STATE OF MICHIGAN

COURT OF APPEALS

SUZANNE SHEDENHELM, Plaintiff-Appellant,	UNPUBLISHED January 17, 2006
v	No. 256168 Oakland Circuit Court
CRITTENTON HOSPITAL, INC., Defendant-Appellee.	LC No. 2003-050996-CZ

Before: O'Connell, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

In this action alleging discrimination in violation of the Michigan Civil Rights Act (CRA), MCL 37.2101 *et seq.*, and the Persons With Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.*, plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." In reviewing a motion under MCR 2.116(C)(10), which tests the factual support of a plaintiff's claim, we consider de novo all pleadings, admissions, affidavits, and other relevant documentary evidence of record and determine the existence of any genuine issue of material fact that would warrant trial. MCR 2.116(G)(5); *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Plaintiff argues that the trial court erred in failing to find a question of fact with respect to her claim that she was discriminated against because of her pregnancy.[1] Proof of discriminatory treatment in violation of the CRA may be established by direct or indirect evidence. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 132-133; 666 NW2d 186 (2003). Here, the only incident plaintiff cites as direct evidence occurred before she took time off to deliver her

[1] For purposes of the CRA's prohibition of discrimination on the basis of sex, "sex" includes pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. MCL 37.2201(d).

baby. It involved a supervisor asking her why her shirt was untucked. Viewed in a light most favorable to plaintiff, this incident would not lead a rational factfinder to conclude that her pregnancy was a motivating factor in her termination after she had delivered the baby and returned to resume work. *Sniecinski, supra*.

Plaintiff also asserts that she established her claim through indirect evidence because she was sent home after she returned from taking her two-week leave to deliver her baby. However, plaintiff failed to present any evidence that she was treated differently for the same or similar conduct. She essentially claims that she was treated differently because, when she returned to work after giving birth, her employer required her to submit a work release from her physician. Plaintiff never submitted a release, but argues that the request itself was discriminatory because she used vacation time for her absence, and other employees were obviously able to use vacation time without needing a release from a physician to return to work. The record reflects that she used vacation time to cover the birth because she had used up all her family medical leave on an earlier foot surgery.

Although plaintiff's supervisor acknowledged that there was no need for a physician's release when returning to work from an actual vacation, plaintiff's argument misstates defendant's policy. Defendant's policy was that an employee returning from any type of leave related to a disabling condition must bring a medical work release certificate from a physician. The record also reflects that plaintiff discussed with her director her plan to use vacation time to cover the medical leave, so defendant understood the reason for her absence and had a basis for requiring adherence to the neutral policy. See *Sniecinski, supra* at 136-138. Plaintiff did not comply with the policy. Plaintiff did not present any evidence that defendant deviated from any aspect of its policy in her case or applied it differently to her than to others. *Id*. at 140. Therefore, plaintiff failed to present any evidence that this policy was merely a pretext to discriminate against her, and the trial court did not err by granting defendant summary disposition on plaintiff's CRA claim. *Id*. at 134.

Plaintiff also argues that the trial court erred in dismissing her claim under the PWDCRA. However, the court ruled that plaintiff's claim failed because pregnancy does not constitute a disability under the statute, which is an element of proof for plaintiff. See *Chiles v Machine Shop, Inc*, 238 Mich App 462, 473; 606 NW2d 398 (1999). Plaintiff does not address the trial court's ruling that she was not "disabled" within the meaning of the PWDCRA. Her failure to address the basis for the trial court's decision precludes our review of the issue. *Roberts & Son Contracting, Inc v North Oakland Dev Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987).

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Michael J. Talbot