STATE OF MICHIGAN

COURT OF APPEALS

AUGUSTINA SCHWARTZ,

Plaintiff-Appellant,

v

UNIVERSITY OF MICHIGAN REGENTS d/b/a UNIVERSITY OF MICHIGAN MEDICAL CENTER, JILL SMITH, and ELAINE PERKINS,

Defendants-Appellees.

UNPUBLISHED
October 31, 1997

No. 192171
Washtenaw Circuit Court
LC No. 94001457

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

PER CURIAM.

Plaintiff appeals as of right from the order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff, who was part of the university's temporary nursing force, brought this suit against defendants under the Whistle-blower's Protection Act (WPA), MCL 15.361 *et seq.*; MSA 17.428(1) *et seq.*, alleging that defendants retaliated against her by not placing her for work as agreed. Plaintiff alleged that the retaliation stemmed from the complaint she filed with the Department of Public Health (DPH), which stated that she was suffering from exposure to gas fumes from the exhaust of the university's ambulance helicopters in violation or suspected violation of the Michigan Occupational Safety and Health Act (MIOSHA), MCL 408.1001 *et seq.*; MSA 17.50(1) *et seq*.

Plaintiff argues that the trial court erred in referring to the decision of *Dolan v Continental Airlines*, 208 Mich App 316; 526 NW2d 922 (1995), aff'd in part, rev'd in part. We reject plaintiff's claim that the trial court "adopted" or "primarily relied upon" *Dolan.* In any event, the trial court reached the correct result in this case, even if, as plaintiff alleges, for the wrong reasons. *Integral Ins Co v Maersk Container Service Co, Inc*, 206 Mich App 325, 332-333; 520 NW2d 656 (1994).

Plaintiff also argues that the trial court's grant of summary disposition was improper because she established a prima facie case under the WPA. We review the trial court's grant of

summary disposition de novo. *Ladd v Ford Consumer Finance Co, Inc*, 217 Mich App 119, 124; 550 NW2d 826 (1996). Likewise, we review de novo the issue of whether a plaintiff set forth evidence to establish a prima facie case under the WPA. *Terzano, supra*, 526.

The WPA protects an employee from discharge, threats, or other discrimination regarding her employment because she "reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule." MCL 15.362; MSA 17.428(2). In *Roberson v Occupational Health Centers of America, Inc*, 220 Mich App 322, 325; 559 NW2d 86 (1996), this Court stated that for a plaintiff to establish a prima facie case under the WPA, she must establish all of the following three elements: (1) that the plaintiff was engaged in a protected activity as defined by the act, (2) that the plaintiff was subsequently discharged, and (3) that there existed a causal connection between the protected activity and the discharge.

Here, plaintiff did not establish the third element of her prima facie case, whether her constructive discharge was caused by her participation in the protected activity. Id. The evidence viewed in the light most favorable to plaintiff establishes that defendants had the belief or knowledge of plaintiff's MIOSHA complaint. Accordingly, plaintiff argues that the causal connection between her complaint and discharge can be inferred from the fact that after the parties had knowledge of her MIOSHA complaint, they gave her only one work assignment and intended to keep her from working in retaliation for her whistleblowing. There is evidence that plaintiff had a workers' compensation claim pending for several months and that she could not be placed until a physician had determined that she was able to work. In addition, the testimony in this case (some of it by plaintiff herself) indicates that plaintiff was not oriented for work in many of the university's clinics and that the clinics where she was oriented employed few nurses and therefore had limited openings for a temporary nurse. There was evidence that "floater" nurses are called from a list and that, in order to be placed, they must be home at the time of the call unless prior arrangements are made. Plaintiff herself testified that she was quite busy and that she likes being able to choose her own hours. Plaintiff testified that she is on a "call" list for other hospitals and/or agencies and that she turned several jobs down because of distance, the hours of the offered shift, or because she "wasn't interested". One specific agency has called her for work but plaintiff testified that they always call her on "the wrong days" and she is "never available." Furthermore, there was some testimony indicating that a nurse manager at one of these three clinics had doubts about plaintiff's skills and dependability.

Thus, even if plaintiff established that she was engaged in a protected activity, and even if she established that she was constructively discharged, the evidence does not support plaintiff's argument that her discharge was caused by defendants' retaliation. It is the retaliation by an employer that the WPA specifically prohibits. Therefore, plaintiff did not establish the third element of a prima facie case under the WPA and the trial court properly granted defendants summary disposition.

Affirmed.

/s/ William B. Murphy
/s/ Roman S. Gribbs