

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL C. WHITNEY,

Plaintiff-Appellant,

v

DAIMLERCHRYSLER CORPORATION,

Defendant-Appellee.

UNPUBLISHED

December 20, 2002

No. 239661

Oakland Circuit Court

LC No. 01-029668-CL

Before: Bandstra, P.J., and Zahra and Meter, JJ.

PER CURIAM.

In this action alleging violation of the Employee Right to Know Act (ERKA), MCL 423.501 *et seq.*, plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendant. We affirm.

On November 27, 2000, while on medical leave of absence from his employment with defendant, plaintiff contacted a representative of defendant's human resource department and requested a copy of his personnel file. Although initially assured that the file would be provided as soon as compiled, plaintiff was informed in January 2001 that the file had been turned over to defendant's corporate diversity representatives in connection with a charge filed by plaintiff with the Equal Employment Opportunity Commission. As a result, on February 29, 2001, plaintiff filed the instant action seeking to compel production of the file under the ERKA.

In April 2001 defendant voluntarily produced all but a portion of plaintiff's file, the remainder of which was delivered to plaintiff in October of that same year – more than eleven months after plaintiff's initial request. After producing the file, defendant moved for summary disposition of plaintiff's action under MCR 2.116(C)(8) and (10), arguing that because it had complied with the ERKA by providing plaintiff his file, the action was moot. The trial court agreed and, finding no actual damages, granted summary disposition in favor of defendant.

On appeal, plaintiff argues that the trial court erred in granting defendant summary disposition merely because plaintiff had received the file and suffered no actual damages. In making this argument, plaintiff asserts that the ERKA must be construed as requiring an employer to respond to a request for a personnel file within a reasonable time, failure of which constitutes a violation of the act for which an employee is entitled to damages, costs, and, if such violation is wilful, attorney fees. See MCL 423.511.

We review de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Statutory interpretation is also a question of law reviewed de novo on appeal. *Oakland Co Bd of Road Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998).

The ERKA requires an employer to provide an employee access to the employee's personnel record upon written request, MCL 423.503, and entitles every employee to a copy of his or her personnel file, MCL 423.504. The purpose of the act is to provide a method for ensuring that erroneous employment information that might harm an employee is corrected by giving employees a chance to review and dispute the information contained in their personnel files. See MCL 423.505; see also House Legislative Analysis, HB 5381, November 11, 1977, pp 1-2. In furtherance of this purpose, the act permits an employee who is denied access to their file to commence an action to force compliance with the act by court order. MCL 423.511. MCL 423.511 further provides that an employer's failure to comply with such an order "may be punished as contempt," and directs the court to "award an employee prevailing in an action pursuant to th[e] act . . . actual damages plus costs" if there was "a violation of the act."

By so providing, the act already itself contains an explicit mechanism for ensuring timely compliance with its provisions. An employee is entitled to secure a court order requiring his employer to comply with the provisions of the act. That order would set out a time frame for compliance, as determined by the court to be reasonable considering the facts and circumstances of the individual case. Here, however, despite his claim that defendant did not timely act to fulfill his request, plaintiff failed to, at any time during the seven months between the filing of this action and the ultimate production of the file, seek issuance of such an order. Indeed, it was not until defendant sought summary disposition of the action that plaintiff even raised the timeliness issue.

Moreover, even assuming that the act impliedly requires production of the requested file within a reasonable time, plaintiff offered no evidence, aside from the length of the delay itself, to support a finding that defendant's production of the file was not reasonably timely under the circumstances of this case.¹ Defendant explained below that the records constituting the whole of plaintiff's file were not centrally located, but rather were disseminated across several departments and thus took time to compile. Defendant also explained that at the time of plaintiff's request it "was in the midst of a massive reduction in force," and had thus been inundated with a number of similar requests. Although required to do so, see MCR 2.116(G)(4), plaintiff failed to produce any evidence indicating that, under these circumstances, defendant did not act in a reasonably timely manner.

Accordingly, the trial court properly granted summary disposition in favor of defendant. *Id.*; see also *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999) (summary disposition under MCR 2.116(C)(10) is appropriate if the opposing party fails to present

¹ Because the trial court looked beyond the pleadings, we will review the court's decision under the appropriate subrule, MCR 2.116(C)(10), which permits summary disposition when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Gibson v Neelis*, 227 Mich App 187, 190; 575 NW2d 313 (1997).

documentary evidence establishing the existence of a material factual dispute). In doing so, the trial court impliedly but properly concluded that defendant had not violated the act, meaning that plaintiff was entitled to no damages. MCL 423.511.

We affirm.

/s/ Richard A. Bandstra

/s/ Brian K. Zahra

/s/ Patrick M. Meter