STATE OF MICHIGAN

COURT OF APPEALS

JOY A. SINAUSKAS,

Plaintiff-Appellant,

v

CHARLES LUCAS, M.D.,

Defendant-Appellee.

UNPUBLISHED
November 24, 1998

No. 197164
Wayne Circuit Court
LC No. 95-500355 CZ

JOY A. SINAUSKAS,

Plaintiff-Appellant,

v

CHARLES LUCAS, M.D., HARPER HOSPITAL and HENRY J. COLEMAN, D.O.

Defendants-Appellees.

No. 198145
Wayne Circuit Court
LC No. 95-500355 CZ

Before: Wahls, P.J., and Holbrook, Jr., and Fitzgerald, JJ.

PER CURIAM.

In this consolidated appeal, plaintiff appeals by right from the trial court's order summarily dismissing plaintiff's final claim against defendants. In docket number 197164, plaintiff appeals the trial court's July 1996 order granting summary disposition to defendant Charles Lucas, M.D., pursuant to MCR 2.116(C)(10). In docket number 198145, plaintiff appeals the trial court's August 1995 order granting summary disposition to defendant Harper Hospital (hereinafter "Harper") pursuant to MCR 2.116(C)(8). We affirm.

Prior to her employment with Harper, plaintiff was employed by Mt. Clemens General Hospital (MCGH). After plaintiff was fired by MCGH, she filed a complaint against the hospital, alleging that her

discharge violated both the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq.*; MSA 17.428(1) *et seq.*, and public policy.

Harper hired plaintiff on May 26, 1992, as a surgical technician. Plaintiff was fired by Harper on September 25, 1992. On January 5, 1995, plaintiff filled a ten-count complaint against defendants. In count I, plaintiff alleged that Lucas and Henry J. Coleman, D.O.,[1] tortiously interfered with her business relationship with Harper. Counts II through VI alleged that Harper's firing of plaintiff was contrary to various public policies, identified as: constitutional rights, the right to bring a medical malpractice claim, the right to testify truthfully in a civil action, the state's interest in investigating gross medical malpractice, and the right to pursue a public policy claim for wrongful discharge. Count VII alleged that in firing plaintiff, Harper breached its implied duty of good faith and fair dealing. Finally, plaintiff alleged that all three defendants joined in a conspiracy to: (1) tortiously interfere with plaintiff's business relationship with Harper (count VIII); (2) act in contravention of the aforementioned public policies (count IX); and (3) breach the duty of good faith and fair dealing owned to plaintiff by Harper (count X).

On August 10, 1995, the trial court entered an order dismissing counts II through X pursuant to MCR 2.116(C)(8). Then, on July 26, 1996, the court entered an order dismissing count I pursuant to MCR 2.116(C)(10). We review de novo a trial court's grant or denial of a motion for summary disposition. *Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).

Docket No. 197164

Plaintiff argues that the trial court erroneous dismissed pursuant to MCR 2.116(C)(10) her claim that Lucas tortiously interfered with her business relationship with Harper.

> A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact . . . . A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Id.* at 85.]

After reviewing the record, and viewing the evidence in a light most favorable to plaintiff as non-moving party, we find that plaintiff has failed to establish that a genuine issue of material fact exists with respect to whether Lucas's conduct was either wrongful per se, or lawful conduct done with malice and unjustified in law. *Stanton v Dachille*, 186 Mich App 247, 255; 463 NW2d 479 (1990). Plaintiff has not "demonstrated, with specificity, affirmative acts by the defendant that corroborate the improper motive for" Lucas's actions. *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan (On Remand)*, 217 Mich App 687, 699; 552 NW2d 919 (1996). Therefore, we conclude that the trial court did not err when granting summary disposition to Lucas on plaintiff's claim of tortious interference with a business expectancy.

Plaintiff also argues that the trial court erred when granting Harper's motion for summary disposition pursuant to MCR 2.116(C)(8) on plaintiff's claim that Harper's actions were contrary to public policy, as articulated in the state constitution and the WPA.[2]

> A motion for summary disposition under MCR 2.116(C)(8) . . . tests the legal basis of the claim and is granted if the claim is so manifestly unenforceable as a matter of law that no factual progression could possibly support recovery. Motions for summary disposition [under this subsection] are examined on the pleadings alone, absent consideration of supporting affidavits, depositions, admissions, or other documentary evidence, and all factual allegations contained in the complaint must be accepted as true. [*Dolan v Continental Airlines/Continental Express*, 454 Mich 373, 380-381; 563 NW2d 23 (1997).]

Resolution of this issue turns on an interpretation of § 2 of the WPA, which provides:

> An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

The overriding goal guiding this Court's interpretation of a statute is to discover and give effect to legislative intent. *Anzaldua v Band*, 457 Mich 530, 534-535; 578 NW2d 306 (1998). The search for legislative intent begins with an examination of the language used in the statute at issue. *Shallal v Catholic Social Services of Wayne Co*, 455 Mich 604, 611; 566 NW2d 571 (1997). "Unless defined in the statue, every word or phrase should be accorded its plain and ordinary meaning, taking into account the context in which the words are used." *People v Hack*, 219 Mich App 299, 305; 556 NW2d 187 (1996). Accord *Shallal, supra* at 611. If the meaning of the language employed is clear, then it is assumed that the Legislature intended the meaning expressed. *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 135; 545 NW2d 642 (1996). Further, we are guided in our interpretation of § 2 by the knowledge that the WPA is a remedial act, which "is to be liberally construed in favor of the persons intended to be benefited." *Stewart v Fairlane Community Mental Health Centre*, 225 Mich App 410, 423; 571 NW2d 542 (1997). Accord *Shallal, supra* at 611; *Dudewicz v Norris Schmid, Inc*, 443 Mich 68, 77; 503 NW2d 645 (1993).

A plain reading of § 2 of the WPA reveals that employees discharged by a present employer for reporting violations or suspected violations of a previous employer are covered by the act. There is nothing in the express language of the text that limits application of the WPA to those situations where

an employee is discharged in retaliation for reporting violations by the discharging employer. Indeed, § 2 indicates that plaintiff need only establish a causal connection between the discharge and the protected activity. While it may be more difficult for an employee to show the existence of such a causal link when the protected activity occurred outside the present employment setting, such a limitation cannot override the plain meaning of the words found in § 2.

Additionally, although construction of the statute is unnecessary given the plain meaning of the text, we note that allowing an employee to bring an action under the WPA in these circumstances furthers the purposes of the act. As the *Dolan* Court observed:

> The underlying purpose of the act is protection of the public. The act meets this objective by protecting the whistleblowing employee and by removing barriers that may interdict employee efforts to report violations or suspected violations of the law. Without employees who are willing to risk adverse employment consequences as a result of whistleblowing activities, the public would remain unaware of large-scale and potentially dangerous abuses. [*Dolan, supra* at 378-379. Accord *Shallal, supra* at 612.]

Allowing a plaintiff to maintain an action in circumstances like those present here helps to assure that such a plaintiff is protected for engaging in activity encouraged by the WPA. Conversely, preventing a whistleblower from bringing an action in these circumstances would serve to erect a barrier to reporting violations or suspected violations of the law, thereby frustrating the purposes of the WPA. If a prospective whistleblower feared that any subsequent retaliatory discharge by a subsequent employer could escape the reach of the WPA, then it is likely that he would think twice about revealing violations or suspected violations of law.

Therefore, because the WPA specifically prohibits retaliatory discharge in the circumstances of this case, plaintiff's public policy claims are not sustainable. *Dudewicz, supra* at 79-80. Accordingly, we conclude that the trial court did not err when summarily dismissing plaintiff's public policy based claims pursuant to MCR 2.116(C)(8).

Affirmed.

/s/ Myron H. Wahls
/s/ Donald E. Holbrook, Jr.
/s/ E. Thomas Fitzgerald

[1] By stipulation of the parties, an order was entered by the trial court on January 26, 1996, dismissing with prejudice plaintiff's claims against Coleman.

[2] Plaintiff does not argue that any of the other counts raised in her ten-count complaint were erroneously dismissed. Those issues are thus abandoned on appeal.