STATE OF MICHIGAN

COURT OF APPEALS

LISA BARRON,

Plaintiff-Appellant,

v

WILLIAM BEAUMONT HOSPITAL,

Defendant-Appellee.

UNPUBLISHED
February 6, 2001

No. 215686
Oakland Circuit Court
LC No. 97-002331-CL

Before: Talbot, P.J., and O'Connell and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition in this handicapper discrimination action. We affirm.

Plaintiff contends that the trial court erred in granting defendant's motion for summary disposition because defendant had a duty to transfer her to an alternate position that met her medical restrictions. Plaintiff further contends that she established valid claims on the bases of failure to accommodate, failure to hire, and disparate treatment. We disagree.

We review de novo a trial court's grant or denial of a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition under MCR 2.116(C)(10), this Court considers the affidavits, pleadings, depositions, admissions, and documentary evidence in the light most favorable to the nonmoving party. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). A motion for summary disposition under MCR 2.116(C)(10) is proper if no genuine issue of material fact exists, thereby entitling the moving party to judgment as a matter of law. *Id.*

To establish a prima facie case of discrimination under the Persons with Disabilities Civil Rights Act (PWDCRA),[1] a plaintiff must show that: (1) she has a disability as defined in the act; (2) the disability is unrelated to her ability to perform the duties of a particular job; and (3) the defendant discriminated against her in one of the ways described in the act. *Kerns v Dura*

[1] Plaintiff's complaint alleged violations of the Michigan Handicappers' Civil Rights Act (HCRA), however, the act is now known as the Persons with Disabilities Civil Rights Act, MCL 37.1101; MSA 3.550 (101).

Mechanical Components, Inc (On Remand), 242 Mich App 1, 12; 618 NW2d 56 (2000); *Lown v JJ Eaton Place*, 235 Mich App 721, 727; 598 NW2d 633 (1999). If necessary, an employer is required to provide reasonable accommodations to assist disabled persons in performing their employment duties unless the accommodation would impose an undue hardship. MCL 37.1102(2); MSA 3.550(102)(2); *Tranker v Figgie Int'l, Inc (On Remand)*, 231 Mich App 115, 121; 585 NW2d 337 (1998). If an employee's disability is related to her ability to perform her job duties, however, she is not disabled within the meaning of the PWDCRA. *Tranker, supra* at 125.

The issue in this case is whether defendant was obligated to accommodate plaintiff's disability by transferring her to another position that she could perform within her medical restrictions. Our Supreme Court recently addressed this issue in *Rourk v Oakwood Hospital Corp*, 458 Mich 25; 580 NW2d 397 (1998), and held that the existence of a disability is determined with reference to the job actually held or applied for and that the Legislature intended the inquiry regarding whether a plaintiff is disabled to focus on the job for which the plaintiff was originally hired. *Id*. at 27, 33-34. *Rourk* is nearly identical to the instant case, and therefore compels a similar result. Plaintiff in the present case admitted that she was unable to perform the duties of her nursing position. Therefore, defendant was not obligated to transfer her to another position. *Id*. See also *Kerns*, *supra* at 16, and *Hall v Hackley Hosp*, 210 Mich App 48, 57-59; 532 NW2d 893 (1995) (holding that an employer's duty to provide reasonable accommodations does not include placing the employee in a new job or transferring her to another position). Because plaintiff's disability was related to her ability to perform the job for which defendant hired her, with or without reasonable accommodation, she did not have a "disability" within the meaning of the PWDCRA and was not entitled to recover under the Act. Consequently, the trial court properly granted defendant's motion for summary disposition with respect to plaintiff's failure-to-accommodate claim.

Plaintiff also asserts that she established a prima facie case of discrimination against defendant based on a failure-to-hire theory, and that *Rourk*, *supra*, did not apply to that claim. However, this case is clearly on par with *Rourk*. The plaintiffs in both cases were already employees of the defendant hospitals when they became disabled, and both sought to transfer to other positions within the hospitals once they became unable to perform their nursing positions. *Rourk, supra* at 27. That plaintiff in the instant case was required to submit transfer requests to apply for available positions, while the plaintiff in *Rourk* was not required to submit any such paperwork, does not render this case a failure-to-hire case and does not distinguish it from *Rourk*.

Plaintiff also argues that *Rourk* is inapplicable to the instant case because defendant's own policies required it to transfer plaintiff to an alternate position. However, even assuming that defendant's policies rendered *Rourk* inapplicable, defendant was not obligated to transfer plaintiff to another position. Consistent with defendant's policy, defendant protected plaintiff's position for a period of twelve weeks while she was on medical leave. When she returned to the emergency department, she was informed that no position was available, and that the position normally reserved for work-restricted employees was filled. In addition, Heidi Shepard, the emergency department manager, expressed concern about tying up clinical employee positions in the emergency department because it compromised defendant's ability to take care of patients. Consistent with defendant's internal policy, Shepard then referred plaintiff to the human

resources department, and plaintiff submitted twenty transfer requests for open positions. Also in accordance with the internal policy, defendant terminated plaintiff when she was unable to secure a position within sixty days. We further note that plaintiff declined two job offers. Defendant's policies did not guarantee that another position would be available or offered to an employee; they merely required defendant to make efforts to locate an alternate position. Consequently, even if *Rourk* did not apply, the court's grant of defendant's motion for summary disposition was proper.

Plaintiff finally argues that she stated a valid claim against defendant based on a disparate treatment theory. As previously stated, however, if an employee's disability is related to her ability to perform her job duties, then she does not have a "disability" within the meaning of the PWDCRA. *Kerns*, *supra* at 12; *Lown*, *supra* at 727; *Tranker*, *supra* at 123, 125. Plaintiff admitted that she was not able to perform the duties of her nursing position and that no accommodation would have enabled her to perform those duties. Because her disability was directly related to her ability to perform her nursing position, with or without accommodation, plaintiff was not disabled within the meaning of the PWDCRA. *Tranker*, *supra* at 125. Consequently, the trial court did not err in granting defendant's motion for summary disposition with respect to plaintiff's disparate treatment claim.

Affirmed.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell