STATE OF MICHIGAN

COURT OF APPEALS

STEPHANIA DONALD,

Plaintiff-Appellant,

v

WOLVERINE HUMAN SERVICES,

Defendant-Appellee.

UNPUBLISHED
December 27, 2011

No. 301184
Saginaw Circuit Court
LC No. 10-008298-NZ

Before: CAVANAGH, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7). We affirm.

Defendant hired plaintiff as a youth care worker on June 4, 2007. At that time, plaintiff signed an Employment Agreement which read in relevant part: "Employee agrees that no action, including claims of discrimination, will be brought more than 180 days after it arises, and that any longer statutes of limitations are waived." According to plaintiff, in November of 2008, she was passed over for a promotion in favor of a Caucasian woman and, on July 21, 2009, plaintiff was terminated. Plaintiff, a member of a protected class, believed these incidents were motivated by her race.

Therefore, on March 24, 2010, plaintiff filed this case alleging race discrimination as defined by the Elliot-Larson Civil Rights Act ("ELCRA"), MCL 37.2101 *et seq*. Subsequently, defendant moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiff's complaint was untimely under the Employment Agreement signed by plaintiff. In a well-reasoned opinion, the trial court agreed with defendant and granted its motion for summary disposition. After plaintiff's motion for reconsideration was denied, this appeal followed.

Plaintiff argues that the trial court erred in granting defendant's motion for summary disposition "since the provision shortening the statute of limitation was not enforceable in that it violates federal law." After de novo review of the court's decision to dismiss, we disagree. See *Clark v DaimlerChrysler Corp*, 268 Mich App 138, 141; 706 NW2d 471 (2005).

Plaintiff acknowledges that an unambiguous contract provision providing for a period of limitations shorter than that provided by statute is to be enforced as written unless the provision

violates law or public policy. However, plaintiff alleges that the contract provision violates her rights under 42 USC 1981,[1] which provides:

> (a) Statement of equal rights
>
> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue . . . as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
>
> * * *
>
> (c) Protection against impairment
>
> The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

Plaintiff argues that this statute granted her "an unconditional right to bring lawsuits." There are several obvious problems with plaintiff's argument. First, plaintiff fails to notice that the statute provides for "equal rights" "as is enjoyed by white citizens," not greater rights. Second, plaintiff fails to acknowledge that, by the same statute, she had the right to make a contract and is likewise subject to its terms "as is enjoyed by white citizens." Third, the statute says nothing about prohibiting a shortened period of limitations in which to sue and to adopt plaintiff's reasoning would be tantamount to denying her the right to make contracts. Fourth, the contract provision is generally applicable to all persons who signed the Employment Agreement without reference to race; thus, it is not a discriminatory provision. And, fifth, according to plaintiff's argument—"the right to sue cannot be impaired under color of State law"—no statute of limitations would ever apply to her alleged claim because of her race; thus, she should enjoy an unfettered right in perpetuity to bring her lawsuit. Clearly, this argument is untenable.

Accordingly, plaintiff has failed to establish that the contract provision violated her rights under 42 USC 1981 and this case was properly dismissed.

Affirmed. Costs to defendant as the prevailing party. MCR 7.219(A).

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Patrick M. Meter

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[1] Plaintiff did not raise this claim in the trial court; therefore, this issue is not preserved for appellate review. See *Booth Newpapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993). Nevertheless, we will review the claim because it is an issue of law and the record is factually sufficient. See *Poch v Anderson*, 229 Mich App 40, 52; 580 NW2d 456 (1998).