

STATE OF MICHIGAN
COURT OF APPEALS

CYNTHIA LAGROW,

Plaintiff-Appellant,

v

COUNTY OF BERRIEN and WILLIAM WOLF,

Defendants-Appellees.

UNPUBLISHED

December 11, 2008

No. 278064

Berrien Circuit Court

LC No. 2005-003211-CD

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

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition to defendants, Berrien County and William Wolf. Because we conclude that there is no genuine issue of material fact as to how plaintiff's employment with the county ended or to whether plaintiff's resignation was voluntary, we affirm.

I

In 2001, plaintiff was hired, by a formal resolution of the Berrien County board of commissioners, to be the director of the county's economic development department. Plaintiff and the 12 other county department heads were supervised by Mike Henry, the county administrator. In a December 2004 evaluation, Henry wrote that plaintiff performed her job duties "in an outstanding manner" and that she "brings a high level of energy and enthusiasm" and consistently represents the county "in a very positive manner." Henry, who was retiring at the end of the year, further wrote that it had been "an honor to serve with someone of such high performance and distinction."¹

On January 1, 2005, defendant William Wolf, the county treasurer, replaced Henry as the county administrator.² Later that month, Wolf sent plaintiff a memorandum, in which he

¹ In the summer of 2004, Henry, concerned about plaintiff, whom he stated "was in a fair amount of stress," had referred plaintiff to a psychologist for a fitness for duty test. Dr. Michael H. Bresler, a licensed psychologist, diagnosed plaintiff with depression.

² In the local 2004 Republican primary race for state representative, Wolf ran against John Proos.
(continued...)

commended her for her “energy and initiative,” but asking, among numerous other requests, that plaintiff meet with him on a weekly basis to bring him up to date on any projects and developments. Wolf also informed plaintiff that all communication from her to the county board of commissioners must be passed through him and that plaintiff was not to make any statement or financial commitment on behalf of the county without his approval. No similar memorandum was sent to any of the other department heads.

On April 15, 2005, Wolf met with plaintiff regarding her involvement in the Berrien Tooling Commission (BTC).³ Wolf told plaintiff that her involvement with the BTC violated the county’s conflict of interest, supplemental employment, and professional conduct policies. According to Shelley Smith, the head of the county’s human resource department, who also attended the meeting, Wolf told plaintiff to go home and to return on Monday with an explanation for her involvement with the BTC. Plaintiff became upset and, by her own admission, told Wolf to just fire her then if he was going to fire her. Wolf replied that he needed the weekend to think about his final decision. According to Smith, Wolf further stated that, before making any decision, he needed to hear her explanation on Monday.⁴

Plaintiff met with Wolf at 9:00 a.m. on Monday, April 18, 2005. Smith was also present at the meeting. Wolf asked plaintiff if she had anything to say for herself, and plaintiff responded in the negative. According to plaintiff, Wolf then told her that he was terminating her employment with the county, effective immediately. Plaintiff, in shock because she had expected, at most, to receive some form of progressive discipline, asked Wolf if he was joking. She explained that she had given her life to the job, that she enjoyed her job, and that she did not want to leave. Plaintiff then stated that she did not want a termination on her record. At that point, according to plaintiff, Wolf stated that a situation could be worked out where she resigned. After plaintiff expressed that she did not know what to do, Wolf ended the meeting to allow her time to consider her options. Wolf asked plaintiff how much time she needed, and when plaintiff stated that she did not know, Wolf said that they would reconvene at 9:30 a.m.

Wolf and Smith presented a slightly different version of what occurred at the meeting. According to them, after plaintiff stated that she did not have anything to say for herself, Wolf stated that it was in the county’s best interest for plaintiff’s employment to come to an end. Wolf then gave plaintiff the opportunity to resign. Smith recalled that Wolf made it clear that plaintiff’s employment with the county could not continue, but he was not so blunt as to tell plaintiff that if she did not resign she would be terminated.

(...continued)

Plaintiff supported Proos, of which Wolf was aware.

³ The BTC, a group of local tool and die companies, was formed after the Legislature in 2004 passed “an amendment to Public Act 376,” which granted tax exemptions to tool and die companies. One of the members of the BTC was Maximum Mold, which was owned by plaintiff and her husband.

⁴ According to plaintiff, she called Wolf later that afternoon to apologize for becoming upset during the meeting. She further told Wolf that she enjoyed her job with the county and that she had always tried “to conflict” herself out of situations. Wolf denied receiving such a telephone call from plaintiff.

After Wolf ended the meeting, plaintiff was allowed to use Smith's office. Left by herself in the office, plaintiff attempted, albeit unsuccessfully, to contact an attorney. Plaintiff then drafted "a letter of resignation." Plaintiff reconvened with Wolf and Smith. Before submitting her resignation letter, plaintiff repeated that she did not know what to do, but she did not want a termination on her record. She also requested Wolf to inform the county board of commissioners that he had given her the choice of resigning or being terminated. After submitting her resignation letter, plaintiff asked Wolf for an opportunity to retrieve her personal belongings from her office. Wolf, who had accepted the resignation letter, replied that plaintiff was to leave the county building immediately.

That afternoon, plaintiff, by a letter to Wolf, revoked her resignation. Plaintiff claimed that her resignation was invalid because, under the circumstances of the morning meeting, her decision to resign was coerced and uninformed. Wolf, believing that it was not in the county's best interest for plaintiff to be allowed to rescind her resignation, refused to accept plaintiff's revocation of her resignation. Wolf forwarded to plaintiff the necessary papers to schedule a hearing before the county's personnel and human services committee. After plaintiff addressed the committee in June 2005, the committee informed plaintiff that it supported Wolf's decision "which ended [her] employment" with the county.

Plaintiff sued Wolf and Berrien County. After alleging that her employment with the county had been "actually or constructively terminated" by Wolf, plaintiff set forth claims of sex discrimination in violation of the Elliot-Larson Civil Rights Act (ELCRA), MCL 37.2101 *et seq.*, intentional infliction of emotional distress, discrimination based on a disability in violation of the Persons with Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.*, and retaliation for constitutionally protected political activity.

Defendants moved for summary disposition under MCR 2.116(C)(8) and (C)(10). Defendants claimed that, because a resignation by a public employee is effective upon delivery, plaintiff's resignation barred her claims as a matter of law. Defendants argued that plaintiff's claim that her resignation constituted a constructive discharge was "plainly meritless," because until plaintiff had been given the choice of being terminated or resigning, plaintiff was not working in conditions so intolerable that she was compelled to resign. In the alternative, defendants claimed that no genuine issue of fact existed as to any of plaintiff's four individual claims.

In response, plaintiff claimed that, based on her testimony that Wolf began the April 18, 2005 meeting by stating that he was terminating her employment with the county, effective immediately, there was a genuine issue of material fact as to whether her employment ended as a result of her resignation or termination by Wolf. In the alternative, plaintiff claimed that her resignation was neither valid nor effective because (1) as a public official, she was entitled to rescind her resignation, (2) her resignation was nugatory because she had already been terminated, and (3) the resignation was not voluntary as it was the product of duress, constituted a constructive discharge, and her psychological condition rendered it invalid. Plaintiff also argued that she had met her burden of establishing a genuine issue of material fact on her four individual claims.

The trial court granted defendant's motion for summary disposition. It concluded that, because plaintiff was supervised by the county administrator, plaintiff was a public employee.

The trial court further concluded that, based on plaintiff's own testimony that she did not want a termination on her record, plaintiff's employment with the county ended as a result of her resignation. The trial court also rejected plaintiff's claims of duress and constructive discharge.

II

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Manuel v Gill*, 481 Mich 637, 643; 753 NW2d 48 (2008). Defendants moved for summary disposition under MCR 2.116(C)(8) and (C)(10). The trial court did not articulate under which subsection it granted the motion. However, because the parties and the trial court relied on matters outside the pleadings, we will review the trial court's decision as being made under MCR 2.116(C)(10). See *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 457; 750 NW2d 615 (2008). A motion under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). A court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Id.* Summary disposition is proper under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law."

III

On appeal, plaintiff claims that the trial court erred in granting summary disposition to defendants because a genuine issue of material fact exists as to whether her employment with the county ended as a result of a termination or her resignation. We disagree.

An employee's resignation terminates the employment relationship. *Schultz v Oakland Co*, 187 Mich App 96, 102; 466 NW2d 374 (1991). After resigning, an employee may not complain of an illegal termination. *Id.* Thus, if plaintiff resigned from her position as the director of the economic development department, plaintiff cannot complain that her termination was in violation of the ELCRA, the PWDCRA, or her constitutionally protected political activity.

Plaintiff's version of the events that led to the end of her employment with the county were that, at the April 18, 2005 meeting, after she stated that she had nothing to say for herself, Wolf told her that he was terminating her employment with the county, effective immediately. After expressing her shock and explaining her commitment to the county, plaintiff stated that she did not want a termination on her record. Wolf then said that a situation could be worked out where plaintiff resigned. Wolf ended the meeting to allow plaintiff time to consider her options. Plaintiff was given access to Smith's office, including the use of Smith's telephone and computer. At Smith's computer, after being unable to contact an attorney, plaintiff drafted "a letter of resignation." Plaintiff returned to Wolf's office, where before handing him her letter of resignation, she explained to Wolf that she did not want a termination on her record and that she wanted the county board of commissioners to know that she had been required to choose between being terminated or resigning.

We conclude that the facts as testified to by plaintiff do not establish a genuine issue of material fact regarding whether plaintiff's employment relationship with the county ended as a result of a termination or resignation. By plaintiff's own account, Wolf, after he stated that he

was terminating plaintiff's employment with the county, offered plaintiff the opportunity to resign. Plaintiff, not wanting a termination on her record, accepted the opportunity, and submitted a letter, which she described as a "letter of resignation."⁵ Accordingly, the end of plaintiff's employment with the county was a result of a resignation, not a termination.⁶

IV

Plaintiff also claims that the trial court erred in holding that she was a public employee rather than a public official.

The resignation of a public employee is effective as soon as the resignation is submitted. *Schultz, supra* at 98. "There [is] no need for a formal acceptance by the employer to give it effect." *Id.* at 102. According to plaintiff, because she was a public official, rather than a public employee, she was entitled to rescind her resignation.

However, plaintiff has not provided any authority that affirmatively states that a public official is entitled to rescind a resignation. Thus, even if we were to agree with plaintiff that the trial court erred in holding that she was a public employee,⁷ plaintiff has left it solely to this Court to locate authority concerning whether a public official is entitled to rescind a resignation and to apply that authority to the present case. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority." *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003) (citations omitted). A party's failure to provide authority in support of its position constitutes a waiver of the issue. *Nat'l Waterworks, Inc v Int'l Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007). Because plaintiff has failed to address the repercussions of the trial court's alleged error, we decline to address plaintiff's claim that the trial court erred in holding that she was a public employee.

Further and more importantly, even if plaintiff is correct that a public official is entitled to rescind a resignation, plaintiff has not cited any authority which sets forth the timeframe in which a public official may rescind a resignation or who can, and under what circumstances, accept a public official's resignation. Regardless, in our estimation, the facts establish that plaintiff attempted to rescind her resignation after it had been accepted. Plaintiff submitted her letter of resignation to Wolf, her immediate supervisor, after she reconvened with Wolf and

⁵ Although plaintiff's letter of resignation did not state when her resignation was effective, plaintiff understood her resignation to be effective immediately. After handing the letter to Wolf, plaintiff asked Wolf whether she would be able to return to her office to collect her personal belongings.

⁶ This conclusion, however, is not determinative of whether plaintiff's resignation was voluntary. Plaintiff's claim that her resignation was involuntary is discussed in Part V, *infra*.

⁷ We make no determination whether the trial court erred in holding that plaintiff was not a public official.

Smith on April 18, 2005. The letter of resignation is marked “Accepted 4/18/05” and initialed by Wolf. In his letter to plaintiff refusing to accept her revocation of her resignation, Wolf wrote that he “accepted [her] resignation when [she] tendered it.” Plaintiff has offered no evidence to the contrary. Accordingly, plaintiff has not established a genuine issue of material fact regarding whether, even if she was a public official, she had the ability to rescind her resignation when she submitted her letter revoking her resignation because her resignation had already been accepted.

V

Plaintiff next claims that the trial court erred in holding that her resignation was voluntary and knowing. Specifically, plaintiff argues that her resignation was the product of duress, invalid due to her psychological condition, and constituted a constructive discharge.

A

Plaintiff claims that her resignation was the product of duress because she only had a few minutes to decide whether she should submit a resignation letter and because Wolf did not require, or even advise, her to consult with an attorney. “‘Duress exists when one by the unlawful act of another is induced to make a contract or perform some act under circumstances which deprive him of the exercise of free will.’” *Barnett v Int’l Tennis Corp*, 80 Mich App 396, 405; 263 NW2d 908 (1978), quoting *Hackley v Headley*, 45 Mich 569, 574; 8 NW 511 (1881). See also *Hungerman v McCord Gasket Corp*, 189 Mich App 675, 677; 473 NW2d 720 (1991) (“In order to void a contract on the basis of economic duress, the wrongful act or threat must deprive the victim of his unfettered will.”).

We conclude that plaintiff has not shown that a genuine issue of material fact exists as to whether her resignation was the product of duress. Upon stating that a situation could be worked out where plaintiff resigned, Wolf ended the meeting to allow plaintiff time to consider her options. He allowed plaintiff to use Smith’s office, where plaintiff had access to a telephone. In Smith’s office, where she was left alone, plaintiff attempted, albeit unsuccessfully, to contact a lawyer. Although Wolf had stated a time at which plaintiff was to reconvene with him and Smith, plaintiff has pointed to no evidence suggesting that Wolf required her to make a decision within a specific period of time or, if she had insisted upon speaking to an attorney, Wolf would not have given her additional time to contact an attorney. Moreover, upon submitting her letter of resignation to Wolf, plaintiff clearly understood that she had the choice of being terminated or resigning. She told Wolf that she did not want a termination on her record and that she wanted the county board of commissioners to know that she had been required to make a choice between the two options. Accordingly, plaintiff has presented no evidence suggesting that Wolf, upon informing plaintiff that her employment with the county had come to an end, acted unlawfully and deprived her of the exercise of her free will.

B

Plaintiff also argues that her psychological condition rendered her resignation invalid. She asserts that the trial court erred in depriving a jury of the right to conclude that she was not mentally or emotionally fit to resign. However, absent from plaintiff’s argument is any affirmative assertion, supported by record evidence, that plaintiff was, in fact, mentally or emotionally unfit to make a knowing choice between resigning from her position or being

terminated. Accordingly, plaintiff has not established that a genuine issue of material fact exists as to whether her psychological condition rendered her resignation invalid.

C

Plaintiff also claims that her resignation constituted a constructive discharge.

A constructive discharge is established where an employer deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation or, stated differently, when working conditions become so difficult or unpleasant that a reasonable person in the employee's shoes would feel compelled to resign. Where reasonable persons could reach different conclusions regarding whether these elements are established, the issue becomes a question of fact for the jury and not one properly decided by the trial court. [*Vagts v Perry Drug Stores, Inc*, 204 Mich App 481, 487-488; 516 NW2d 102 (1994) (quotation marks and citation omitted).]

See also *Saroli v Automation & Modular Components*, 405 F3d 446, 451 (CA 6, 2005) ("To demonstrate a constructive discharge, Plaintiff must adduce evidence to show that 1) the employer . . . deliberately create[d] intolerable working conditions, as perceived by a reasonable person, and 2) the employer did so with the intention of forcing the employee to quit.") (citation omitted). If a constructive discharge is established, the employee is treated as having been fired by the employer. *Champion v Nation Wide Security, Inc*, 450 Mich 702, 710; 545 NW2d 596 (1996). "The decision to terminate in a constructive discharge case, therefore, is imputed to the employer." *Id.*

The present case is not a constructive discharge case. Plaintiff testified that, at the April 18, 2005 meeting, after Wolf asked her if she had anything to say for herself and she replied in the negative, Wolf informed her that he was terminating her employment with the county, effective immediately. Wolf gave her the opportunity to resign when she stated that she did not want a termination on her record. Thus, this is not a case where plaintiff's working conditions were made so intolerable by Wolf that plaintiff was forced into an involuntary resignation. At the time plaintiff resigned, there were no intolerable working conditions because plaintiff's employment with the county had come to an end. Wolf had already announced that plaintiff's employment with the county had come to an end, and plaintiff chose to have her employment with the county end as a result of a resignation, rather than a termination.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio