that reasonable jurors could have found for the nonmoving party, neither the trial court nor this Court may substitute its judgment for that of the jury. *Pakideh v Franklin Commercial Mortgage Group*, 213 Mich App 636, 639; 540 NW2d 777 (1995); *McLemore v Detroit Receiving Hosp*, 196 Mich App 391, 395; 493 NW2d 441 (1992).

The CRA provides that "[a]n employer shall not . . . discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status." MCL 37.2202(1)(a); MSA 3.548(202)(1)(a). In order to prevail at trial on a claim of age discrimination under the CRA, a plaintiff must show that he was discharged from his employment because of his age. *Matras v Amoco Oil Co*, 424 Mich 675, 681-683; 385 NW2d 586 (1986); see also *Hazen Paper Co v Biggins*, 507 US 604, 610; 113 S Ct 1701; 123 L Ed 2d 338 (1993).[1] The plaintiff's age "does not have to be the only reason, or even the main reason, but it does have to be one of the reasons which made a difference in determining whether or not to [discharge] the plaintiff." *Matras, supra* at 682, quoting SJI2d 105.02; see also *Gallaway v Chrysler Corp*, 105 Mich App 1, 6; 306 NW2d 368 (1981).

In the instant case, the evidence of age discrimination presented by plaintiff included (1) the fact that plaintiff was not selected to fill one of the positions he sought while some of the employees who were selected were younger than plaintiff, (2) Jamie Dylenski's comment that Ameritech needed to make sure that the ethnicity, gender, and age of its employees better reflected that of the outside world,

and (3) the transcript of the ABC news story in which James Goetz, an Ameritech vice president, stated, "We want to get back and start bringing in some folks that are under 45 years old." On the other hand, Dylenski testified that age was not a factor in her decision not to select plaintiff; she explained in detail that her selections were made according to an interview process that was uniform across the entire region served by Ameritech. Moreover, according to Dylenski, Ameritech did not instruct her to take the applicants' age into consideration in selecting her post-reorganization work group. The evidence also showed that plaintiff did not make a concerted effort to secure one of the other open positions after he was informed by Dylenski that he had not been selected for his old position. As for the comment by Goetz, there was no evidence that Goetz was referring to the 1993 reorganization, by which plaintiff was terminated, or that he had any authority regarding Dylenski's decision not to select plaintiff or the criteria Dylenski used to make that decision. Finally, the statistics did not evidence any age discrimination on the part of Ameritech by way of either intention or effect. Accordingly, we hold that, viewing the evidence in a light most favorable to defendants, reasonable jurors could have found that age was not among the reasons for (1) Dylenski's decision not to select plaintiff or (2) Ameritech's decision to terminate plaintiff's employment. *Pakideh*, *supra* at 639. Because the evidence was such that reasonable jurors could have found that age was not among the reasons for plaintiff's separation from Ameritech, the trial court did not err in denying plaintiff's motion for judgment notwithstanding the verdict. See *Matras*, *supra* at 681-683.

Affirmed.

/s/ Maura D. Corrigan
/s/ Richard Allen Griffin
/s/ Joel P. Hoekstra

[1] Michigan courts have considered federal law when reviewing claims of age discrimination based on state law. *Plieth v St Raymond Church*, 210 Mich App 568, 573; 534 NW2d 164 (1995).