STATE OF MICHIGAN

COURT OF APPEALS

RAYNARD CANN,

Plaintiff-Appellant,

v

ELITE PLASTIC PRODUCTS INC,

Defendant-Appellee.

UNPUBLISHED
November 18, 2021

No. 353694
Macomb Circuit Court
LC No. 2020-000175-CL

Before: CAVANAGH, P.J., and SHAPIRO and GADOLA, JJ.

PER CURIAM.

In this wrongful-termination case, the trial court granted summary disposition to defendant under MCR 2.116(C)(7), concluding that plaintiff's suit was time-barred by the provision in the employment application stating that any claim must be brought within six months after the date of the employment action giving rise to the lawsuit.[1] We affirm.[2]

Plaintiff presents two arguments in support of his contention that we should reverse the trial court's order granting defendant's motion for summary disposition. First, plaintiff argues that the rule for strict interpretation of contracts articulated in *Rory v Continental Ins Co*, 473 Mich 457, 489; 703 NW2d 23 (2005), should be overturned in favor of the dissent's analysis. *Rory* overruled prior caselaw and held "that an unambiguous contractual provision providing for a shortened period of limitations is to be enforced as written unless the provision would violate law or public policy" and that such provisions could not be set aside based on reasonableness. *Id*. at

[1] Plaintiff alleges that he was wrongfully terminated by defendant after he missed work following a workplace accident. The workplace accident occurred on January 20, 2017. Plaintiff filed the instant complaint alleging wrongful termination on January 16, 2020.

[2] We review de novo a trial court's decision on a motion for summary disposition. *Lantz v Southfield City Clerk*, 245 Mich App 621, 625; 628 NW2d 583 (2001). Summary disposition is appropriate under MCR 2.116(C)(7) where a claim is barred by the applicable statute of limitations. *Bryant v Oakpointe Villa Nursing Ctr*, 471 Mich 411, 419; 684 NW2d 864 (2004).

465-470. The Court also held that it is irrelevant whether a contract may be described as "adhesive." *Id*. at 490. The Court reasoned, "Regardless of whether a contract is adhesive, a court may not revise or void the unambiguous language of the agreement to achieve a result that it views as fairer or more reasonable. *Id*.

According to plaintiff, we should follow the view of the dissenting opinion in *Rory* that courts may "review the reasonableness of contractual clauses that limit the period during which legal actions can be brought." *Id*. at 492 (KELLY, J., dissenting). However, this Court is bound by the Supreme Court's holding in *Rory* and may not overrule it. See *State Treasurer v Sprague*, 284 Mich App 235, 242; 772 NW2d 452 (2009). Accordingly, we must follow *Rory* unless and until the Supreme Court overrules it.

Plaintiff also argues that the contract provision at issue is unconscionable. "A party may avoid enforcement of an 'adhesive' contract only by establishing one of the traditional contract defenses, such as fraud, duress, unconscionability, or waiver." *Rory*, 473 Mich at 489. To obtain relief on the basis of unconscionability, the contract must be both procedurally and substantively unconscionable. *Clark v DaimlerChrysler Corp*, 268 Mich App 138, 143; 706 NW2d 471 (2005). "Procedural unconscionability exists where the weaker party had no realistic alternative to acceptance of the term." *Id*. at 144. "Substantive unconscionability exists where the challenged term is not substantively reasonable," i.e., "where the inequity of the term is so extreme as to shock the conscience." *Id*.

In *Clark*, we held that the provision in the employment application limiting the period of limitations to six months for all claims was not unconscionable, reasoning as follows:

> In the present case, plaintiff did not present any evidence that he had no realistic alternative to employment with defendant. Therefore, while plaintiff's bargaining power may have been unequal to that of defendant, we cannot say that plaintiff lacked any meaningful choice but to accept employment under the terms dictated by defendant. Furthermore, the six-month period of limitations is neither inherently unreasonable, nor so extreme that it shocks the conscience. Consequently, plaintiff failed to establish that the contractually modified period of limitation was either substantively or procedurally unconscionable. [*Id*. (citations omitted).]

We are bound by *Clark*'s holding that the six-month limitations period set out in the contract is not unconscionable. And we must reject plaintiff's argument that defendant did not explain the contractual provision to him and therefore his assent was involuntary. "Michigan law presumes that one who signs a written agreement knows the nature of the instrument so executed and understands its contents." *Watts v Polaczyk*, 242 Mich App 600, 604; 619 NW2d 714 (2000). And the "mere failure to read an agreement is not a defense in an action to enforce the terms of a written agreement." *Id*. Thus, plaintiff has failed to meet his burden establishing procedural unconscionability.

As for substantive unconscionability, the modified limitations period at issue in this case is identical to the one in *Clark*. Perhaps as a result, plaintiff does not argue that the six-month limitation itself is unconscionable, but rather that the physical placement and size of the provision

within the contract is substantively unconscionable. This argument is unpersuasive for several reasons. First, plaintiff is incorrect that the provision was below his signature line. To the contrary, the provision was located immediately *above* the signature line. Second, while plaintiff suggests the size and placement of the provision make it substantively unconscionable, he does not cite to any authority standing for this proposition. Moreover, the provision at issue was the same size font as the immediately preceding clauses, and it was placed directly above plaintiff's signature, suggesting that he saw the clause as he was signing the employment application. For these reasons, plaintiff's claim of unconscionability fails.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Douglas B. Shapiro
/s/ Michael F. Gadola