

STATE OF MICHIGAN
COURT OF APPEALS

SCOTT FOUBARE,

Plaintiff-Appellant,

v

ACCU-MOLD, INC.,

Defendant-Appellee.

UNPUBLISHED

July 14, 1998

No. 201780

Kalamazoo Circuit Court

LC No. 96-003286-NZ

Before: Corrigan, C.J., and Hoekstra and Young, Jr., JJ.

PER CURIAM.

In this employment action alleging a violation of the Bullard-Plawecki Employee Right to Know Act, MCL 423.501 et seq.; MSA 17.62(1) et seq., plaintiff appeals by right the order granting summary disposition for defendant under MCR 2.116(C)(8). We affirm.

Defendant employed plaintiff from June 20, 1995 until he was discharged on July 17, 1996. On October 2, 1996, and again one week later, plaintiff requested a copy of his personnel file from defendant. Defendant invited plaintiff to schedule an appointment so he could review his file at defendant's office. On October 24, 1996, plaintiff's counsel informed defendant that, since plaintiff was no longer employed by defendant, he would have difficulty reviewing his personnel file at defendant's place of business. Counsel, however, did not elaborate on the nature of the difficulty. In response, defendant once again invited plaintiff to review the file at defendant's office. Plaintiff declined and commenced this action for failure to comply with the Bullard-Plawecki Act's requirement that an employer mail a copy of an employee's personnel record to an employee who demonstrates an inability to review it at the "employing unit." MCL 423.504; MSA 17.62(4).

Defendant subsequently moved for summary disposition under MCR 2.116(C)(8) and MCR 2.116(C)(10) on the grounds that plaintiff's complaint failed to state a claim upon which relief could be granted and there was no genuine issue of fact whether defendant had a duty to mail a copy of plaintiff's personnel file to him. The trial court granted the motion under the MCR 2.116(C)(8), reasoning as follows:

In this case, the correspondence between the parties reveals that Defendant invited Plaintiff to review the file at their office. Plaintiff's attorney responded that Plaintiff had obtained other employment and "finds it difficult to go to your premises to review his personnel file." However, Plaintiff has failed to demonstrate to this court "an inability to review the file" at Defendant's place of business. The fact that he has another job, without any further explanation, does not reveal how or why he is unable to review his file at Defendant's place of business.

Furthermore, there is not any evidence that Defendant wilfully or intentionally violated the act. Since Plaintiff has failed to demonstrate a violation of the Bullard-Plawecki Employee Right to Know Act, summary disposition should be granted.

Plaintiff argues that the trial court erred in granting summary disposition under MCR 2.116(C)(8), because he stated a valid cause of action. This Court reviews de novo an order granting summary disposition. *Butler v Ramco-Gershenson, Inc.*, 214 Mich App 521, 524; 542 NW2d 912 (1995). Because the trial court looked beyond the pleadings, we will review the court's decision under the appropriate subrule, MCR 2.116(C)(10). A motion for summary disposition under MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim and permits summary disposition when, except for the amount of damages, no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Gibson v Neelis*, 227 Mich App 187, 190; 575 NW2d 313 (1997). When deciding the motion, the court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence in a light most favorable to the opposing party. *Id.*

Plaintiff contends that the trial court erred in granting summary disposition because, as a former employee, there was no longer an "employing unit" at which he could review his file. We reject this contention as unreasonable on its face. In interpreting a statute, our primary goal is to ascertain and give effect to the legislative intent. *Frankenmuth Mut Ins Co v Marlett Homes, Inc.*, 456 Mich 511, 515; 573 NW2d 611 (1998). This Court first considers the specific language of a statute to determine the intent of the Legislature. *House Speaker v State Administrative Bd*, 441 Mich 547, 567; 495 NW2d 539 (1993). Judicial construction is not permitted where the plain and ordinary meaning of the language is clear. *Lorencz v Ford Motor Co*, 439 Mich 370, 376; 483 NW2d 844 (1992).

MCL 423.504; MSA 17.62(4) provides in relevant part:

If an employee demonstrates that he or she is unable to review his or her personnel record at the employing unit, then the employer, upon that employee's written request, shall mail a copy of the requested record to the employee.

Although the statute does not define the phrase "employing unit," the term "employee" is defined as a person currently or formerly employed by an employer. MCL 423.501(2)(a); MSA 17.62(1)(2)(a). Thus, the termination of the employment relationship does not alter the plaintiff's status as an employee for the purposes of the act, and, consistently, the employing unit remains the place of (former) employment. Because the statute applies to both current and former employees, a former employee is

required to view his file at the employing unit unless he demonstrates an inability to do so. MCL 423.504; MSA 17.62(4).

Plaintiff next contends that, by informing defendant of his other employment, he sufficiently demonstrated his inability to review his file at the employing unit. We reject this contention because although the act grants an employee the right to view his file, it clearly places the burden on him to arrange the review. The fact that plaintiff has obtained other employment does not, by itself, demonstrate the necessary inability. Further, in the event that a former employee's new employment presents a mere inconvenience to him, the employer is not necessarily required to copy the file, but, rather, may offer another reasonable place and time for the review. MCL 423.503; MSA 17.62(3). Accordingly, we conclude that the trial court properly granted summary disposition because plaintiff failed to raise a genuine issue of material fact concerning his inability to review his file at defendant's office.

Affirmed.

/s/ Maura D. Corrigan
/s/ Joel P. Hoekstra
/s/ Robert P. Young, Jr.