STATE OF MICHIGAN

COURT OF APPEALS

GEORGIA STAHL,

Plaintiff-Appellant,

v

HEALTH ALLIANCE PLAN,
ROMAN KULICH and DON DAVIS,

Defendant-Appellees.

UNPUBLISHED
July 19, 1996

No. 179879
LC No. 93-306793-NZ

Before: Reilly, P.J., and Cavanagh and R.C. Anderson,* JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) on her claims of wrongful discharge and intentional infliction of emotional distress. We affirm.

On appeal, an order granting or denying summary disposition is reviewed de novo. A motion for summary disposition may be granted pursuant to MCR 2.116(C)(10) when, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Giving the benefit of reasonable doubt to the nonmovant, the trial court must determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Plieth v St Raymond Church*, 210 Mich App 568, 571; 534 NW2d 164 (1995).

Plaintiff argues that the trial court erred in finding that there was no genuine issue of material fact regarding plaintiff's status as an at-will employee. Plaintiff claims that she had a legitimate expectation that she could be discharged only for cause.

Generally, oral contracts of employment for an indefinite term are terminable at will by either party. *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 596; 292 NW2d 880 (1980). An employee hired under such a contract can be discharged for any reason or for no reason.

* Circuit judge, sitting on the Court of Appeals by assignment.

Rood v General Dynamics Corp, 444 Mich 107, 116; 507 NW2d 591 (1993). However, the presumption of at-will employment may be overcome by proof of an express contract forbidding discharge without just cause, or by evidence that the employee had a legitimate expectation of just-cause employment based on the employer's policies. *Id*. at 117-118. In claims based on the theory of a legitimate expectation of just-cause employment, courts should examine employer polices to see if they are capable of being interpreted as promises of just-cause employment. *Id*. at 140.

We agree with the trial court that defendants' handbook cannot be interpreted as providing plaintiff with just-cause employment. The handbook itself contained a provision stating, "Employment and compensation can be terminated, with or without cause, and with or without notice, at any time at the option of either the company or the employee." Employers may provide for employment at will by way of express disclaimers in statements of employment policies. *Scholz v Montgomery Ward & Co, Inc*, 437 Mich 83, 92-93; 468 NW2d 845 (1991).

Furthermore, plaintiff's other arguments fail to support a conclusion that she was subject to discharge only for just cause. Plaintiff asserts that defendant Kulich and defendant Davis testified that they understood that an employee could be terminated only for cause. However, neither Kulich nor Davis stated that an employee could be terminated only for cause, and Kulich explicitly stated that employment could be terminated without cause. Neither the existence of employee performance evaluations, the presence of a disciplinary system, nor the existence or successful completion of a probationary period give rise to a legitimate expectation of discharge only for just cause. See *Rood, supra* at 142-143; *Biggs v Hilton Hotel Corp*, 194 Mich App 239, 241-242; 486 NW2d 61 (1992); *Kostello v Rockwell Int'l Corp*, 189 Mich 241, 244-245; 472 NW2d 71 (1991). The fact that another employee was fired and then rehired because there had been insufficient cause is not relevant to any expectation formed by plaintiff regarding her own job security. See *Prysak v R L Polk Co*, 193 Mich App 1, 8; 483 NW2d 629 (1992).

Plaintiff also argues that defendants' offer of a training position was in essence a constructive discharge because plaintiff was not qualified for the position. However, a proposed change in job assignment cannot be equated with termination of employment under *Toussaint*. *Fischhaber v General Motors Corp*, 174 Mich App 450, 455; 436 NW2d 386 (1988).

Plaintiff next contends that the trial court erred in finding that no material issue of fact existed regarding her claim of intentional infliction of emotional distress. The elements of intentional infliction of emotional distress are (1) extreme and outrageous conduct; (2) intent or recklessness; (3) causation; and (4) severe emotional distress. Liability will be found only where the conduct complained of is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community. *Johnson v Wayne Co*, 213 Mich App 143, 161; 540 NW2d 66 (1995).

We agree with the trial court that the conduct alleged by plaintiff, while, in general, crass and insensitive, does not rise to the level of extreme and outrageous. Liability does not extend to mere

insults, indignities, threats, annoyances, petty oppressions, and other trivialities. *Tope v*

Howe, 179 Mich App 91, 107; 445 NW2d 452 (1989). Accordingly, the trial court did not err in dismissing plaintiff's claim of intentional infliction of emotional distress.

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Mark J. Cavanagh
/s/ Robert C. Anderson