STATE OF MICHIGAN

COURT OF APPEALS

BONITA WILLIAMS,

Plaintiff-Appellant,

v

GRAND TRAVERSE PAVILIONS,

Defendant-Appellee.

UNPUBLISHED
November 2, 2004

No. 247063
Grand Traverse County
LC No. 02-22350-CL

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's granting of summary disposition in favor of defendant pursuant to MCR 2.116(C)(7) (statute of limitations) based on a six month limitation period contained in plaintiff's employment application. We affirm.

Plaintiff, a Native American, was employed as a Certified Nursing Aide (CNA) by defendant Grand Traverse Pavilions, a long-term medical care facility. Defendant hired plaintiff on April 10, 2000;[1] plaintiff resigned on September 13, 2001. On December 17, 2001, plaintiff filed a civil rights complaint against defendant alleging violations of the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101, *et seq.*, with the Michigan Civil Right Commission (MCRC). While her complaint was pending before the MCRC, plaintiff instituted this action in circuit court on September 6, 2002, alleging violations of the ELCRA, defamation and intentional infliction of emotional distress. The MCRC dismissed plaintiff's civil rights charge when plaintiff filed this lawsuit in circuit court.

Plaintiff alleges that the wife of a patient at defendant's facility referred to plaintiff as a "dirty Indian" and requested that plaintiff not be assigned to care for her husband. According to plaintiff, she was thereafter demoted by being reassigned to a different unit. Plaintiff contends that her demotion and reassignment caused her to suffer medical problems as a result of the embarrassment, humiliation, anxiety and confusion concerning her demotion, caused her to be

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[1] Plaintiff had previously worked for defendant in 1999. She took time off to care for her sick father and reapplied for employment with defendant as a CNA in April 2000.

the object of ridicule by other employees, and caused her to suffer emotional distress as a result of the lack of support afforded to her by defendant.

Before being hired by defendant, plaintiff signed an employment application that provides as follows:

> I agree that any action or suit against the organization arising out of my employment or termination of employment, including but not limited to claims arising under State or Federal civil rights statutes, must be brought within 180 days of the event giving rise to the claims or be forever barred. I waive any limitation periods to the contrary.

Based on this language, defendant moved for summary disposition under MCR 2.116(C)(7) and (C)(10). The trial court granted the motion pursuant to MCR 2.116(C)(7), holding that this Court's decision in *Timko v Oakwood Custom Coating, Inc*, 244 Mich App 234; 625 NW2d 101 (2001), permitted parties in an employment agreement to contract for a shortened limitations period as long as the time period was reasonable and that a 180 day limitations period qualified as reasonable. On appeal, plaintiff contends that the trial court erred in granting summary disposition in favor of defendant because the hire agreement contains an integration clause that supersedes the 180 day limitation period contained in plaintiff's employment application, because the 180 day limitation period in the application was unreasonable under *Timko*, and because the filing of her complaint with the MCRC tolled the 180 day limitation period.[2] We disagree.

A motion for summary disposition pursuant to MCR 2.116(C)(7) is appropriate where "[t]he claim is barred because of . . . statute of limitations." MCR 2.116(C)(7). All well-pleaded factual allegations and documentary evidence is construed in the plaintiff's favor. *Jackson Co Hog Producers v Consumers Power Co*, 234 Mich App 72, 77; 592 NW2d 112 (1999). Where there are no factual disputes and reasonable minds cannot differ on the legal effect of the facts, the decision regarding whether a plaintiff's claim is barred by the statute of limitations is a question of law that this Court reviews de novo. *Geralds v Munson Healthcare*, 259 Mich App 225, 230; 673 NW2d 792 (2003). Additionally, whether contract language is ambiguous is a question of law which we review de novo. *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996).

Plaintiff first argues that the integration clause contained in her hire agreement superseded or canceled the limitation period contained in the employment application, or, at a minimum, created a question of fact for the trier of fact. Although the trial court did not explicitly address this issue below, we will consider it on appeal because the trial court, in

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[2] Plaintiff also argues on appeal that the trial court erred in failing to rule that the National Labor Relations Board has exclusive jurisdiction to interpret plaintiff's employment application. The trial court did not address or decide this issue. Issues that have not been raised in and decided by the trial court are not preserved for appeal. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). We therefore decline to review this unpreserved issue.

granting summary disposition in favor of defendant based on the 180 day limitation period contained in the employment application, implicitly rejected plaintiff's contention that the hire agreement superseded the application. The relevant portion of the hire agreement provides:

> This constitutes the entire agreement of the parties and supersedes and cancels all previous written or oral communications between the parties referring to the subject matter of this agreement.

The hire agreement encompassed four subject matter areas: (1) the applicant's certification that the information on the employment application was correct, (2) the applicant's passage of a physical examination and acceptance of certain responsibilities associated with employment, (3) the applicant's licensing qualifications, and (4) the applicant's position, hourly pay rate. Because the four subject matter areas in the hire agreement do not include or encompass a limitation period, nothing in the hire agreement can be construed as superseding the limitation period set forth in the employment application. The hire agreement plainly and unambiguously limits the "entire agreement" to those four areas that are the specific "subject matter" of the hire agreement. We cannot ignore the language in the hire agreement limiting its application to the areas that are within its "subject matter." Contracts must be construed so as to give effect to every word or phrase as far as practicable. *Klapp v United Insurance Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003). Interpreting the integration clause as superseding plaintiff's application would render meaningless the language limiting its application to the "subject matter" of the hire agreement. We conclude that the plain and unambiguous language of the hire agreement limits its application and does not supersede the limitation period in plaintiff's application. If a contract is plain and unambiguous, this Court must enforce it according to its terms. *Burkhardt v Bailey*, 260 Mich App 636, 656; 680 NW2d 453 (2004). Accordingly, we reject plaintiff's contention that the hire agreement superseded the limitation period contained in plaintiff's application for employment.

Plaintiff next argues that the trial court erred in failing to rule that the 180 day limitation period is unreasonable under *Timko*. Again, we disagree. This Court set forth the requirements to determine whether a contractually established limitation period is unreasonable in *Timko*, *supra*, when we stated:

> The Supreme Court in *Herweyer v Clark Hwy Services, Inc*, 455 Mich 14; 564 NW2d 857 (1997) restated the accepted principle that parties may contract for a period of limitation shorter than the applicable statute of limitation provided that the abbreviated period remains reasonable. The period of limitation '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 . . . .' To this point, no published opinion by this Court or the Supreme Court has specifically addressed the reasonableness of a shortened, 180-day period of limitation in the context of an employment agreement.
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> Plaintiff does not address how the instant, shortened period of limitation violates any of the three prescribed considerations. Applying Michigan law, at least two federal courts have found that a six-month period of limitation contained within an employment agreement qualified as reasonable. In *Myers v Western-*

> *Southern Life Ins Co*, 849 F2d 259, 260 (CA 6, 1988), the plaintiff signed an employment contract agreeing '[n]ot to commence any action or suit relating to your employment . . . more than six months after the date of termination of such employment, and to waive any statute of limitation to the contrary.' More than sixteen months after the plaintiff retired, he filed a constructive discharge lawsuit against the defendant, alleging age and handicap discrimination in violation of the Michigan Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*, and the Michigan Handicappers' Civil Rights Act, MCL 37.1101 *et seq.*; MSA 3.550(101) *et seq.* The United States District Court for the Eastern District of Michigan (Feikens, J.) granted the defendant's motion for summary judgment based on the six-month period of limitation. [*Timko, supra*, 239-240 (internal citations and footnote omitted).]

In light of *Timko's* holding that a "180-day period qualifies as reasonable," we find that the 180 day limitation period in this case also was not unreasonable. *Id.*, 244. Plaintiff's arguments that the limitation period works a practical abrogation of plaintiff's civil rights cause of action are unpersuasive, and plaintiff does not even argue on appeal that the 180 day limitation is unreasonable under the remaining two considerations articulated in *Herweyer.* To the extent that plaintiff has not argued that the limitation was unreasonable under the remaining two considerations articulated in *Herweyer*, she has abandoned this issue on appeal. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). A party may not merely "'announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Therefore, we reject plaintiff's argument that the trial court erred in determining that the 180 day limitation period was reasonable.

Plaintiff finally argues that her filing of a civil rights claim with the MCRC either satisfied or tolled the 180 day limitations period contained in her application for employment. We disagree.

In asking this Court to grant such extraordinary relief, plaintiff devotes less than one page of written text, and cites neither the tolling statute itself nor a single case to support its application to this contractual period. Plaintiff's confusing argument on this point seemingly rests on the argument that the contract language is ambiguous, which somehow leads to the applicability of our tolling statutes. As such, we decline to address this issue because plaintiff herself must "'adequately prime the pump; only then does the appellate well begin to flow.'" *Columbia Assoc, LP v Dep't of Treasury*, 250 Mich App 656, 678; 649 NW2d 760 (2002), quoting *Mitcham, supra*, 203.

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood