

STATE OF MICHIGAN
COURT OF APPEALS

PAMELA L. SANDERS,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED

February 5, 2013

No. 308553

Washtenaw Circuit Court

LC No. 11-000993-CD

Before: OWENS, P.J., and FITZGERALD and RIORDAN, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition pursuant to MCR 2.116(C)(7) in favor of defendant in this case alleging discrimination, harassment, and retaliation under the Elliott-Larson Civil Rights Act (ELCRA), MCL 37.2101 *et seq.*, and the Persons with Disabilities Civil Rights Act (PWDCRA), MCL 37.1201 *et seq.* We affirm.

Plaintiff began her employment with defendant in November 1984 as a registered dietician. On December 14, 2009, plaintiff's supervisor, Sharon Fairbanks, informed Timothy Kangas that plaintiff was disregarding direct instructions regarding her work schedule. On December 17, 2009, Kangas asked Warden Warren for an investigation into plaintiff's possible work rule violations. Warren assigned investigation of the issue to Alfred Jones.

On December 21, 2009, plaintiff communicated with Human Resources Administrator Jerome Fraske about her "handicapped" status and flexible work schedule. Fraske informed plaintiff that her medical file did contain a 1993 approval by Civil Service for "handicapper" status, but that the status did not constitute approval for any type of accommodation and that her file contained no record of approval for an accommodation.

On December 28, 2009, Jones sent an investigative inquiry to plaintiff to determine the schedule she was following and why she was following it. Plaintiff responded that she was not following Fairbanks' scheduling directives as issued on September 22, 2009, October 29, 2009, and November 19, 2009. She responded that Fairbanks criticized her for everything that she did, unfairly reduced her work schedule, treated her differently than other employees, and harassed her. Plaintiff referred Jones to an October 29, 2009, e-mail chain in which she discussed her health, harassment, her son's disabilities, and her civil rights, including her statement that "I know this is a violation of my civil rights to force me to do this and I will not do it."

On January 3, 2010, Jones sent Kangas a memo regarding plaintiff's alleged work rule violations for insubordination and disregard for authority. Jones referred to plaintiff's handicap accommodation, personal and health issues, and "civil rights" issues in his findings. On June 9, 2010, Warden Warren held a disciplinary conference regarding plaintiff's work rule violations and found that plaintiff was in violation of two work rules: No. 10 – insubordination and No. 13 – enforcing rules and policies. On August 11, 2010, plaintiff and defendant entered into a settlement agreement regarding the disciplinary action.

On August 30, 2011, plaintiff filed the present lawsuit in which she alleged that defendant had discriminated against her within the meaning of the PWDCRA when it reduced the amount of hours that she worked. She also claimed that defendant's actions constituted harassment within the meaning of the ELCRA.

Defendant subsequently moved for summary disposition, arguing that the August 11, 2010, settlement agreement between the parties constituted a valid release and waiver of plaintiff's right to pursue the complaint. In summary, defendant alleged as follows:

Plaintiff is pursuing claims she has already settled. Plaintiff was, and still is, a dietician for the Michigan Department of Corrections (MDOC). As her responsibilities increased and other dieticians left MDOC, Plaintiff's hours grew until she was temporarily provided full-time status. When one of her primary assigned facilities closed and another dietician was hired, she was returned to part-time status.

In response, Plaintiff refused to adjust her schedule, refused to work her assignments, and filed internal discrimination and harassment complaints against her supervisor. She filed similar complaints with the Equal Employment Opportunity Commission (EEOC), and also filed for a disability accommodation.

In less than eighteen months, MDOC and Plaintiff had resolved their differences. MDOC granted Plaintiff's request for several accommodations, including a flexible work schedule. MDOC brought her position back up to full time and decided to discipline her misconduct with only a written reprimand. In return, Plaintiff agreed to accept the written reprimand, withdraw her EEOC complaint, and release all of her civil rights claims related to the issue.

After gaining the benefit of nominal discipline for her misconduct and all of MDOC's concessions, Plaintiff has brought this suit in direct contravention of her release and settlement agreement. Plaintiff has already settled her claims, so this case should be dismissed.

In her response to defendant's motion, plaintiff asserted that her harassment and discrimination claims were unrelated to the disciplinary process regarding her work schedule and, therefore, did not fall within the scope of the settlement agreement. In the alternative, she asserted that the scope of the settlement agreement is ambiguous and, therefore, that plaintiff is entitled to discovery in order to obtain extrinsic evidence to prove the parties' intent in executing the agreement.

Following a hearing on the motion for summary disposition, the trial court granted summary disposition in favor of defendant. The trial court opined that the settlement agreement encompassed and barred plaintiff's claims.

Plaintiff argues that the trial court erroneously granted summary disposition in favor of defendant because the release does not bar the claims at issue. This Court reviews de novo a trial court's decision on a motion for summary disposition. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 205; 815 NW2d 412 (2012). This Court also reviews de novo the proper interpretation of contracts, such as the settlement agreement at issue. *Reicher v SET Enterprises, Inc*, 283 Mich App 657, 663-664; 770 NW2d 902 (2009).

In interpreting a contract, this Court's obligation is to determine the intent of the parties. *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003). We must examine the language of the contract and accord the words their ordinary and plain meanings, if such meanings are apparent. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003). When the contractual language is unambiguous, we interpret and enforce the contract as written. *Quality Products, supra* at 375. "[A]n unambiguous contractual provision is reflective of the parties' intent as a matter of law." *Id.*

The settlement agreement provided in pertinent part:

The following constitutes a complete, final and binding agreement and resolves this discipline between **Pamela Sanders** and the **Michigan Department of Corrections** (Employer) and its agents relative to this matter.

1. As a resolution to this matter¹, **Pamela Sanders** shall receive a Written Reprimand.

2. With full knowledge and understanding of her rights, **Pamela Sanders** specifically releases and waives any federal or state civil rights claims, and violations of state and federal constitution and/or statutory rights as well as other legal claims she may have had arising out of her employment with her Employer, limited to this matter. This settlement constitutes full and complete resolution of this discipline and all complaints and demands relative to this issue that **Pamela Sanders** may have against Employer or its agents. [Emphasis in original.]

The totality of plaintiff's argument is that the plain language of the settlement agreement provides that the disciplinary action would be resolved by a written reprimand and plaintiff would file no lawsuits with regard to the discipline – i.e., the written reprimand – she received. However, such an interpretation ignores the plain language of paragraph 2. This plain and unambiguous language, when read as a whole, reveals that plaintiff clearly released and waived “any federal or state civil rights claims, and violations of state and federal constitution and/or

¹ The parties agree that “this matter” refers to the disciplinary matter that is the subject of the settlement agreement – that is, plaintiff's work rule violations.

statutory rights as well as other legal claims she may have had arising out of her employment with her Employer, limited to this matter.” The parties agree that “this matter” refers to the disciplinary matter that is the subject of this lawsuit. Thus, the settlement agreement encompasses the issues involved with her disciplinary matter; that is, her objection to part time, her “handicapped” status, her “flexible” work schedule, her stress level and health, her son’s disabilities, Fairbanks’ alleged harassment, and other alleged violations of her “civil rights.” All of these issues were raised by her as explanations for her actions and as a defense to the allegations that she had violated defendant’s work rules. The agreement demonstrates the parties’ intent that the release and waiver provision extends to all potential suits connected or associated with the disciplinary action and is not limited solely to suits concerning the actual discipline imposed. Indeed, as the trial court noted, “her claims of harassment, flexibility in her schedule, not accommodating her handicap, all those things were part of the issues and the time frame that involved the period when she was making these complaints, when she was not following the schedule because of those factors, and when there was a threat of disciplinary action being taken, and then there was an EEOC complaint.” Because plaintiff’s complaint presents the civil rights claims she has released and waived, the trial court properly granted summary disposition in favor of defendant.²

Affirmed.

/s/ Donald S. Owens
/s/ E. Thomas Fitzgerald
/s/ Michael J. Riordan

² Plaintiff’s remaining two issues are premised on a finding that the language of the settlement agreement is ambiguous and, therefore, need not be addressed.