

STATE OF MICHIGAN
COURT OF APPEALS

KIRK LEAPHART,

Plaintiff-Appellant,

v

H & H PROPERTY MANAGEMENT
COMPANY,

Defendant-Appellee.

UNPUBLISHED

November 30, 2001

No. 225006

Wayne Circuit Court

LC No. 99-923719-CZ

Before: Whitbeck, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Plaintiff Kirk Leaphart appeals of right from the trial court's order granting defendant H&H Property Management Company's motion for summary disposition. We decide this appeal without oral argument pursuant to MCR 7.214(E). We affirm.

I. Basic Facts And Procedural History

Leaphart, who has a disability not necessarily visible on casual inspection by others, decided to apply for an apartment at a complex H&H managed. Accordingly, Leaphart went to the management office at the complex and obtained an application for tenancy. He also obtained a form on which a physician would certify his disability for the application process. Leaphart returned to the management office the following day, at which time he presented the tenancy application requesting a two-bedroom apartment to accommodate him and living space for his aunt, who acted as his housekeeper. Leaphart, who did not have a completed physician's certificate, secretly taped a discussion with H&H employee Thelma Fever. Fever reviewed the application but was suspicious about Leaphart's need to have a second bedroom for a housekeeper because, apparently, the previous day he had not mentioned that his aunt was also his housekeeper. In language peppered with expletives, Fever expressed incredulity that a sixty-year-old woman was Leaphart's housekeeper.

When H&H rejected his application, Leaphart filed this action seeking damages under the Persons With Disabilities Civil Rights Act (PWDCRA),¹ the Civil Rights Act (CRA),² and the

¹ MCL 37.1101 *et seq.*

² MCL 37.2101 *et seq.*

federal Fair Housing Act.³ Soon thereafter, Leaphart moved for summary disposition pursuant to MCR 2.116(C)(9). He asserted that he was entitled to judgment because he provided information that he was disabled as part of the application process and Fever acted callously toward him, while H&H had failed to present a valid defense. H&H filed a motion for summary disposition pursuant to MCR 2.116(C)(8), asserting that the evidence did not support Leaphart's claim because he failed to complete the application process and because a background check revealed that he had an extensive criminal history, making him an unsuitable tenant.

The trial court denied Leaphart's motion and granted H&H's motion, first stating:

There was no reference in anything she . . . said that had to do with a violation of the Elliott-Larsen Civil Rights Act. There was nothing that had to do with the Persons with Disabilities Act. She didn't say: I'm not going to rent you an apartment because you are schizophrenic or you have a schizoid affect[ive] disorder, nothing to that effect.

She asked why do you want to move here? . . . [S]he was a colorful person, a person who used colorful language. She cursed quite a bit during conversation with you. And I don't know if that's her usual style or not but she may have been an unpleasant person but she said nothing that would indicate that she was discriminating against you under state or federal law.

Leaphart responded that because the applicable statutes prohibited a real estate owner from engaging in certain conduct "or otherwise deny or make real property unavailable to a person,"⁴ and H&H had denied him an apartment, H&H was liable. The trial court disagreed, stating:

Then if I were to accept that interpretation there would be no reason on which or for which an owner of property could deny renting property to an applicant. And in this instance you weren't even an applicant in the sense that you didn't complete the application process. Not having completed the application process, not having any language used during the course of the conversation that would indicate that you were a member of a protected class and she was discriminating against you, and having an extensive criminal record all provide a basis for H & H Management to deny you an apartment.

II. Standard Of Review And Legal Standard

We review a trial court's decision on a dispositive motion de novo on appeal.⁵ The trial court properly considered H&H's motion as if it arose under MCR 2.116(C)(10), not subrule

³ 42 USC 3613.

⁴ MCL 37.1502(1)(e); MCL 37.2502(1)(e).

⁵ See *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

(C)(8).⁶ “A motion for summary disposition under MCR 2.116(C)(10) . . . tests the factual support of a claim”⁷ MCR 2.116(G)(5) requires the reviewing court to consider “affidavits, together with the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties” The court reviews this documentary evidence in the “light most favorable to the nonmoving party.”⁸ However,

an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her.^[9]

In other words, summary disposition is appropriate “if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact,^[10] and the moving party is entitled to judgment as a matter of law.”¹¹

III. The Trial Court’s Ruling

Technically, Leapheart has failed to present for our review the issue that has any potential to lead to reversal: whether the trial court erred in granting H&H’s motion for summary disposition. Instead, he has phrased a somewhat rambling question concerning the applicable standard of review that does not match his substantive, though short, argument that the trial court failed to rule on his statutory claims. We respond to his challenge only because he has proceeded without the benefit of counsel.¹²

The trial court did rule on Leapheart’s claims. The trial court reasoned, and we agree, that Fever’s comments, though offensive, did not indicate that Leapheart was being denied an opportunity to rent an apartment because of his disability. Rather, Fever’s comments were

⁶ MCR 2.116(C)(8) focuses exclusively on the pleadings, while H&H’s argument implicated the evidence on the record, which is properly considered under MCR 2.116(C)(10). See MCR 2.116(G)(5).

⁷ *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999).

⁸ See *id.*, quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).

⁹ MCR 2.116(G)(4).

¹⁰ See *Richardson v Michigan Humane Society*, 221 Mich App 526, 527-528; 561 NW2d 873 (1997) (plaintiff must show genuine issue of material fact regarding each element of prima facie case to survive a motion for summary disposition under MCR 2.116[C][10]).

¹¹ *Smith*, *supra* at 454-455, quoting *Quinto*, *supra*.

¹² See *Paschke v Retool Industries (On Rehearing)*, 198 Mich App 702, 705; 499 NW2d 453 (1993), rev’d on other grounds 445 Mich 502 (1994) (“The court is *obligated* only to review issues that are properly raised and preserved; the court is *empowered*, however, to go beyond the issues raised and address any issue that, in the court’s opinion, justice requires be considered and resolved.”).

directed at his relationship with his aunt. When Fever asked Leapheart why he needed a housekeeper, Fever did not question his response. She accepted that Leapheart needed a housekeeper to help with cooking and to help him manage what he called his “episodes.” Though using this colorful language, Fever merely expressed disbelief that Leapheart’s aunt was really his housekeeper. This is not the sort of conduct that the CRA, PWDCRA, and Fair Housing Act address. Thus, according to the evidence on the record, H&H management through Fever did not discriminate and therefore violate Leapheart’s rights. Summary disposition was appropriate.

Affirmed.

/s/ William C. Whitbeck

/s/ Janet T. Neff

/s/ Joel P. Hoekstra