STATE OF MICHIGAN

COURT OF APPEALS

ARLENE F. SMITH, D.O.,

Plaintiff-Appellant,

v

MICHIGAN STATE UNIVERSITY,

Defendant-Appellee.

UNPUBLISHED
September 29, 1998

No. 202717
Court of Claims
LC No. 97-016586 CM

ARLENE F. SMITH, D.O.,

Plaintiff-Appellant,

v

DOUGLAS L. WOOD, D.O., DONALD F. STANTON, D.O., and MICHIGAN STATE UNIVERSITY,

Defendants-Appellees.

No. 204081
Ingham Circuit Court
LC No. 95-081057 CZ

Before: Saad, P.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

In these consolidated cases, plaintiff appeals as of right an order dismissing her breach of contract claim and granting summary disposition to defendant Michigan State University (MSU) pursuant to MCR 2.116(C)(8) and (10) in Docket No. 202717, and an order granting partial summary disposition to defendants pursuant to MCR 2.116(C)(8) and (10) in Docket No. 204081. We affirm.

First, plaintiff argues that the trial court, sitting as the Court of Claims, improperly dismissed her breach of contract action against defendant MSU. We disagree. MSU violated the Department of Family Medicine's bylaws by failing to timely inform plaintiff of the nonrenewal of her one-year

appointment; however, as the trial court observed, "the question was whether plaintiff is entitled to damages from this breach, if at all." The trial court properly concluded that plaintiff was not entitled to lost wages pursuant to the terms of her employment contract, which unambiguously provided that she only had a temporary one-year appointment.[1] Therefore, plaintiff had no reasonable expectation of compensation beyond June 30, 1995, the date her term of employment expired. See *Kocenda v Archdiocese of Detroit*, 204 Mich App 659, 665; 516 NW2d 132 (1994) ("[t]he normal rule is that a wrongfully discharged employee is entitled to the total amount of the agreed-upon salary for the unexpired term of his employment").

Next, plaintiff argues that the trial court, sitting as the Ingham Circuit Court, improperly dismissed her discrimination claim under the Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq.*; MSA 3.550(101) *et seq.*[2] To establish her claim, plaintiff must show the following: (1) that she is handicapped or disabled within the meaning of the act; (2) that the handicap or disability is unrelated to her ability to perform the duties of the particular job, and (3) that she has been discriminated against in one of the ways set forth in the act. *Stevens v Inland Waters, Inc*, 220 Mich App 212, 215; 559 NW2d 61 (1996). Although plaintiff asserts that she proffered a strong case of handicap discrimination, including direct evidence of defendants' discrimination, we agree with defendants that she has not shown the first element of her prima facie case, which is that she is disabled within the meaning of the act.

Plaintiff notes in her brief on appeal that "Michigan courts have previously assumed asthma is a handicap." In support of this assertion, plaintiff cites two cases, which are apparently the only two reported cases in Michigan concerning claims of asthma as a handicap. However, in *Hall v Hackley Hospital*, 210 Mich App 48, 54; 532 NW2d 893 (1995), this Court did not decide that a plaintiff with asthma was handicapped as defined by the act; rather, this Court stated that it would "assume, without deciding," that the plaintiff had established a genuine issue of material fact regarding that element of her prima facie case and focused its discussion on whether she has been discriminated against in one of the ways set forth in the act. Similarly, in *Marsh v Dep't of Civil Service (After Remand)*, 173 Mich App 72, 75, 81; 433 NW2d 820 (1988), this Court did not address the merits of the plaintiff's claim that her asthma constituted a disability but merely acknowledged in its recitation of the facts that the defendant had certified the plaintiff as handicapped.[3]

We point out that this Court has rejected any attempts to automatically label a condition as a disability. See, e.g., *Chmielewski v Xermac*, 216 Mich App 707, 713-715; 550 NW2d 797 (1996) (rejecting as inconsistent with the act an instruction requiring the jury to decide that where a condition requires medication, the condition constitutes a substantial impairment per se), aff'd 457 Mich 593; 580 NW2d 817 (1998). The analysis of each case is instead dependent upon whether the plaintiff shows facts establishing that the condition substantially limits "one or more of the person's major life activities," such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. MCL 37.1103(e)(*i*)(A); MSA 3.550(103)(e)(*i*)(A); *Stevens*, *supra* at 217. Whether an impairment substantially limits a major life activity is determined in light of (1) the nature and severity of the impairment, (2) its duration or expected duration, and (3) its permanent or expected permanent or long-term effect. *Id.* at 218. An impairment that interferes with a person's ability to

perform a particular job but does not significantly decrease the ability to obtain satisfactory employment elsewhere does not substantially limit the major life activity of working. *Id.*

There is nothing in this record to show that plaintiff's asthma substantially limited any major life activity. Plaintiff asserts, without any argument, that she was disabled because her physician recommended that she limit her work hours to ten hours per week for a three-week period in December 1994 while she was undergoing treatment for asthma; however, plaintiff acknowledges that she returned to a full work schedule on December 30, 1994. Therefore, plaintiff failed to establish that her asthma is a disability as defined by MCL 37.1103(e)(*i*)(A); MSA 3.550(103)(e)(*i*)(A). Similarly, in light of plaintiff's return to a full work schedule on December 30, 1994, we disagree with plaintiff that defendants could have perceived her as disabled, see *Sanchez v Lagoudakis*, 440 Mich 496, 502-506; 486 NW2d 657 (1992), because that argument rests on a mention in the unpublished minutes of a December 15, 1994, meeting that plaintiff had limited her work hours. We hold that summary disposition of plaintiff's disability discrimination claim was proper because she failed to show the first element of a prima facie case.[4]

Next, plaintiff argues that the trial court improperly dismissed her claim under the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq*.; MSA 17.428(1) *et seq*. We disagree. To establish a prima facie case under the WPA, plaintiff must show that (1) she engaged in protected activities as defined by the act; (2) she was subsequently discharged, threatened, or otherwise discriminated against; and (3) a causal connection existed between the protected activity and the discharge, threat or discrimination. MCL 15.362; MSA 17.428(2); *Phinney v Perlmutter*, 222 Mich App 513, 553; 564 NW2d 532 (1997). The basis for plaintiff's WPA claim is that her appointment was not renewed because in September 1993, she reported her concerns about a colleague's standard of patient care to the Department's Quality Assurance Committee, which is an internal committee of MSU's College of Osteopathic Medicine.

We agree with plaintiff that the trial court erred in concluding that MSU was not a "public body" within the meaning of MCL 15.362; MSA 17.428(2). See *Phinney, supra* at 554-555. Nevertheless, we hold that summary disposition of plaintiff's WPA claim was proper because plaintiff failed to present any evidence showing a causal connection between her report in 1993 and the 1995 decision not to renew her temporary appointment. Indeed, plaintiff's annual appointment was renewed in 1994, *after* she made the subject report in September 1993. We will not reverse a lower court's decision where it reached the correct result for a wrong reason. *Integral Ins Co v Maersk Container Service Co, Inc*, 206 Mich App 325, 332-333; 520 NW2d 656 (1994).

Last, plaintiff argues that the trial court improperly granted defendants summary disposition of her retaliation claims under Michigan's Civil Rights Act (CRA), MCL 37.2102 *et seq*.; MSA 3.548(102) *et seq*. We disagree. To establish a prima facie claim of retaliation under the CRA, plaintiff must show that (1) she engaged in protected activity; (2) defendants knew of the activity; (3) defendants took an employment action adverse to plaintiff; and (4) there was a causal connection between the protected activity and the adverse employment action. MCL 37.2701; MSA 3.548(701); *DeFlaviis v Lord & Taylor, Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997). Here, plaintiff failed to present evidence tending to show that the 1995 decision not to renew her appointment was causally

connected to either her complaints in 1993 about pay

inequity or her utilization of MSU's grievance procedure in 1994. Therefore, we hold that the trial court properly granted defendants summary disposition.

Affirmed.

/s/ Henry W. Saad
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra

[1] In her complaint, plaintiff made no claim for damages other than lost wages.

[2] Before March 12, 1998, the Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq*.; MSA 3.550(101) *et seq.*, was titled the Handicappers Civil Rights Act (HCRA). See 1998 PA 20.

[3] Similarly, in *Marsh v Dep't of Civil Service,* 142 Mich App 557, 563; 370 NW2d 613 (1985), which concerned the plaintiff's previous appeal, this Court declined to address the merits of the claim that the plaintiff's asthma was a disability as defined by the act but limited its opinion to the issue of subject matter jurisdiction.

[4] Even if we ignore the fact that plaintiff returned to a full work schedule on December 30, 1994 and instead accept plaintiff's argument that a reference to her limited work schedule in the unpublished minutes of a December 15, 1994 meeting constitutes direct evidence of discrimination, thereby removing this case from the evidentiary framework of *McDonnell Douglas Corp v Green,* 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973), the minutes of a subsequent meeting on January 26, 1995 reveal that plaintiff's asthma was not a determining factor in the decision not to renew her appointment; rather, the decision was based solely on the determination that plaintiff's behavior had progressed to an unacceptable level. Accordingly, summary disposition of plaintiff's disability discrimination claim was nonetheless proper because even if plaintiff's allegation was true, the employer made the same decision without consideration of the discriminatory factor. See generally *Price Waterhouse v Hopkins,* 490 US 228; 109 S Ct 1775; 104 L Ed 2d 268 (1989) (holding that when a plaintiff in a Title VII case proves that her gender played a motivating part in an employment decision, the defendant may avoid a finding of liability by proving by a preponderance of the evidence that it would have made the same decision even if it had not taken the plaintiff's gender into account); *Harrison v Olde Financial Corp,* 225 Mich App 601, 606-614; 572 NW2d 679 (1997) (describing the principles of proof applicable in a single-plaintiff, mixed-motive employment discrimination case).