STATE OF MICHIGAN

COURT OF APPEALS

BETTY M. MUDGE and RAY MUDGE,

Plaintiffs-Appellants,

v

CITY OF SOUTH LYON and RODNEY L. COOK,

Defendants-Appellees.

UNPUBLISHED
June 27, 1997

No. 194363
Oakland Circuit Court
LC No. 95-495977

Before: Smolenski, P.J., and Kelly and Gribbs, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition for defendants. We affirm in part and reverse in part.

Plaintiff Betty Mudge worked for defendants as a Deputy Treasurer. As part of her job, Betty was responsible for the collection of fees for county dog licenses. Betty's immediate supervisor, Julie Zemke, improperly cashed a personal check from those funds. When Betty discovered the check, she asked her husband, plaintiff Ray Mudge, what she should do. Ray contacted a friend and Plymouth Township police officer, Erik Mayernik, and explained the situation. Mayernik then relayed the information to the Oakland County Sheriff's Office. The sheriff's office began an investigation which eventually resulted in criminal charges against Zemke. Defendants suspended Betty for two weeks, allegedly because she failed to promptly report the incident. Plaintiffs then filed suit under the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq.*; MSA 17.428(1) *et seq*.

Plaintiffs first argue that the trial court erred in finding that Betty was not engaged in protected activity under the Act. The WPA provides the following:

> 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. [MCL 15.362; MSA 17.428(2).]

See *Dolan v Continental Airlines*, ___ Mich ___; ___ NW2d ___ (1997) (#102413, rel'd 5-20-97). This Court has articulated three requirements to establish a prima facie case under the WPA. First, a plaintiff must show that she was engaged in protected activity under the Act. Second, she must show that she suffered adverse employment action. Finally, she must show a causal connection between the protected activity and the adverse employment action. *Chandler v Dowell Schlumberger*, 214 Mich App 111, 113-114; 542 NW2d 310 (1995).

Here, we must first decide whether there was sufficient evidence to raise a question of fact whether Betty, or someone acting on her behalf reported, or was about to report a violation of law to a public body. We conclude that there was.

We find no cases construing the phrase "acting on behalf of the employee." Because reasonable minds can differ with regard to the meaning of this phrase, we look to the objective of the statute and the harm it is designed to remedy and apply a reasonable construction that best accomplishes the purpose of the Legislature. *Terzano v Wayne Co*, 216 Mich App 522, 527; 549 NW2d 606 (1996). The purpose of the WPA is to encourage employees to report wrongdoing by protecting employees who make such reports. *Chandler, supra* at 120-121. Here, Betty asked her husband what to do about the check she discovered in the dog tag fund. He told her that he would handle the matter. We conclude that his actions thereafter were taken on Betty's behalf. Thus, when Ray contacted Mayernik, he was acting on Betty's behalf. Under the plain language of the WPA, Mayernik constituted a "public body." MCL 15.361(d)(v); MSA 17.428(1)(d)(v). We see no reason to exclude Mayernik from this definition simply because he was also a friend of Ray and Betty Mudge. As a police officer sworn to uphold the law, Mayernik had a duty to act on the information he received.

Alternatively, we would also find that Mayernik was acting on Betty and Ray's behalf when he reported the incident to the Oakland County Sheriff's Office. Just as Betty had entrusted the handling of the matter to Ray, Ray entrusted it to Mayernik.

Plaintiffs next argue that the trial court erred in finding that there was no causal connection between the protected activity and the suspension. Plaintiffs argue that Betty was suspended because she reported Zemke's misuse of funds to law enforcement authorities. In order to show causation under the WPA, plaintiffs bear the initial burden of showing that defendants suspended her because of her actions in reporting the violation. *Hopkins v City of Midland*, 158 Mich App 361, 378-379; 404 NW2d 744 (1987). If plaintiffs meet this burden, defendants may dispel the inference of retaliation by establishing a legitimate reason for Betty's suspension. *Id.* The burden then shifts back to plaintiffs to show that defendants' reasons are only a pretext. *Id.* at 379-381. Plaintiffs can meet this burden "either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." *Id.* at 380.

Here, plaintiffs provided evidence, in the form of deposition testimony, that defendants were angry about the report to the Oakland County Sheriff's Office. While this evidence did not show that defendants proffered explanation was illegitimate, we conclude it was sufficient to raise a question of fact whether defendants were more likely motivated by retaliation than by legitimate reasons. Thus, summary disposition on this issue was improper.

Finally, plaintiffs argue that the trial court erred in granting summary disposition on their due process claims. While plaintiffs characterize their claim as one for a violation of both procedural and substantive due process, they in fact raise a simple procedural due process issue. Because plaintiffs failed to plead and prove the inadequacy of state remedies, they cannot succeed on their due process claim. *Blue Cross and Blue Shield of Michigan v Comm'r of Ins*, 155 Mich App 723, 732; 400 NW2d 638 (1986). Thus, the trial court properly granted summary disposition on this issue.

Affirmed in part, reversed in part, and remanded for further proceedings.

/s/ Michael R. Smolenski
/s/ Roman S. Gribbs