

STATE OF MICHIGAN
COURT OF APPEALS

TERRY MACLENNAN,

Plaintiff-Appellant,

v

COUNTY OF ALLEGAN,

Defendant-Appellee.

UNPUBLISHED
December 12, 2013

No. 312710
Allegan Circuit Court
LC No. 11-048164-CZ

Before: SAWYER, P.J., and MARKEY and STEPHENS, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this action for wrongful termination. We affirm.

Plaintiff signed and returned an employment application to defendant that stated, "I understand that my employment and compensation can be terminated, with or without notice, at any time, at the option of either the County/Court(s) or myself." Defendant subsequently hired plaintiff as a maintenance supervisor, and plaintiff signed a form entitled "Non Bargaining Employees Acknowledgment," which stated, "I understand that my employment is not for any definite time period and that my employment can be terminated by the County or myself at any time, without cause or notice. . ." In 2007, plaintiff received a warning from defendant after receiving complaints that plaintiff committed acts in violation of defendant's sexual harassment policy. In 2009, defendant received another sexual harassment complaint regarding plaintiff. During an investigation, plaintiff admitted to the alleged acts, and defendant sent a letter to plaintiff informing him that it was terminating his employment.

Plaintiff filed a complaint against defendant alleging wrongful termination and alleged that defendant violated its Code of Ethics, which referenced principles of "fairness" and a "fair, legal, and objective process for hiring and maintaining quality personnel." Plaintiff also introduced a sexual harassment guide that offered suggestions on how management should handle claims of sexual harassment. Defendant moved for summary disposition, and the trial court found that plaintiff was an at-will employee and that the Code of Ethics and harassment guide were only guides and did not rise to the level needed to create an implied just-cause contract under *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579; 292 NW2d 880 (1980). Thus, the court granted the motion pursuant to MCR 2.116(C)(10).

We review a grant of summary disposition de novo. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). A motion for summary disposition may be granted when “there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” MCR 2.116(C)(10). “In evaluating such a motion, a court considers the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties.” *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). “All reasonable inferences are drawn in favor of the nonmoving party.” *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 485; 502 NW2d 742 (1993). “The party opposing the motion may not rest upon mere allegations or denials in the pleadings. It must set forth specific facts using documentary evidence to show the existence of a genuine issue for trial.” *Id.* “There is a genuine issue of material fact when ‘reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party.’” *Lakeview Commons v Empower Yourself*, 290 Mich App 503, 506; 802 NW2d 712 (2010).

“Generally, and under Michigan law by presumption, employment relationships are terminable at the will of either party.” *Lytle v Malady*, 458 Mich 153, 163; 579 NW2d 906 (1998). At-will employees have no property right to continued employment and are not entitled to procedural due process when terminated. *Manning v Hazel Park*, 202 Mich App 685, 694; 509 NW2d 874 (1993). However, under *Toussaint*, a just-cause provision may be “implied at law, where an employer’s policies and procedures instill a ‘legitimate expectation’ of job security.” *Lytle*, 458 Mich at 164. Still, the “‘implied contract’ theory of *Toussaint* may not be relied upon in Michigan when there is an express contract covering the same subject matter.” *Meagher v Wayne State Univ*, 222 Mich App 700, 721; 565 NW2d 401 (1997).

In this case, plaintiff signed an application form and acknowledgement form that concerned employment termination. Both stated that defendant could terminate his employment at any time, without cause or notice. These documents constitute part of the employment contract. See, e.g., *Timko v Oakwood Custom Coating, Inc*, 244 Mich App 234, 244; 625 NW2d 101 (2001). “Under ordinary contract principles, if contractual language is clear, construction of the contract is a question of law for the court.” *Meagher*, 222 Mich App at 721. “If the contract . . . fairly admits of but one interpretation, it is not ambiguous.” *Id.* at 722. “The language of a contract should be given its ordinary and plain meaning.” *Id.* The employment contract clearly established an at-will relationship because defendant could terminate plaintiff’s employment at any time with or without cause. See *Kimnelman v Heather Downs Mgt, Ltd*, 278 Mich App 569, 572; 753 NW2d 265 (2008) (An at-will employee is terminable at any time for any or no reason). Because at-will employees cannot rely on the implied contract theory of *Toussaint*, where there is an express contract covering the same subject matter, *Meagher*, 222 Mich App at 721, have no property right to continued employment and are not entitled to procedural due process, *Manning*, 202 Mich App at 694, and are terminable at the will of the other party, *Lytle*, 458 Mich at 164,

defendant was entitled to judgment as a matter of law. Thus, the trial court did not err when it granted defendant's motion for summary disposition.¹

Affirmed.

/s/ David H. Sawyer

/s/ Jane E. Markey

/s/ Cynthia Diane Stephens

¹ It was unnecessary for the trial court to find that defendant's Code of Ethics and sexual harassment guide did not create an implied just-cause contract under *Toussaint* because the "implied contract" theory of *Toussaint* may not be relied upon when there is an express contract concerning the same subject matter. *Meagher*, 222 Mich App at 721. Therefore, the trial court had sufficient grounds to grant defendant's motion for summary disposition once it found that plaintiff was an at-will employee because of the express contracts created by the signing of the application and acknowledgment form.