# STATE OF MICHIGAN

# COURT OF APPEALS

SHARON WOOFTER,

Plaintiff-Appellant,

v

MECOSTA COUNTY MEDICAL CENTER,

Defendant-Appellee.

UNPUBLISHED
November 27, 2012

No. 307208
Mecosta Circuit Court
LC No. 11-020319-CZ

Before: SERVITTO, P.J., and MARKEY and MURRAY, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order dismissing her first amended complaint pursuant to MCR 2.116(C)(8). For the reasons set forth below, we affirm.

Plaintiff filed this action for wrongful discharge, alleging that she was improperly terminated by defendant, her employer, for allegedly accessing confidential medical records, an accusation she contends was later proven false. Plaintiff claims that provisions in defendant's Employee Handbook created a legitimate expectation of for-cause employment, and that any attempts by defendant to terminate her employment should have been in accordance with procedures outlined in the Employee Handbook. Defendant responded to plaintiff's complaint and immediately moved for summary disposition pursuant to MCR 2.116(C)(8), asserting that plaintiff was an at-will employee and thus subject to discharge for any or no reason and that the Employee Handbook clearly disclaims any intent of creating an enforceable contract.

In response to defendant's motion, plaintiff identified two provisions in the Employee Handbook: the Employee Fair Treatment Program ("Fair Treatment Program"), and the Work Rules and Progressive Disciplinary Action ("Disciplinary Policy") which, she argues, create a grievance-like procedure and progressive form of discipline leading up to termination. According to plaintiff, these provisions each create a legitimate expectation of just-cause employment. The trial court granted defendant's motion for summary disposition, concluding that plaintiff had failed to state a claim, but provided plaintiff with an opportunity to amend her complaint. After amendment, defendant again moved for summary disposition pursuant to MCR 2.116(C)(8), which the trial court again granted. This appeal followed.

A trial court's decision on a motion for summary disposition under MCR 2.116(C)(8) is reviewed de novo. *Lee v Detroit Med Ctr*, 285 Mich App 51, 58-59; 775 NW2d 326 (2009). Under MCR 2.116(C)(8), a trial court grants a motion for summary disposition when "[t]he

opposing party has failed to state a claim on which relief can be granted." Thus, a motion under MCR 2.116(C)(8) "tests the legal sufficiency of a complaint." *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2d 633 (2003). The trial court's decision is based on consideration of the pleadings alone and "all well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Id*., quoting *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).[1]

Under Michigan law, "employment is rebuttably presumed to be at-will." *Kimmelman v Heather Downs Mgt, Ltd*, 278 Mich App 569, 572; 753 NW2d 265 (2008). At-will employment means that an employee may be terminated "at any time and for any—or no—reason, unless that termination was contrary to public policy." *Id*. at 572-573. Generally, a termination is contrary to public policy when the employee "act[s] in accordance with a statutory right or duty." *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich 692, 695; 316 NW2d 710 (1982). The presumption of at-will employment may be overcome when there is an explicit or implicit contractual promise for a definite employment term or just-cause employment. *Rood v General Dynamics Corp*, 444 Mich 107, 117-118; 507 NW2d 591 (1993). In addition, the presumption of at-will employment may be overcome when "employer policies and procedures . . . instill 'legitimate expectations' of job security in employees." *Id*.[2] This "legitimate expectations theory" is based on public policy considerations, not contract law. *Id*. at 118.

To determine whether a plaintiff has established a legitimate expectations claim, the court should follow a two-step process. *Id*. at 138-139. First, the court must make the threshold determination as to whether the employer's policies and procedures are reasonably capable of making a promise. *Id*. "[N]ot all policy statements will rise to the level of a promise. For instance, an employer's policy to act or refrain from acting in a specified way if the employer chooses is not a promise at all." *Id*. at 139. If the employer's policies and procedures do not make a promise, the legitimate expectations claim must fail. *Id*. Second, the court must "determine whether the promise is reasonably capable of instilling a legitimate expectation of just-cause employment in the employer's employees." *Id*. at 139. "[O]nly policies and procedures reasonably related to employee termination are capable of instilling such expectations." *Id*.

In this case, plaintiff's legitimate expectations claim fails as a matter of law. Employing the first step in the *Rood*, two-step process, the employer's policies and procedures are not reasonably capable of making a promise because the Employee Handbook clearly states on the first page that it is not to be construed as a contract for employment. In *Lytle v Malady (On Rehearing)*, 458 Mich 153; 579 NW2d 906 (1998), the plaintiff's employee handbook included the following two relevant provisions:

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[1] Plaintiff essentially asserts that the trial court could not consider the Employee Handbook language because it is not a pleading. However, it was attached to the first amended complaint and under MCR 2.113(F)(2) it became "a part of the pleading for all purposes."

[2] In *Rood*, the term "job security" was deemed to mean "just cause for discharge." *Id*. at 118 n 18.

> The contents of this booklet are not intended to establish, and should not be interpreted to constitute any contract between [the employer] and any employee, or group of employees.
>
> * * *
>
> No employee will be terminated without proper cause or reason and not until management has made a careful review of the facts. [*Id*. at 162 (emphasis omitted).]

Our Supreme Court explained that the "proper cause" provision of the employee handbook could not overcome the presumption of at-will employment because "[the] contractual disclaimer clearly communicated to employees that the employer did not intend to be bound by the policies stated in the handbook." *Id*. at 166. Thus, our Supreme Court held that the provision did not constitute a promise and that the plaintiff could thus not establish the first step of a legitimate expectations claim. *Id*. Further, our Supreme Court held that the plaintiff could not establish the second step of a legitimate expectations claim because the employee handbook "contained a specific disclaimer of contractual intent and did not contain detailed discharge procedures[.]" *Id*. In sum, our Supreme Court held that "[a]n express policy that disclaims any contractual intent" is generally sufficient to overcome other language in the employee handbook indicating that an employee may only be terminated for "proper cause." See *id*. at 171 n 17.

Here, the Employee Handbook includes the following relevant statement on the first page:

> The language in this handbook is not intended to establish, nor is it to be construed, to constitute a contract between the Hospital and any of its employees for either employment or the providing of any benefit.

Even if plaintiff can identify other language in the Employee Handbook indicating just-cause employment, plaintiff's legitimate expectations claim must fail because of the contractual disclaimer. *Lytle*, 458 Mich at 166. The contractual disclaimer is legally sufficient to overcome contrary language suggesting just-cause employment. *Id*.

Plaintiff relies on *Dalton v Herbruck Egg Sales Corp*, 164 Mich App 543; 417 NW2d 496 (1987) for the proposition that where an employee handbook contains both at-will and just cause employment provisions, the question of whether just cause employment prevails is a question for the jury. In *Dalton*, "[t]he employee handbook, while providing that its provisions were not a contract and that an employee could be terminated at will, also set forth provisions from which plaintiff could have concluded that he would not be reprimanded for his conduct or, at the very most, would receive only a verbal warning." *Id*. at 547. This Court held that the trial court erroneously dismissed the plaintiff's legitimate expectations claim because the employee handbook contained conflicting provisions with respect to at-will termination and just-cause termination, so there was a question of fact for the jury to decide. *Id*. Plaintiff argues that the Employee Handbook at issue included both at-will and just-cause termination language and that the trial court therefore erroneously refused to allow her legitimate expectations claim to reach a jury. To the extent that this Court's *Dalton* decision conflicts with the *Lytle* decision, the latter

decision controls because it was decided by our Supreme Court. See *People v Armisted*, 295 Mich App 32, 53; 811 NW2d 47 (2011). Again, under *Lytle*, a specific contractual disclaimer is generally sufficient to defeat a legitimate expectations claim based on other language in the employee handbook. *Lytle*, 458 Mich at 166.

Plaintiff argues that the instant case is distinguishable from *Lytle* because the plaintiff in *Lytle* could only identify a single statement in the employee handbook indicating just-cause employment, whereas plaintiff has identified an extensive disciplinary procedure. However, the fact that an employer establishes a written "disciplinary system" does not transform at-will employment into just-cause employment. *Biggs v Hilton Hotel Corp*, 194 Mich App 239, 241-242; 486 NW2d 61 (1992). Moreover, the employee handbook in *Lytle* provided the plaintiff with a *stronger* argument for a legitimate expectations claim than the Employee Handbook in this case because the employee handbook in *Lytle* explicitly stated, "No employee will be terminated without proper cause . . . " Here, in contrast, plaintiff has not identified a single statement clearly indicating just-cause employment. In fact, under the "Disciplinary Policy" section of the Employee Handbook, it is specifically stated that "[t]he normal procedure for dealing with a violation of these rules will be the imposition of one or a combination of the following disciplinary measures. . ." This is followed by a list of measures including discharge. The section also contains the statement, "[t]he hospital may vary from this normal disciplinary procedure in a particular case if, in the sole discretion of the hospital, the facts so warrant." Thus, defendant specifically retained the right to vary from any disciplinary policy in its sole discretion, further indicating at-will employment. The trial court did nor err in finding that plaintiff failed to state a claim.

Affirmed.

/s/ Deborah A. Servitto
/s/ Jane E. Markey
/s/ Christopher M. Murray