STATE OF MICHIGAN

COURT OF APPEALS

VICKY L. SCHULTZ,

Plaintiff-Appellant,

v

MEMORIAL HEALTHCARE CENTER,

Defendant-Appellee.

UNPUBLISHED
June 14, 2002

No. 230774
Shiawassee Circuit Court
LC No. 99-003326-CL

Before: Bandstra, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Plaintiff Vicky L. Schultz appeals as of right from the trial court's October 25, 2000, order granting defendant summary disposition under MCR 2.116(C)(10). We affirm.

On appeal, plaintiff first argues that the trial court erred in granting defendant summary disposition under MCR 2.116(C)(10) where a question of fact exists concerning whether defendant's statements, as well as its policies and procedures, reasonably caused plaintiff to believe that her employment was terminable only for cause. We disagree.

This Court reviews a trial court's decision regarding a motion for summary disposition de novo and must review the entire record to determine if the moving party was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A summary disposition motion under MCR 2.116(C)(10) asserts there is no genuine issue of material fact. *Maiden*, *supra* at 120. The opposing party must set forth specific facts showing a genuine issue for trial. *Id*. at 121.

Generally, under Michigan law an employer or employee may terminate an employment relationship at will. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 163; 579 NW2d 906 (1998) (Weaver, J.). There is a strong presumption that an employment contract for an indefinite duration can be terminated at will. *Nieves v Bell Industries, Inc*, 204 Mich App 459, 462; 517 NW2d 235 (1994). However, the presumption of at-will employment may be overcome by proof of a contract for a definite period of time, a clause that states termination may be for just cause only, a clear and unequivocal written or oral express agreement about job security, or a legitimate expectation of job security on the basis of the employer's policies and procedures. *Lytle*, *supra* at 164.

Oral statements must be clear and unequivocal to overcome the presumption of at-will employment. *Clement-Rowe v Michigan Health Care Corp*, 212 Mich App 503, 505; 538 NW2d 20 (1995). When assessing oral statements, the key question is the meaning a reasonable person would have assigned to the language under the circumstances. *Rood v General Dynamics Corp*, 444 Mich 107, 119; 507 NW2d 591 (1993). All relevant circumstances, including all writings, oral statements, and other conduct by which the parties manifested their intent, must be considered. *Lytle*, *supra* at 171. The plaintiff's subjective expectation that her employment could only be terminated for cause does not in itself create a just-cause employment contract. See *Nieves*, *supra* at 464.

We agree with the trial court that the record, viewed in the light most favorable to plaintiff, does not yield genuine material factual disputes regarding whether plaintiff's employment was terminable only for cause. To the extent that plaintiff's claim of just-cause employment is premised on oral assurances, we agree with the trial court that these were not so clear and unequivocal that the presumption of at-will employment was overcome. Because the record does not reflect an actual negotiation or a clear intention to contract for permanent or just-cause employment, any statements attributed to defendant concerning job security are more reasonably interpreted as optimistic hopes for a long and satisfying employment relationship. *Lytle*, *supra* at 172. Optimistic hopes about the future of the plaintiff's employment will not suffice to prove just-cause employment. *Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627, 640; 473 NW2d 268 (1991). Plaintiff's initial concerns about job security during the merger resulted in a two-year express employment contract. However, the record does not substantiate plaintiff's assertion that concerns for the period beyond the initial two years were addressed orally or in a binding contractual provision.

Next, plaintiff claims a just-cause employment contract was formed on the basis of her legitimate expectations grounded in defendant's employment policies. An employee must have both a subjective and objective belief of just-cause employment when the claim is based on legitimate expectations gleaned from employment policies and established procedures. *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 83; 480 NW2d 297 (1991). Further, a legitimate expectation claim is generally based on promises to all employees subject to the relevant policies and procedures, rather than to promises made to an individual employee. See *Rood*, *supra* at 136-137. Likewise, the employer's statements and conduct must clearly and unambiguously indicate an intent to enter into just-cause employment contracts with the relevant group of employees. *Id*.

This Court must discern what, if anything, the employer promised and then determine whether the promise was reasonably capable of causing a legitimate expectation of just-cause employment. *Lytle*, *supra* at 164-165. Only policies and procedures reasonably related to the termination procedure are applicable to the legitimate expectation analysis. *Rood, supra* at 139. Even when policies do not explicitly state employment is terminable at will, just-cause employment is not lightly presumed. *Biggs v Hilton Hotel Corp*, 194 Mich App 239, 241; 486 NW2d 61 (1992).

We have reviewed the employment policies plaintiff offers in support of her legitimate expectations claim and conclude that they do not support her argument that factual disputes exist concerning whether her employment was terminable only for cause. Policy statements of fairness and a commitment to maintain good will, loyalty, and harmony among employees are

not inconsistent with at-will employment and do not objectively support just-cause employment. *Rood*, *supra* at 127. In contrast, in *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 598; 292 NW2d 880 (1980), a legitimate expectation of just-cause employment arose where the employer's handbook explicitly stated that employees would be terminated "for just cause only" and the handbook was given to the employee in response to his specific questions about job security. "A promise of fairness, without more, is too vague to judicially enforce." *Rood*, *supra* at 141. Similarly, that reasonable minds would conclude that the policies were not intended to create a legitimate expectation of just-cause employment is further evidenced by the fact that plaintiff did not receive the policies during negotiations for job security. *Lytle*, *supra* at 167. Accordingly, we are satisfied that the trial court properly granted summary disposition because the record evidence does not support plaintiff's contention that her employment was terminable only for cause.

Plaintiff next argues that trial court improperly granted summary disposition of her fraud claim where the record reflects that defendant misrepresented its plans for expanding Positive Alternatives In Counseling Education (PACE) services. We disagree.

The elements of an actionable fraud claim are: (1) the defendant made a material representation; (2) the representation was false, (3) the defendant knew the representation was false when it was made or the representation was made recklessly, without any knowledge of the truth; (4) the representation was made with the intent that the plaintiff would act on it; (5) the plaintiff did act in reliance on the representation; and (6) the plaintiff suffered injury. *Hi-Way Motor Co v International Harvester Co*, 398 Mich 330, 336; 247 NW2d 813 (1976). A claim of fraud must be based on a misrepresentation about a past or existing fact. *Id*. "Future promises are contractual and do not constitute fraud." *Id*. In the instant case, defendant's statements concerning the future of PACE services involved future events and, therefore, do not support a claim of misrepresentation. However, an exception to the "past or present fact" rule is made for fraudulent misrepresentation on the basis of a promise made in bad faith without the intent to perform. *Hi-Way*, *supra* at 338. Evidence of this fraudulent intent must relate to conduct at the time the representations were made or almost immediately after. *Id*. at 338-339.

The present case involved a merger between PACE and defendant, not plaintiff and defendant, and a review of the record indicates that defendant shared the possibility of expanding PACE services with the president of the PACE board of directors. Also, plaintiff knew that expanding PACE services was a possibility. In fact, expanding resources was one reason she contacted defendant about a merger. Further, plaintiff's non-competition agreement unequivocally stated that defendant "anticipates further development of outpatient substance abuse services and certain beneficial relationships with patients . . . ." Under the circumstances, we are not persuaded that the trial court improperly granted summary disposition because defendant did not intentionally misrepresent information to plaintiff.

Finally, plaintiff argues that the trial court improperly granted summary disposition of her intentional infliction of emotional distress claim where defendant's misrepresentations about adding services to the PACE program were extreme and outrageous. We disagree.

To support a claim of intentional infliction of emotional distress, the plaintiff must prove: "(1) extreme and outrageous conduct; (2) intent or recklessness; (3) causation; and (4) severe emotional distress." *Linebaugh v Sheraton Michigan Corp*, 198 Mich App 335, 342; 497 NW2d

585 (1993). The conduct at issue must go beyond all possible bounds of decency, and be regarded as atrocious and utterly intolerable in a civilized community. *Id*. We agree with the trial court that defendant's actions fell far short of extreme and outrageous conduct. *Id.* There is nothing intolerable about expanding services and employment responsibilities. Further, terminating an individual's employment will generally not rise to the threshold level of extreme and outrageous conduct. See, e.g., *Fulghum v United Parcel Service, Inc*, 424 Mich 89, 96-98; 378 NW2d 472 (1985) (Levin J.). Accordingly, we are satisfied that trial court properly granted summary disposition where the record does not demonstrate that defendant's conduct was extreme and outrageous.

Affirmed.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell