

STATE OF MICHIGAN
COURT OF APPEALS

TAMMY HENDERSON,

Plaintiff-Appellant,

v

JACKSON NATIONAL LIFE INSURANCE
COMPANY,

Defendant-Appellee.

UNPUBLISHED

September 25, 1998

No. 197091

Ingham Circuit Court

LC No. 95-079980 NZ

Before: Hood, P.J., and Griffin and O'Connell, JJ.

MEMORANDUM.

Plaintiff appeals by right from the circuit court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant terminated plaintiff's employment purportedly because of plaintiff's excessive absenteeism. Plaintiff brought this action claiming that the proffered reason was a pretext, and that she was actually fired because of pregnancy and gender discrimination after she announced she was beginning fertility treatment. The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), finding that plaintiff failed to present evidence of pretext that would raise a genuine issue of material fact for trial.

A motion for summary disposition under MCR 2.116(C)(10) tests whether factual support exists for a claim. This Court reviews a trial court's ruling on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997). In the context of a discrimination claim, when a plaintiff asserts that an employer's proffered reason for its action was pretextual, the plaintiff bears the burden of providing evidence to support that theory. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 182 (Weaver, J., joined by Boyle & Taylor, JJ.), 186 (Mallet, C.J., concurring), 192 (Cavanagh, J., joined by Kelly, J., dissenting); 579 NW2d 906 (1998). Thus, to avoid dismissal on summary disposition, plaintiff must offer evidence sufficient to persuade a reasonable factfinder that the defendant's stated reason for dismissing her was a pretext for discrimination.

The trial court properly found that plaintiff failed to present evidence upon which reasonable minds could find that excessive absenteeism was a pretextual reason for her termination. Plaintiff presented no evidence to rebut defendant's assertion that plaintiff took excessive liberties with sick time, annual leave, and tardiness. That defendant had been lenient about this in the past is not probative of pretext where defendant warned plaintiff that such continued excesses could result in dismissal. Nor is a good work evaluation probative of pretext, where violation of company policy afforded a basis for plaintiff's termination. On this record, the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Harold Hood

/s/ Richard Allen Griffin

/s/ Peter D. O'Connell