

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT CLASPELL,

Plaintiff-Appellant,

v

DENSO MANUFACTURING MICHIGAN INC.,
d/b/a NIPPONDENSO MANUFACTURING,
USA INC.,

Defendant-Appellee.

UNPUBLISHED
December 4, 2001

No. 223345
Calhoun Circuit Court
LC No. 98-003095-NZ

Before: O'Connell, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

In this employment discrimination/wrongful termination suit, plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm.

Plaintiff brought suit alleging a handicap discrimination claim under the Persons with Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.*; an age discrimination claim under the Elliott-Larsen Civil Rights Act (CRA), MCL 37.2101 *et seq.*; and a wrongful discharge claim brought under a breach of contract theory. The trial court granted summary disposition on all three counts. The trial court first determined that collateral estoppel precluded plaintiff's employment discrimination claims, given certain factual determinations made in an earlier federal court suit. Furthermore, the trial court determined that no genuine issue of material fact existed with regard to plaintiff's breach of contract claim.

Plaintiff first contends that the trial court erred in granting preclusive effect to the determinations of the federal court under the doctrine of collateral estoppel. Plaintiff argues that differences between state and federal law, specifically relating to the use of after-acquired information, preclude application of the collateral estoppel doctrine. Plaintiff's argument mischaracterizes the applicable law. In *McKennon v Nashville Banner Pub Co*, 513 US 352, 359-360; 115 S Ct 879; 130 L Ed 852 (1995), the United States Supreme Court unanimously held that an employee discharged in violation of the Age Discrimination in Employment Act (ADEA), 29 USC 621 *et seq.*, is not barred from relief when, after his discharge, the employer discovers evidence of wrongdoing that would have led to the employee's termination on lawful and legitimate grounds. This Court adopted the *McKennon* reasoning in *Wright v Restaurant Concept Management, Inc*, 210 Mich App 105, 110; 532 NW2d 889 (1995), stating:

An employer should not be absolutely insulated from liability for violations of state civil rights laws because of the fortuitous discovery, after the employee's termination, of employee wrongdoing sufficient to have caused his termination.

Because this Court has adopted *McKennon*'s treatment of after-acquired information used to rebut a prima facie case of employment discrimination, plaintiff's assertion that state and federal law differ in this area is simply incorrect. Furthermore, plaintiff has failed to identify any after-acquired information that the federal court considered in rendering its decision. Therefore, plaintiff is not entitled to relief based on this argument.

Plaintiff also argues that application of collateral estoppel was improper because the federal standard for summary judgment is a higher standard than the summary disposition standard in Michigan. Plaintiff argues that, under Michigan law, where the truth of a material factual assertion depends upon a deponent's credibility, a genuine issue for the trier of fact exists and a motion for summary disposition should not be granted. *Vanguard Ins Co v Bolt*, 204 Mich App 271, 276; 514 NW2d 525 (1994).

Plaintiff's argument is without merit because the standards for summary disposition in state court mirror the standards for summary judgment in federal court. The standards for summary judgment in federal court require the moving party to demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp v Catrett*, 477 US 317, 324-325; 106 S Ct 2548; 91 L Ed 2d 265 (1986). The trial court must draw all inferences in a light most favorable to the nonmoving party, but may grant summary judgment when "the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Argristor Financial Corp v Van Sickle*, 967 F2d 233, 236 (CA 6, 1992), quoting *Matsushita Elec Indus Co, Ltd v Zenith Radio Corp*, 475 US 574, 587; 106 S Ct 1348; 89 L Ed 2d 538 (1986). Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no "genuine issue for trial." *Id.* That standard is exactly the same as the standard for summary disposition used under Michigan law, which tests whether a genuine issue of material fact exists supporting the nonmovant's case. MCR 2.116(C)(10). When deciding a motion for summary disposition, a court must consider the affidavits, pleadings, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). Both the trial court and this Court must resolve all reasonable inferences in favor of the nonmovant. *Hall v McRea Corp*, 238 Mich App 361, 369-370; 605 NW2d 354 (1999), lv pending.

Plaintiff argues that, where credibility issues exist, a grant of summary disposition under state law is improper. *Vanguard, supra* at 276. However, under federal law, the standard is the same. Doubts regarding the credibility of the movant's affiants, deponents, and witnesses should lead the court to conclude that a genuine issue of material fact exists, and therefore that summary judgment is improper. *Gribcheck v Runyon*, 245 F3d 547, 551 (CA 6, 2001). Plaintiff is simply incorrect when he argues that federal law on the points discussed differs materially from analogous Michigan law. Further, plaintiff has failed to identify the credibility issues that the federal court allegedly resolved in defendant's favor. Accordingly, plaintiff's argument that summary disposition of his discrimination claims should not have been granted is without support.

Plaintiff next takes issue with the trial court's decision to dismiss his wrongful discharge/breach of contract claim. The trial court initially stated that the collateral estoppel doctrine barred plaintiff's breach of contract claim. However, the trial court also analyzed plaintiff's claim and determined that defendant was entitled to summary disposition, independent of the federal court's decision. Therefore, the proper analysis involves de novo review of the trial court's grant of summary disposition. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). We find that summary disposition was proper.

Generally, a contract for employment is presumed to provide for employment at will. However, a contract for termination for just cause may be created either by express agreement or as a result of an employee's legitimate expectations grounded in the policy statements of the employer. *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 596-598; 292 NW2d 880 (1980); *Prysak v R L Polk Co*, 193 Mich App 1, 6-7; 483 NW2d 629 (1992). Plaintiff does not assert just cause employment by virtue of an express agreement. Rather, plaintiff relies on the provisions of defendant's employee handbook. However, this Court has ruled that an employee cannot assert legitimate expectations of just cause employment stemming from a manual or handbook, when the employee was unaware of the handbook or its contents until after his termination. *Id.* at 7. Plaintiff's own testimony establishes that he never received and never read the human resources manual until after he was terminated. Therefore, summary disposition was proper.

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ Michael R. Smolenski