

STATE OF MICHIGAN
COURT OF APPEALS

JAMAL SAFIEDINE,
Plaintiff,

FOR PUBLICATION
April 1, 2008
9:20 a.m.

and

JSC CORPORATION, MTK FAMILY
INVESTMENT and MTK FAMILY
INVESTMENT, LLC,

Plaintiffs-Appellants,

v

CITY OF FERNDALE,

Defendant-Appellee.

No. 272518
Oakland Circuit Court
LC No. 2006-072961-CD

Before: Saad, P.J., and Jansen and Beckering, JJ.

SAAD, P.J.

Plaintiffs, JSC Corporation, MTK Family Investment, and MTK Family Investment, LLC (collectively, “corporate plaintiffs”), appeal the trial court’s grant of summary disposition to defendant, City of Ferndale. For the reasons set forth below, we affirm.¹

I. Nature of the Case

This suit by corporate plaintiffs raises an issue of first impression under Michigan’s primary civil rights law: Do the anti-discrimination provisions of the Elliott-Larsen Civil Rights Act (“Act”), MCL 37.2101 *et seq.*, protect only natural, but not juridical persons such as corporations.² In other words, do the rights and protections of the Act extend to juristic persons

¹ Plaintiff Jamal Safiedine is not a party to this appeal, and his claims against Ferndale remain pending in the trial court.

² Clearly, the Act’s mandate not to discriminate applies to juridical persons, corporations.

or only to people? As we will explain below, though the specific words in the definitional sections of the Act allow for competing arguments, the overriding purpose of the Act, and the specific language that grants substantive rights, compel our holding that the Act's protections apply only to natural persons.

The essential purport and express language of Michigan's comprehensive civil rights law is to protect people. For example, in the critically important field of employment discrimination, the mandate of the law is that irrelevant characteristics such as age, race, sex, and marital status, should not make a difference in hiring and firing decisions. Were we to extend these protections to juridical persons, this would constitute an unwarranted expansion of the Act. When the Act says that individuals are to be protected from discrimination based on race, sex, and marital status, it grants protection to natural persons, based on these peculiarly and exclusively human characteristics.³

II. Facts

This case arises out of an incident at a gasoline station in the City of Ferndale. According to plaintiffs' complaint, James Safiedine, who has an individual suit pending in circuit court, manages the station. JSC Corporation owns the station, and MTK Family Investment and MTK Family Investment, LLC own the real estate and structures. These corporate plaintiffs are owned and operated by members of Safiedine's family. Plaintiffs assert that, on April 14, 2005, a Ferndale police officer made discriminatory comments to Safiedine and dissuaded customers from patronizing the station. According to plaintiffs' complaint, "[t]he essence here is that the City of Ferndale was trying to chase away business because Jamal Safiedine and [his father] are of Arabic national origin, Islamic religion and Arabic race." Plaintiffs mischaracterize the police officer's conduct as a denial of access to public accommodations and public services.⁴ Plaintiffs allege that defendant violated § 302 of the Act, which provides:

Except where permitted by law, a person shall not:

(a) Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service because of religion, race, color, national origin, age, sex, or marital status.

(b) Print, circulate, post, mail, or otherwise cause to be published a

³ This analysis is solely for the purpose of determining if corporations are granted these protections. Such protection could not be granted to corporations unless the Legislature intended to anthropomorphize juridical persons, for purposes of the civil rights laws. There is nothing in the Act to support this interpretation. We do not reach the question of whether business entities, such as corporations, may find protection under Michigan laws if treated unfairly, but we do hold that Michigan civil rights laws do not afford such rights.

⁴ The veracity of the allegations is not an issue before us, but only the narrow legal issue raised by the corporate plaintiffs invoking the protections of the act.

statement, advertisement, notice, or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service will be refused, withheld from, or denied an individual because of religion, race, color, national origin, age, sex, or marital status, or that an individual's patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable because of religion, race, color, national origin, age, sex, or marital status. [MCL 37.2302.]

The trial court granted summary disposition to Ferndale pursuant to MCR 2.116(C)(8) and dismissed the corporate plaintiffs. The trial court reasoned that § 302 of the Act does not afford protection to business or corporate plaintiffs, only to "individuals" who can establish discrimination. The corporate plaintiffs now appeal.

III. Analysis

The corporate plaintiffs contend that the trial court erred because the various definitional sections of the Act, when read together, suggest that corporations may sue under the Act. Specifically, the corporate plaintiffs point out that the Act states that a "person" may bring an action for injunctive relief or damages, and that § 801 provides that "[a] *person* alleging a violation of this act may bring a civil action for appropriate injunctive relief or damages, or both." MCL 37.2801(1) (emphasis added). The corporate plaintiffs further reason that because MCL 37.2103(g) defines a person to include, among other things, a corporation, this means corporations are protected under the Act. On the other hand, defendant says that § 302 provides that "a person shall not . . . [d]eny an *individual* the full and equal enjoyment of goods, services . . . accommodations of a place of public accommodation or public service because of religion, race" And, defendant argues that because § 302 addresses violations against individuals only, a corporate entity, which is not an individual, cannot seek a remedy for a violation of § 302. In sum, the parties' reasoning is premised on their view of the definitional sections of the Act, specifically, from the Legislature's use of the term "person" in § 801, in contrast to its use of the term "individual" in § 302. Yet, we do not rest our decision on the parties' differing views of these definitional sections of the Act.⁵ But, our analysis of the definitional sections supports

⁵ This question raises an issue of statutory interpretation. As our Supreme Court explained in *Bukowski v City of Detroit*, 478 Mich 268, 273-274; 732 NW2d 75 (2007):

The goal of statutory interpretation is to give effect to the Legislature's intent as determined from the language of the statute. In order to accomplish this goal, this Court interprets every word, phrase, and clause in a statute to avoid rendering any portion of the statute nugatory or surplusage. We give the words of a statute their plain, ordinary meaning unless the Legislature employs a term of art.

Furthermore, this Court recently held:

(continued...)

our holding that the Act's substantive anti-discrimination provisions that grant rights and protections applies only to natural, not juridical persons.

Read together, § § 302 and 801 present a seeming incongruity: § 302 prohibits a person from denying public accommodations or services to an *individual*, but § 801, in providing a remedy for violations of the statute, states that a *person* may bring a civil action for appropriate injunctive relief and/or damages. The statutory definition of "person" in the Act includes corporations and partnerships, thus, the statutory language of § 801 suggests that these entities are entitled to sue for damages for a violation of the Act. However, we agree with Ferndale that § 302 plainly refers to the denial of a public service or accommodation to an "individual," not a "person" as defined by § 103(g). The ordinary meaning of an individual is "human being," and not a corporation or partnership. See *Random House Webster's College Dictionary*, p 664 (1997). Further, by defining "person" to include both an "individual" and a corporation or partnership, the Legislature made clear that an individual is not the same as a corporation or partnership. See § 103(g). And, although defendant's reading of the definitional sections is more plausible than plaintiffs' interpretation, this definitional language nonetheless presents the conundrum of whether § 801 authorizes a corporation to sue for damages for a violation of § 302, when § 302 refers only to violations directed at an individual.

To resolve this apparent incongruity, we consider "the object of the statute and the harm it is designed to remedy," and the interests protected in order to "apply a reasonable construction that best accomplishes the statute's purpose."⁶ The primary purpose of this civil rights legislation is to protect people, i.e., individuals, from discriminatory conduct based on characteristics peculiar to individuals: race, sex, age, national origin, marital status, etc. Clearly,

(...continued)

This Court's goal of statutory interpretation is to determine and give effect to the intent of the Legislature, with the presumption that unambiguous language should be enforced as written. *People v Gubachy*, 272 Mich App 706, 709; 728 NW2d 891 (2006), citing *Gladych v New Family Homes, Inc*, 468 Mich 594, 597; 664 NW2d 705 (2003). "Statutory language should be construed reasonably, keeping in mind the purpose of the act." *In re McEvoy*, 267 Mich App 55, 60; 704 NW2d 78 (2005). "***In other words, the Court must consider the object of the statute and the harm it is designed to remedy and apply a reasonable construction that best accomplishes the statute's purpose.***" *Gubachy*, *supra* at 709-710, citing *People v Lawrence*, 246 Mich App 260, 265; 632 NW2d 156 (2001). In doing so, this Court considers a variety of factors and applies principles of statutory construction, but should also always use common sense. *Marquis v Hartford Accident & Indemnity (After Remand)*, 444 Mich 638, 644; 513 NW2d 799 (1994); *Proudfoot v State Farm Mut Ins Co*, 254 Mich App 702, 708; 658 NW2d 838 (2003), rev'd in part on other grounds 469 Mich 476 (2003). [*Charter Twp of Commerce v Michigan Public Service Comm*, ___ Mich App ___, ___; ___ NW2d ___ (2008) (slip op at 4), emphasis added.]

⁶ *Charter Twp of Commerce*, *supra* at ___ (slip op at 4).

the Act seeks to insure that *people* are not discriminated against because of these peculiarly “human” characteristics. Such characteristics are inherently inapplicable to corporate or juridical entities. Thus, when describing the prohibited conduct, the Act plainly references individuals, i.e., people, and grants protection only to human beings, and not inanimate organizations.⁷

Every article of the Elliott-Larsen Civil Rights Act, from the article on Employment, through and including the article invoked by the corporate plaintiffs, Public Accommodations, makes clear, by explicit language used in granting rights, that these statutory rights and protections are afforded to natural, not juridical persons. Article 1, General Provisions, MCL 37.2102(1) provides:

The opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination because of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status as prohibited by this act, is recognized and declared to be a civil right.

A reading of the entire Act makes plain that the statute grants protection from discrimination based on characteristics that cannot be reasonably applied to juridical persons. Article 2, Employment, forbids employers from making decisions on hiring, firing, compensation, or other terms of employment “because of religion, race, color, national origin, age, sex, height, weight, or marital status.” MCL 37.2202(1). It also forbids employment agencies and labor organizations from utilizing discriminatory practices “because of religion, race, color, national origin, age, sex, height, weight, or marital status.” MCL 37.2203; 37.2204. Article 3, Public Accommodations and Services, prohibits the denial of “the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service because of religion, race, color, national origin, age, sex, or marital status.” MCL 37.2302. Article 4, Educational Institutions, bars educational institutions from utilizing discriminatory practice based on the same list of characteristics. MCL 37.2402. Likewise, Article 5, Housing, prohibits practices that would deny housing or other real estate opportunities to persons based on the same list. MCL 37.2502; 37.2504.

⁷ We acknowledge that the Act is not consistent in its use of the terms “person” and “individual” with regard to defining violations. For example, § 202(1)(a) provides that an employer shall not “[f]ail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment . . . because of religion, race, color, national origin, age, sex, height, weight, or marital status,” but § 202(1)(c) provides that an employer shall not “[s]egregate, classify, or otherwise discriminate against a person on the basis of sex with respect to a term, condition, or privilege of employment, including, but not limited to, a benefit plan or system.” MCL 37.2202(1)(a) and (c). Similarly, § 402(a) uses the term “individual” in prohibiting certain forms of educational discrimination based on religion, race, etc., whereas § 402(c) uses the term “person” in prohibiting other forms. MCL 37.2402(a) and (c). These occasional uses of the term “person” need not cause confusion. As we point out throughout this Opinion, the concept of discrimination based on inherently *human* characteristics has no meaning when applied to organizational entities.

Fundamentally, the Act prohibits decision makers from using race, sex, national origin, and marital status, among other human characteristics, as determining factors in decisions affecting people's employment, education, housing, and public accommodations.⁸ And, in every case, it is people whose interests are protected, not corporations or other juridical entities.⁹ Therefore, juristic persons that seek protection from the anti-discrimination provisions of the Act do not state a cause of action under the Act.¹⁰

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Jane E. Beckering

⁸ See *Alsbaugh v Comm on Law Enforcement Standards*, 246 Mich App 547, 563; 634 NW2d 161 (2001) (to prove religious or ethnic discrimination, the plaintiff must prove that religion or ethnicity was a determining factor in the alleged adverse employment action); *Town v Michigan Bell Telephone Co*, 455 Mich 688, 706; 568 NW2d 64 (1997) (plaintiff claiming sex discrimination must prove that gender was a determining factor in the allegedly discriminatory decision); and *Matras v Amoco Oil Co*, 424 Mich 675, 682; 385 NW2d 586 (1986) (in age discrimination action, the plaintiff's age need not be the only reason or main reason for the discharge, but must be one of the reasons that made a difference in determining whether to discharge the person).

⁹ We would not reach a different result if we labeled the corporate plaintiffs' cause of action as derivative of Safiedine's claim. In *Burchett v RS Optical*, 232 Mich App 174, 181; 591 NW2d 652 (1998), the plaintiff alleged that her employer's violations of the Act caused mental anguish which resulted in injury to her child during pregnancy. The child also brought an action against the defendant, and claimed that he also was entitled to sue for damages stemming from the defendant's alleged discriminatory conduct against his mother. This Court rejected the child plaintiff's claim, and held that when the Act refers to discriminatory conduct toward an "individual," "the Legislature intended to authorize only the person whose civil rights were violated to bring a cause of action under the CRA." *Id.* at 181. Here, this would preclude the corporate plaintiffs from maintaining a cause of action against Ferndale for alleged discrimination against Safiedine.

¹⁰ Though we rule that corporations are not protected by the anti-discrimination provisions of the Act, this narrow ruling should not be construed as a holding that corporations may never assert a claim under the Act. For example, because it is not before us, we do not address the related question of whether a juridical person, a corporation, may file a claim for indemnification or contribution if the corporation seeks such relief in an action wherein it may be held vicariously liable for acts of its agents under the Act.