

STATE OF MICHIGAN  
COURT OF APPEALS

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SHANNON NIEZGOSKI and TODD  
NIEZGOSKI,

UNPUBLISHED  
January 27, 2005

Plaintiffs-Appellants,

v

QUALITY HOME CARE, INC. and PARKER  
MANOR,

No. 250385  
Ingham Circuit Court  
LC No. 03-000874-CZ

Defendants-Appellees.

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Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

BORRELLO, J. (*dissenting*).

I respectfully dissent in this matter because I believe the trial court engaged in fact finding in reaching the conclusion that plaintiff Shannon Niezgoski was terminated in January of 2003.

The trial court, in reaching the conclusion that plaintiff was terminated in January of 2003 stated as follows:

And I think that in this letter, it says, you know, ‘You can probably collect unemployment. We’ve had to make difficult decisions.’ *Sounds like they’re terminating her...So I think they terminated her.* (Emphasis added).

The trial court correctly stated that the motion contained both legal and factual issues, but because the trial court improperly engaged in fact-finding to reach a result in ruling on a MCR 2.116(C)(7) motion, I would reverse the trial courts granting of summary disposition, and remand issues of fact to the fact finder.

/s/ Stephen L. Borrello