STATE OF MICHIGAN

COURT OF APPEALS

ALFRED DONN BRYANT,

Plaintiff-Appellant,

v

DIE DIMENSIONS CORPORATION,

Defendant-Appellee.

UNPUBLISHED
September 8, 2000

No. 215163
Kent Circuit Court
LC No. 98-003455-NZ

Before: White, P.J., and Talbot and R. J. Danhof*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting summary disposition to defendant pursuant to MCR 2.116(C)(7) on the basis that plaintiff's employment discrimination claim was barred by a six-month contractual limitations period. We affirm.

Plaintiff was defendant's employee when he was laid off in June 1997 because of a shortage of work. He filed a complaint on April 3, 1998, alleging racial discrimination in violation of the Elliot-Larsen Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq*. Defendant moved for summary disposition, arguing that plaintiff had signed an employment agreement that prohibited him from commencing any employment-related action against defendant "at any time more than six months from the date my employment terminates." Plaintiff began working for a new employer on September 16, 1997. He testified in his deposition that when he started his new job he had no plans to return to work for defendant, even if recalled from the layoff. Defendant argued below that plaintiff's employment terminated at the latest on September 16, 1997, and that his complaint was barred by the contractual period of limitations. The trial court, accepting defendant's reasoning, held that plaintiff's employment terminated on September 16, 1997, and granted defendant's motion.

Whether a cause of action is barred by a period of limitations is a question of law that we review de novo. *Todorov v Alexander*, 236 Mich App 464, 467; 600 NW2d 418 (1999). Parties to an employment contract may agree to shorter limitation periods than allowed by statute so long as they are specific and reasonable. Such contractual provisions are subject to close judicial scrutiny given that

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

employment contracts are often contracts of adhesion. *Camelot Excavating Co, Inc v St Paul Fire & Marine Ins Co*, 410 Mich 118, 127; 301 NW2d 275 (1981); *Herweyer v Clark Highway Services, Inc*, 455 Mich 14, 20-21; 564 NW2d 857 (1997). See also *Myers v Western-Southern Life Ins Co*, 849 F2d 259 (CA 6, 1988) (upholding six-month limitation period in employment contract for suit by employee against employer relating to employment, following termination of employment).

On appeal, plaintiff does not challenge the validity or enforceability of the six-month provision.[1] Instead, the parties frame the issue as one of determining when plaintiff's employment was "terminated" for purposes of applying the six-month limitations period. We note that neither party has provided appropriate citation to authority in support of their respective positions.

Given the language of the parties' contract, plaintiff's discrimination claim could not accrue until he was terminated, notwithstanding that plaintiff has not claimed wrongful discharge. In the absence of a contractual definition of when "termination" occurs, we turn to case law applying the statutory three-year limitation period for discrimination cases. MCL 600.5805(8); MSA 27A.5805(8). In *Parker v Cadillac Gage, Inc*, 214 Mich App 288, 290; 542 NW2d 365 (1995), this Court held that, for purposes of § 5805(8),

> [a] claim of discriminatory discharge accrues on the date the plaintiff is discharged. . . . The last day worked is the date of discharge. Subsequent severance or vacation pay does not affect the date of discharge.

In *Parker*, this Court concluded that the plaintiffs' last day of work was the day that they were laid off as part of a workforce reduction plan, rather than their subsequent "effective date of separation," as reflected in the defendant's personnel records. *Id*.

Here, plaintiff's last day of work with defendant was on or about June 27, 1997, the day that he was laid off. Plaintiff's discrimination claim accrued on that date. Because he did not file his complaint until more than six months after that date, his claim is time-barred. While we acknowledge defendant's poor drafting of its employment contract, we do not believe that our holding unfairly punishes plaintiff. Although plaintiff has contended throughout these proceedings that his June 1997 layoff was temporary, he failed to provide factual support for that contention either in his response to defendant's motion for summary disposition or in his appeal to this Court. Furthermore, to the extent that the six-month limitation period in the parties' contract can be viewed as either ambiguous or non-specific, we reiterate that plaintiff has not challenged the validity or enforceability of the provision. Accordingly, summary disposition in favor of defendant was proper.

Affirmed.

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[1] Consequently, we decline to reach the question whether the contractual provision incorporated the requisite specificity and reasonableness of length. See *Herweyer, supra*.

/s/ Helene N. White
/s/ Michael J. Talbot
/s/ Robert J. Danhof