

# Order

Michigan Supreme Court  
Lansing, Michigan

February 3, 2017

Stephen J. Markman,  
Chief Justice

152844

Robert P. Young, Jr.  
Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Joan L. Larsen,  
Justices

KEVIN SMITH,  
Plaintiff-Appellant,

v

SC: 152844  
COA: 320437  
Genesee CC: 13-100532-CZ

CITY OF FLINT,  
Defendant-Appellee.

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On January 12, 2017, the Court heard oral argument on the application for leave to appeal the November 5, 2015 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(H)(1). In lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals, for the reasons stated in the Court of Appeals dissenting opinion. Namely, we agree with Judge Fort Hood's dissent that the plaintiff's complaint sufficiently alleged discrimination under the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq.*, on the basis of a job reassignment unique to the plaintiff during undesirable hours at an undesirable location. See MCR 2.116(C)(8); *Maiden v Rozwood*, 461 Mich 109, 119-120 (1999). Furthermore, we VACATE as prematurely decided that part of the Court of Appeals majority opinion ruling *sua sponte* that the plaintiff's WPA claim should be dismissed for failure to properly plead participation in a protected activity, given that the issue had not been raised by either party or reached by the trial court, and the requirements of MCR 2.116(I)(5) have not been addressed. We REMAND this case to the Genesee Circuit Court for further proceedings not inconsistent with this order.

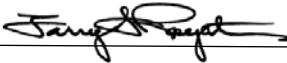
We do not retain jurisdiction.



t0131

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 3, 2017

  
Clerk