

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ANTOINE GUILDER,

Plaintiff-Appellant,

v

PONTIAC OSTEOPATHIC HOSPITAL, KALLIE  
MOSHIER, and UNITED SOLAR OVONIC,

Defendants-Appellees,

and

DAVID MESSINA,

Defendant.

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UNPUBLISHED  
November 22, 2011

No. 298719  
Oakland Circuit Court  
LC No. 2010-107234-CD

Before: MURPHY, C.J., and BECKERING and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's orders granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(7). We affirm.

Plaintiff alleged that he was terminated from his employment with defendant United Solar Ovonic ("USO") in June 2008 on the basis of a false report that he altered a drug test administered by defendants Pontiac Osteopathic Hospital ("POH") and Kallie Moshier. Plaintiff filed this action in January 2010, asserting claims for (1) race discrimination under Michigan's Civil Rights Act (CRA), MCL 37.2101 *et seq.*, (2) discrimination under the Persons with Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.*, (3) "wilful and deliberate defacing of a medical record" in violation of MCL 750.429, and (4) intentional infliction of emotional distress.

Defendants POH and Moshier moved for summary disposition under MCR 2.116(C)(7) and (8). USO filed a separate motion for summary disposition under MCR 2.116(C)(7). The trial court granted summary disposition for all defendants, concluding that plaintiff's claims were barred by contractual limitations periods in employment agreements with USO.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Grimes v Dep't of Transp*, 475 Mich 72, 76; 715 NW2d 275 (2006). MCR 2.116(C)(7) provides that summary disposition may be granted when a claim is "barred because of [a] . . . statute of limitations[.]" This Court has recognized that MCR 2.116(C)(7) is also the appropriate subrule for analyzing a request for summary disposition based on a contractual limitations period. *Timko v Oakwood Custom Coating, Inc*, 244 Mich App 234, 238; 625 NW2d 101 (2001). Under MCR 2.116(C)(7), this Court must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties. *Horace v City of Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998). The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. *Patterson v Kleiman*, 447 Mich 429, 434 n 6; 526 NW2d 879 (1994). This Court considers the documentary evidence in a light most favorable to the nonmoving party. *Herman v Detroit*, 261 Mich App 141, 143-144; 680 NW2d 71 (2004). If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. *Huron Tool & Engineering Co v Precision Consulting Servs, Inc*, 209 Mich App 365, 377; 532 NW2d 541 (1995). If a factual dispute exists, however, summary disposition is not appropriate. *Id.*

On appeal, plaintiff argues that summary disposition was inappropriate for reasons unrelated to the contractual limitations period, which was the sole basis for the trial court's decision to grant summary disposition in favor of all defendants. Our review of plaintiff's appellate brief reveals no substantive discussion or analysis with respect to the contractual limitations period. While plaintiff's statement of questions involved perhaps includes an attempt to reference the issue, it is not decipherable, and the matter regarding the contractual limitations period is not subsequently explored or elaborated upon in the brief. Accordingly, the issue is waived due to inadequate briefing, *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998), and we must also affirm for failure to address the basis of the trial court's decision in granting summary disposition in favor of defendants, *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004). Furthermore, even on examination of the trial court's ruling, we find no error.

"[A]n 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." *Rory v Continental Ins Co*, 473 Mich 457, 470; 703 NW2d 23 (2005). There is no general exception for contractual agreements that shorten the limitations period for bringing a statutory civil rights claim arising out of employment. See *Timko*, 244 Mich App at 240-245 (holding that a contractual six-month limitations period was enforceable as applied to the plaintiff's claim for age discrimination under the CRA).

In this case, plaintiff's employment application with USO contained a one-year limitations period that applied to "any action or claim against [USO] or any employee arising out of [plaintiff's] employment or termination of employment." Plaintiff also signed a separate at-will employment agreement that contained a six-month limitations period. The latter provision applied to "any action or lawsuit, including administrative charges, against [USO], or any of its employees or agents, arising out of [plaintiff's] employment or termination of employment."

Although plaintiff argues that defendant USO was not entitled to rely on an arbitration provision in the employment agreements because it did not raise an agreement to arbitrate as an affirmative defense, the trial court did not grant summary disposition on the basis of the arbitration provision. Instead, it determined that plaintiff's claims against USO were barred by the contractual limitations periods. Plaintiff does not address the contractual limitations issue. Because contractual provisions that provide for a shortened limitations period are generally enforceable, plaintiff's complaint was filed beyond the contractual limitations periods in the employment agreements at issue, and because plaintiff has not provided any reason for finding that the provisions should not be enforced, USO was entitled to summary disposition.

We additionally conclude that POH and Moshier were USO's agents who were also entitled to assert the limitations provision in the at-will employment agreement between plaintiff and USO.

The at-will employment agreement between plaintiff and USO unambiguously provided that the six-month limitations period applied to USO's employees and agents. A third-party beneficiary to a contract "stands in the shoes of the promisee and thus may enforce the contract against the promisor." *White v Taylor Distrib Co, Inc*, 289 Mich App 731, 734; 798 NW2d 354 (2010) (citation and internal quotations omitted). The at-will employment agreement expressly identified USO's agents and employees as designated classes intended to benefit from the six-month limitations provision. *Id.* at 735.

"In agency law, the principal and his agent share a legal identity; it is a fundamental rule that the principal is bound, and liable for, the acts of his agent done with the actual or apparent authority of the principal." *People v Konrad*, 449 Mich 263, 280-281; 536 NW2d 517 (1995); see also *Persinger v Holst*, 248 Mich App 499, 505; 639 NW2d 594 (2001). In determining whether an agency has been created, a court must consider the relations of the parties as they in fact exist under their acts or agreements; in its broadest sense an agency includes every relationship in which one person acts for or represents another by his authority. *St Clair Intermediate Sch Dist v Intermediate Ed Ass'n/Mich Ed Ass'n*, 458 Mich 540, 557; 581 NW2d 707 (1998). An essential component of an agency relationship is the right of the principal to control, "at least at some point, the conduct and actions of his agent." *Persinger*, 248 Mich App at 504-505. Here, POH acted on USO's behalf by conducting an employment-related drug screen for USO's employee. USO controlled POH's conduct by directing it to perform employee drug screening under conditions that ensured accuracy. As reflected in plaintiff's own complaint, during the course of the drug screening process, nurse Moshier phoned defendant David Messina, USO's human resources director, seeking direction on how she should instruct plaintiff after plaintiff objected to the taking of a second specimen and indicated an intent to leave POH. Moreover, once again, plaintiff fails to engage in any analysis of agency law, nor does he even assert that POH and Moshier were not agents of USO. Accordingly, the trial court properly granted summary disposition for POH and Moshier pursuant to MCR 2.116(C)(7), given that plaintiff's claims were time-barred.

In light of our decision, it is not necessary to address the parties' remaining arguments concerning alternative bases for summary disposition.

Affirmed. Having fully prevailed on appeal, defendants are awarded costs pursuant to MCR 7.219.

/s/ William B. Murphy  
/s/ Jane M. Beckering  
/s/ Amy Ronayne Krause