

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RICHARD CHAPPLE

UNPUBLISHED

Plaintiff-Appellant,

v

No. 192526  
Wayne Circuit Court  
LC No. 95-511944-CZ

TABRO'S GLASS, INC.,

Defendant-Appellee.

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Before: Jansen, P.J., and Young and R.I. Cooper\*, JJ.

JANSEN, P.J. (concurring in part and dissenting in part).

I concur with the majority that the trial court properly dismissed plaintiff's handicapper's discrimination claim for the reasons set forth by the majority. I dissent from the majority's decision to affirm the trial court's dismissal of plaintiff's claim of retaliatory discharge.

The trial court dismissed plaintiff's claim of retaliatory discharge "because there was no compensation claim ever filed." Although the trial court did not specify under which subsection it was granting summary disposition, the trial court's reason on the record must mean that it was granted under MCR 2.116(C)(8). See *Griffey v Prestige Stamping, Inc.*, 189 Mich App 665, 668-669; 473 NW2d 790 (1991); *Wilson v Acacia Park Cemetery Ass'n*, 162 Mich App 638, 646; 413 NW2d 79 (1987) (the plaintiff failed to state a claim upon which relief can be granted where the plaintiff alleged termination of employment for the anticipated filing of a worker's compensation claim).

Plaintiff acknowledges that he did not file a worker's compensation claim either before or after he was terminated. Plaintiff, however, argues that he was terminated for exercising a right afforded by the act, specifically, the right to report a work-related injury and obtain medical treatment. The WDCA is remedial legislation and is to be liberally construed. The primary intent underlying the WDCA is to provide compensation to eligible persons for covered disabilities. *Gardner v Van Buren Public Schools*, 445 Mich 23, 49; 517 NW2d 1 (1994).

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

Contrary to the trial court's ruling, I would find that plaintiff has stated a claim upon which relief can be granted. Section 301(11) of the WDCA provides that an employer shall not discharge or discriminate against an employee because of the exercise of a right by the employee afforded by the act. The act permits employees to seek recovery of benefits for work-related injuries and this is the exclusive remedy that an employee has for a work-related injury, except for an intentional tort. MCL 418.131(1); MSA 17.237(131)(1). Because the WDCA confers a right upon plaintiff to seek recovery of benefits for a work-related injury, and because plaintiff sought medical attention for his alleged work-related injury and reported his restriction to his employer, I would find that plaintiff has adequately stated a claim upon which relief can be granted in that he was allegedly discharged for exercising a right afforded to him under the WDCA.

The majority decides this claim on a reason that was not relied upon by the trial court. Moreover, the majority's "reliance" on plaintiff's deposition testimony is inexplicable given the fact that this Court does *not* have the entire transcript of plaintiff's deposition testimony. The fact that the deposition was before the trial court is irrelevant because the trial court did not dismiss plaintiff's retaliatory discharge claim on the basis that plaintiff did not inform his employer that he had a work-related injury. Therefore, because this Court does not have the entire transcript of plaintiff's deposition testimony to review, I cannot conclude, as the majority does, that plaintiff failed to establish a nexus between his employer's action in discharging him, and his employer's knowledge that he had exercised or was going to exercise a right afforded under the WDCA.

Finally, I would find that, based on the limited record before us, defendant had constructive notice of plaintiff's alleged work-related injury. In January 1995, plaintiff reported the pain and swelling occurring in his elbow to defendant's general manager. On February 6, 1995, plaintiff had his elbow examined by an orthopedic surgeon. Plaintiff's arm was placed in a fiberglass cast and plaintiff was given a note recommending that he not be given work requiring the use of his right arm. Plaintiff reported to work the following day wearing the fiberglass cast and submitted the doctor's note. Because the trial court did not dismiss plaintiff's claim for the reason given by the majority and because this Court does not have plaintiff's entire deposition transcript, I find it inappropriate to dismiss plaintiff's claim of retaliatory discharge for allegedly failing to inform his employer that the injury was work related.

I would reverse the trial court's grant of summary disposition in defendant's favor with respect to the claim of retaliatory discharge and remand for further proceedings on that claim only.

/s/ Kathleen Jansen