STATE OF MICHIGAN

COURT OF APPEALS

JOANN VALENTI,

Plaintiff-Appellee,

v

GKN AUTOMOTIVE, INC.,

Defendant-Appellant.

UNPUBLISHED
December 14, 2001

No. 220035
Oakland Circuit Court
LC No. 90-387972-CL

JOANN VALENTI,

Plaintiff-Appellant,

v

GKN AUTOMOTIVE, INC.,

Defendant-Appellee.

No. 220204
Oakland Circuit Court
LC No. 90-387972-CL

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

PER CURIAM.

These consolidated appeals stem from the same lower court case in which plaintiff sued her former employer, defendant, with regard to a series of events leading to plaintiff's termination. Plaintiff and defendant appeal as of right. We reverse in part and affirm in part.

In 1990, plaintiff filed a lawsuit against defendant alleging, among other things, invasion of privacy and handicap discrimination. Both of these claims were dismissed pursuant to defendant's separate motions for partial summary disposition; however, both claims were later reinstated. With regard to the invasion of privacy claim, plaintiff appealed to this Court the order of final judgment on fewer than all claims, which included the invasion of privacy claim, and, having found a genuine issue of material fact, this Court reversed and remanded the case to the trial court. *Valenti v GKN Automotive, Inc*, unpublished opinion per curiam of the Court of Appeals, issued February 4, 1997 (Docket No. 151613). Following remand, plaintiff filed a motion to reinstate the handicap discrimination claim and the trial court granted the motion. After trial, the jury returned a verdict in favor of plaintiff on the invasion of privacy claim, but in favor of defendant on the handicap discrimination claim. On the invasion of privacy claim, the

jury awarded plaintiff $130,000 in economic damages and $115,000 in emotional damages. Accordingly, the trial court entered judgment in favor of plaintiff in the amount of $245,000, exclusive of interests and costs. Adding pre- and post-judgment interest, the total judgment amounted to $462,449.07 through December 31, 1998, "and thereafter as calculated according to statute until paid in full." The parties filed separate appeals, challenging the adverse decisions.

Defendant first claims that the trial court erred in denying its motion for a directed verdict and judgment notwithstanding the verdict (JNOV) on plaintiff's invasion of privacy claim because plaintiff failed to establish a prima facie case of invasion of privacy.[1] We agree. We review de novo a trial court's grant or denial of a directed verdict and a trial court's decision on a motion for JNOV. *Bouverette v Westinghouse Electric Corp*, 245 Mich App 391, 395; 628 NW2d 86 (2001). "When examining either motion, we view the evidence, as well as any legitimate inferences, in the light most favorable to the nonmoving party and decide whether a factual question exists about which reasonable minds might have differed." *Abke v Vandenberg*, 239 Mich App 359, 361; 608 NW2d 73 (2000). "The denial of a motion for a directed verdict or JNOV is reviewed to determine whether the nonmoving party failed to establish a claim as a matter of law." *Chiles v Machine Shop, Inc*, 238 Mich App 462, 469; 606 NW2d 398 (1999). "If reasonable jurors could honestly have reached different conclusions, neither the trial court nor this Court may substitute its judgment for that of the jury." *Zander v Ogihara Corp*, 213 Mich App 438, 441; 540 NW2d 702 (1995).

Of the four types of invasion of privacy that this Court has recognized, plaintiff alleges intrusion upon her seclusion, solitude, or into private affairs. *Tobin v Civil Service Comm*, 416 Mich 661, 672; 331 NW2d 184 (1982); *Doe v Mills*, 212 Mich App 73, 79-80; 536 NW2d 824 (1995). The elements of this intrusion action include: "(1) an intrusion by the defendant (2) into a matter in which the plaintiff has a right of privacy (3) by a means or method that is objectionable to a reasonable person." *Saldana v Kelsey-Hayes Co*, 178 Mich App 230, 233; 443 NW2d 382 (1989), citing *Lewis v Dayton-Hudson Corp*, 128 Mich App 165, 169; 339 NW2d 857 (1983).

We hold that, viewing the evidence in a light most favorable to plaintiff, reasonable jurors could not conclude that plaintiff proved that defendant's requirement that plaintiff undergo a psychiatric examination before returning to work from a medical leave was a means to ascertain information about matters in which plaintiff had a right to privacy. During her medical leave, plaintiff reported to defendant that stress aggravated her condition. Other evidence demonstrated that plaintiff's position with defendant was very stressful. Because defendant knew that there was a correlation between plaintiff's medical condition and stress, it is beyond dispute that defendant had a legitimate reason to require plaintiff to submit to a psychiatric exam. Further, no evidence was presented at trial to show that there was any other motive for the exam.

[1] In response to this argument, plaintiff argues, among other things, that the law of the case doctrine requires this Court to reject defendant's claim. Defendant failed to respond, but nevertheless, we find no merit to plaintiff's reliance on the law of the case doctrine. This Court previously remanded this case because a material issue of fact remained. "When this Court reverses a case and remands it for a trial because a material issue of fact exists, the law of the case doctrine does not apply because the first appeal was not decided on the merits." *Brown v Drake-Willock Int'l, Ltd*, 209 Mich App 136, 144; 530 NW2d 510 (1995) (emphasis omitted).

Additionally, the private information that the psychiatric reports provided to defendant was obtained by a licensed psychiatrist not in the employment of defendant. There is no indication that defendant gave to the psychiatrist specific instructions regarding the nature of the information that defendant required. Rather, the only expectation that defendant had was that it would receive a medical opinion regarding plaintiff's psychiatric condition relative to her ability to return to work. No doubt plaintiff was embarrassed by some of her comments made during the examinations that were contained in the reports, but the fact of the matter is that they were put there by the independent psychiatrist for the purpose of supporting his medical opinion. The information was not obtained to satisfy defendant's request, nor for any other purpose than to support the medical opinions of the examining psychiatrist. Consequently, plaintiff failed to demonstrate an intrusion by defendant to obtain information that she had a right to keep private. See *Saldana, supra* at 234-235; *Early Detection Center, PC v New York Life Ins Co*, 157 Mich App 618, 630-631; 403 NW2d 830 (1986).

Moreover, the record demonstrates that plaintiff knew her employer had a right to obtain medical reports in conjunction with its benefit plans, that she signed a broad medical release in applying for salary disability benefits, and that plaintiff told her coworkers and others about many of the allegedly private matters. Under these circumstances, plaintiff waived her right to privacy by her conduct. See *Doe, supra* at 86-87; *Earp v Detroit*, 16 Mich App 271, 278, n 5; 167 NW2d 841 (1969). Thus, as a matter of law, we conclude that defendant was entitled to judgment in its favor.[2]

In her appeal, plaintiff first argues that she is entitled to judgment as a matter of law on the handicap claim for which the jury returned a verdict of no cause of action. In essence, plaintiff claims that she was entitled to JNOV on her handicap claim because she was unlawfully compelled to submit to a psychiatric examination unrelated to the ability to do her job and she was discriminated against on the basis of a perceived handicap. We find plaintiff's argument without merit.

Michigan's Handicappers' Civil Rights Act (HCRA), MCL 37.1101 *et seq.*,[3] covers those whose disability is unrelated to the ability to perform the job. *Ashworth v Jefferson Screw Products, Inc*, 176 Mich App 737, 743; 440 NW2d 101 (1989). Viewing the evidence and all legitimate inferences in the light most favorable to defendant, we conclude that reasonable jurors could have reached different conclusions regarding whether defendant had reasonable and objective reasons to believe that plaintiff could not do her job upon returning from medical leave and whether defendant discriminated against plaintiff on the basis of a perceived handicap that was unrelated to her ability to do her job. *Abke, supra*; *Zander, supra*.

In particular, we disagree with plaintiff's contention that no objective evidence exists from which a jury could determine that the psychiatric examinations that defendant required before plaintiff could return from her medical leave were related to plaintiff's ability to do her job. There was evidence that plaintiff's position with defendant was stressful and that before her medical leave she had been counseled about stress management in an evaluation. Evidence also

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[2] Accordingly, we need not reach defendant's argument regarding remittitur.

[3] This act is now known as the Persons with Disabilities Civil Rights Act. See MCL 37.1101.

was presented that during her medical leave plaintiff advised defendant that the stress of discussing work-related matters in phone conversations was impeding her recovery. From this evidence a reasonable juror could conclude that defendant's referral of plaintiff to a psychiatrist was reasonable and was related to discovering whether plaintiff was able to return to work.

Finally, plaintiff argues that the trial court erred in denying her a new trial where the jury's verdict on her handicap claim was against the great weight of the evidence.[4] We review trial court's denial of a motion for new trial for an abuse of discretion. *Meyer v City of Center Line*, 242 Mich App 560, 564; 619 NW2d 182 (2000); *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 261; 617 NW2d 777 (2000). Having reviewed the record and giving substantial deference to the trial court's decision, *Morinelli*, *supra*, we conclude that the jury's verdict of no cause of action was not against the great weight of the evidence and that the trial court did not abuse its discretion in denying plaintiff's motion for a new trial.

Reversed in part, affirmed in part.

/s/ Henry William Saad
/s/ Joel P. Hoekstra

[4] To the extent that plaintiff argues that the verdict was against the great weight of the evidence on the basis of "unrebutted evidence of disparate treatment," we decline to address that aspect of her claim on appeal because she presents no law on the theory of discrimination on the basis of disparate treatment or whether that theory applies in handicap discrimination claims. See *In re Webb H Coe Marital & Residuary Trusts*, 233 Mich App 525, 537; 593 NW2d 190 (1999) ("We need not address an issue that is given only cursory consideration.").