STATE OF MICHIGAN

COURT OF APPEALS

RICHARD D. HOFER,

Plaintiff-Appellant,

v

DAIMLERCHRYSLER CORP,

Defendant-Appellee.

UNPUBLISHED
December 9, 2003

No. 239870
Macomb County Circuit Court
LC No. 00-000360-CL

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

PER CURIAM.

Plaintiff brought several causes of action against his former employer, DaimlerChrysler Corporation, including violations of the Elliott-Larsen Civil Rights Act, the Family and Medical Leave Act, and the American with Disabilities Act. When plaintiff applied for a job with then Chrysler Corporation, he signed an employment application agreeing to bring any action against the company within six months of the injury. The trial court held that plaintiff failed to bring the action within the time allotted in the employment application and granted defendant's motion for summary disposition. We affirm.

Plaintiff was hired as an hourly assembly worker at defendant's Warren Truck Assembly Plant in December 1993. Plaintiff filled out an employment application, which clearly stated that any employment related action against defendant must be brought within six months of the alleged injury.

Plaintiff signed the employment application and began work. During 1998, plaintiff was found to have violated the bargained attendance policy and was issued a ten-day disciplinary layoff. After receiving the disciplinary layoff, plaintiff informed defendant of various family and personal reasons for his excessive absences. Following the explanation, defendant rescinded the layoff and informed plaintiff that in the future, he should request leave pursuant to defendant's Family and Medical Leave Act policy.

In May 1998, following an extended leave, plaintiff did not return to work. Plaintiff was thereafter issued another ten-day suspension. Plaintiff again failed to report to work after a leave he took in July. He was then issued a thirty-day suspension. When plaintiff's suspension expired on September 7, 1998, he refused to return to work, citing a hostile work environment.

He was thereafter terminated for violating company policies. Plaintiff commenced this action on January 27, 2000.

This Court reviews motions for summary disposition de novo. *Timko v Oakwood Custom Coating, Inc*, 244 Mich App 234; 625 NW2d 101, lv den 464 Mich 875 (2001). In reviewing a motion pursuant to MCR 2.116(C)(7), a trial court is required to accept all of the plaintiff's allegations as true, construing them in the light most favorable to the plaintiff. *Stablein v Schuster*, 183 Mich App 477; 455 NW2d 315 (1990).

In this case, plaintiff signed an employment application, which stated in relevant part:

> I agree that any claim or lawsuit relating to my service with Chrysler Corporation or any of its subsidiaries must be filed no more than six (6) months after the date of the employment action that is the subject of the claim or lawsuit. I waive any statute of limitations to the contrary.

The employment application also stated that it would become "part of your official employment record."

Plaintiff argues that when he became a member of the union, the collective bargaining agreement superseded this provision of the employment application. However, plaintiff has not presented this Court with a copy of the collective bargaining agreement, offered any such language of limitation, or provided this Court with any case law to justify his argument. A party may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, unravel and elaborate for him his argument, and search for authority to sustain or reject his position. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Thus, plaintiff's failure to properly brief this issue to this Court constitutes abandonment of the issue. *Yee*, *supra* at 406.

Plaintiff also argues that cases decided by our Court or the Michigan Supreme Court cannot be applied to federal statutes such as the FMLA or the ADA because of the difference in print and the size of the corporation. We adopt the view of the trial court that such a claim is "sufficiently absurd as to require no further comment."

Michigan recognizes the right of parties to bargain for shorter time periods in which to bring a cause of action than those allowed by statute and case law. In *Herweyer v Clark Highway Services, Inc*, 455 Mich 14; 564 NW2d 867 (1997), our Supreme Court stated:

> We held that parties may contract for a period of limitation shorter than the applicable statute of limitation. The limitation period must be reasonable. It is reasonable if (1) the claimant has sufficient opportunity to investigate and file an action, (2) the time is not so short as to work a practical abrogation of the right of action, and (3) the action is not barred before the loss or damage can be ascertained. Courts have held that limitation periods written into certain insurance, shipping, and bond contracts were valid although they shortened legislatively prescribed limitation periods. [*Id.* at 20.]

Finding that Michigan allows parties to contract for a shortened time period, the analysis turns on whether (1) the plaintiff has sufficient opportunity to investigate and file an action, (2) the time is not so short as to be a practical abrogation of the right to file, and (3) the action is not barred prior to the loss or damage. In *Timko, supra*, this Court held that a six-month limitation period was reasonable as applied to civil rights claims. The *Timko* Court, relying in part on *Myers v Western-Southern Life Ins Co*, 849 F2d 259 (CA 6 1988) held:

> We find that in this case the 180-day period of limitation afforded plaintiff adequate time to investigate and file his age discrimination claim. Both Michigan law and federal law allow for six-month or even shorter periods of limitation in the context of various employment actions . . . . Furthermore, both Michigan and federal law apply six-month periods of limitation even where an employee's civil rights are involved. [*Id.* at 242, 243.]

Plaintiff argues that the time period should be tolled pursuant to *AFSCME v Highland Park Bd of Ed*, 457 Mich 74; 577 NW2d 79 (1998) because he was pursuing a grievance. We agree. However, even considering the time period of limitations would have tolled, plaintiff still failed to bring this action within six months. Plaintiff's grievance seeking to overturn his May 1998 suspension was filed on September 2, 1998. Therefore, at the time plaintiff filed his grievance he had almost 2½ months remaining on the suspension. Plaintiff revived a final response to his grievance on September 7, 1999, when the union informed plaintiff that a non-binding settlement had been reached. Thus, plaintiff had until the end of November 1999 to file this action. He waited until January 27, 2000, some sixteen months after the alleged claim arose to file this action. We hold that *Timko, supra*, is determinative to our decision in this matter.

The remaining issues raised in plaintiff's appeal do not require resolution by this Court, save one, because plaintiff either failed to properly preserve the issue, the issue is moot, or the issue is clearly without merit. However, one of the claims offered by plaintiff's counsel is sufficiently alarming as to justify review by this Court, despite the fact that plaintiff failed to properly preserve it. Among his many claims on appeal, plaintiff claims that the trial judge was "biased and acted with prejudice against plaintiff . . . and should be disqualified from this case." Plaintiff's rationale for disqualifying the trial judge is predicated on plaintiff's assertion that the judge "alleged to have had trials already pending in his court but public record speaks otherwise." As is the case throughout much of plaintiff's brief, counsel supplies no documentation to support this claim. Such an unsubstantiated allegation is reckless abandon of the truth by plaintiff's counsel because review of the entire record demonstrates that the trial judge treated plaintiff, his counsel, and the claims brought by plaintiff with respect, professionalism, and courtesy when rendering all decisions in this matter.

Affirmed.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Stephen L. Borrello