

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

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DR. SAMMIE E. HARRIS,

Plaintiff-Appellant/Cross-Appellee,

v

DETROIT PUBLIC SCHOOLS,

Defendant-Appellee/Cross-  
Appellant.

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UNPUBLISHED  
February 23, 2010

No. 283472  
Wayne Circuit Court  
LC No. 04-419599-CZ

Before: Gleicher, P.J., and O’Connell and Wilder, JJ.

PER CURIAM.

Following a jury trial, plaintiff Dr. Sammie E. Harris was awarded judgment on his claims against defendant Detroit Public Schools for breach of contract related to the failure to pay employment benefits, constructive discharge, and violation of the Teachers’ Tenure Act (TTA), MCL 38.71 *et seq.* Plaintiff now appeals by leave granted from the trial court’s postjudgment order granting defendant’s motion for judgment notwithstanding the verdict (JNOV) on the constructive discharge claim and denying plaintiff’s motion for taxable costs under MCR 2.625. Defendant cross-appeals, challenging the trial court’s denial of its motion for JNOV with respect to plaintiff’s breach of contract and TTA claims. We affirm in part, reverse in part, and remand for further proceedings.

I. Facts and Procedural History

This action arises from plaintiff’s employment as principal at Northern High School in the Detroit school system from August 2000 to June 2004. Plaintiff accepted the position knowing that an audit of the school’s finances from 1996 to 1998 revealed more than \$37,000 in unaccounted funds. After plaintiff was hired as principal, he requested an audit for the years 1998 to 2000. Defendant conducted a follow-up audit of the 1998 audit, which examined the years 1998 to 2002. The audit revealed \$19,090.47 in unaccounted funds for the period July 1, 1998 – June 30, 2001, and \$644.92 in unaccounted funds for the period July 1, 2001 – June 30, 2002. Plaintiff was upset that the audit report lumped together the years 1998 to 2001 without apportioning the irregularities between his term as principal and his predecessor’s. Plaintiff was given an opportunity to prepare a written rebuttal to the draft report of the follow-up audit, and his response was made part of the final copy.

On January 21, 2004, plaintiff tendered his notice of retirement to defendant. Plaintiff stated in a letter that he had hoped to continue his employment with defendant for five more years, but vision problems interfered with his ability to perform his duties. When plaintiff completed defendant's Form 4149, Separation from Service, which was dated February 2, 2004, he gave as his reasons for retiring as vision problems and insufficient staffing support from defendant's administration.

On February 3, 2004, the *Detroit Free Press* published an article about the audit at Northern High School and four other high schools. The article reported missing funds of \$19,734.92 at Northern High School, without naming plaintiff or explaining that only a portion of the missing funds was attributable to the period after plaintiff became principal. The article also stated that funds had been misspent on staff luncheons and an office refrigerator, without explaining that the follow-up audit report stated that these purchases were made before plaintiff became principal. Plaintiff perceived the article as an assault on his character and blamed defendant for releasing false and misleading information to the news media.

On February 6, 2004, defendant placed plaintiff on administrative leave pending an investigation of Northern High School's finances. In part, this investigation concerned the school's Sign-O-Rama program, a for-profit program run in conjunction with a Florida company, Sign-O-Rama. This investigation was initiated after a teacher at the school notified defendant that this program was not complying with state and federal tax laws. The investigation was never completed because defendant's investigators were unable to locate all relevant records. The *Detroit News* published an article reporting that plaintiff had been placed on administrative leave because of the follow-up audit and the Sign-O-Rama investigation. Again, plaintiff perceived defendant's actions and the article as character assassination.

On April 19, 2004, plaintiff notified defendant that he intended to rescind his retirement. Defendant denied the request. Defendant's witnesses testified at trial that it had previously decided to deny all requests to rescind retirements because of its worsening budget crisis. Nonetheless, plaintiff testified that he expected to either continue his employment as a principal or be reemployed as a classroom teacher. Plaintiff stated that he assumed that his principal's contract would automatically renew because defendant had not notified him of the contract's non-renewal during the applicable 60-day period. He also suggested that he believed that his retirement had been put on hold while he was on administrative leave. Plaintiff also believed that the TTA required defendant to reemploy him as a teacher if it discontinued his principal's contract, despite his expressed intent to retire. Plaintiff learned in July 2004 that defendant no longer employed him.

Plaintiff brought this action against Detroit Public Schools and several additional individual parties. The case proceeded to trial on plaintiff's claims of "constructive discharge," breach of contract, and violation of the TTA. The jury returned verdicts in favor of plaintiff on all three claims. The trial court thereafter granted defendant's motion for JNOV with respect to the constructive discharge claim, but denied the motion in all other respects. The court also denied plaintiff's motion for taxable costs under MCR 2.625. This appeal followed.

## II. Plaintiff's Appeal

### A. Constructive Discharge

Plaintiff argues that the trial court erred in granting defendant's motion for JNOV with respect to the constructive discharge claim. We disagree. We review de novo a trial court's decision granting or denying JNOV. *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 260; 617 NW2d 777 (2000). "A motion for JNOV should be granted only when there was insufficient evidence presented to create an issue for the jury." *Pontiac School Dist v Miller, Canfield, Paddock & Stone*, 221 Mich App 602, 612; 563 NW2d 693 (1997).

This Court has recognized that an employee's ostensibly voluntary resignation of employment may constitute "constructive discharge" where the employer "deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation or, stated differently, when working conditions become so difficult or unpleasant that a reasonable person in the employee's shoes would feel compelled to resign." *Vagts v Perry Drug Stores, Inc*, 204 Mich App 481, 487; 516 NW2d 102 (1994), quoting *Mourad v Automobile Club Ins Ass'n*, 186 Mich App 715, 721; 465 NW2d 395 (1991). Constructive discharge is not itself a cause of action, but a defense against a defendant employer's argument that a plaintiff employee may not recover for wrongful termination of employment when the plaintiff voluntarily resigned. *Id.* at 487. In *Vagts*, this Court stated:

For the sake of clarity, we also point out that constructive discharge is not in itself a cause of action, although it is routinely alleged as a separate count in complaints for wrongful discharge. Rather, constructive discharge is a defense against the argument that no suit should lie in a specific case because the plaintiff left the job voluntarily. Thus, an underlying cause of action is needed where it is asserted that a plaintiff did not voluntarily resign but was instead constructively discharged. [*Id.* (internal citations omitted).]

Plaintiff argues that his breach of contract claim was the necessary underlying claim for the constructive discharge claim. Although a contract of employment for an indefinite term is generally terminable at the will of either party with or without cause, the parties may contractually agree that the employment relationship is terminable only for just cause. *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 598; 292 NW2d 880 (1980). However, the only breach of contract claim that was presented to the jury did not involve plaintiff's termination of employment, but rather defendant's failure to compensate him for benefits that plaintiff claimed were owed at the conclusion of the employment relationship. Because no underlying claim relating to plaintiff's termination of employment was presented to the jury, the trial court did not err in granting defendant's motion for JNOV with respect to the constructive discharge claim.

#### B. Taxable Costs

Plaintiff also argues that the trial court erred in denying his motion for taxable costs under MCR 2.625. We agree in part. "[T]he award of taxable costs to the prevailing party is within the trial court's discretion." *Allard v State Farm Ins Co*, 271 Mich App 394, 403; 722 NW2d 268 (2006).

MCR 2.625(A)(1) provides that the prevailing party may recover costs unless prohibited by statute or court rule, or unless the court directs otherwise for reasons stated in writing and filed in the record. MCR 2.625(B)(2) provides:

In an action involving several issues or counts that state different causes of action or different defenses, the party prevailing on each issue or count may be allowed costs for that issue or count. If there is a single cause of action alleged, the party who prevails on the entire record is deemed the prevailing party.

The trial court's May 17, 2007, order did not indicate any reasons for denying plaintiff's motion for costs. In its opinion and order denying plaintiff's motion for reconsideration, the trial court stated that plaintiff "was not the prevailing party as to all counts and is therefore not entitled to recovery of actual costs under MCR 2.625(B) as the request is submitted." The court appears to have denied costs because plaintiff's bill of costs did not allocate costs among the various counts. However, the trial court erred in stating that plaintiff was not entitled to costs under MCR 2.625(B) because he was "not the prevailing party as to all counts." Under the court rule, plaintiff was entitled to costs for the claims on which he prevailed. In section III, *infra*, we conclude that the trial court erred in denying defendant's motion for JNOV with respect to plaintiff's TTA claim, but properly denied the motion with respect to plaintiff's breach of contract claim. Therefore, plaintiff is a prevailing party on the breach of contract claim. Accordingly, the trial court's order denying plaintiff's motion for costs is reversed in part with respect to the breach of contract claim, and we remand for a determination of plaintiff's taxable costs on that claim.

### III. Defendant's Cross Appeal

Initially, plaintiff asserts that defendant's cross appeal is moot because defendant has fully satisfied the trial court's judgment. See *Becker v Halliday*, 218 Mich App 576, 578; 554 NW2d 67 (1996). However, plaintiff has not provided any supporting documentation for this assertion, nor have we found any in the lower court record.

#### A. Teacher Tenure Act

Defendant argues that it was entitled to JNOV on plaintiff's TTA claim because plaintiff failed to exhaust his administrative remedies under the act. This issue involves a question of law, which this Court reviews de novo. *Eggleston v Bio-Medical Applications of Detroit, Inc.*, 468 Mich 29, 32; 658 NW2d 139 (2003).

The TTA provides that a tenured teacher may not be discharged or demoted except for reasonable and just cause. MCL 38.101. With respect to a tenured teacher who is employed by the school board in a position other than as an active classroom teacher, MCL 38.91(7) provides:

If the controlling board provides in a contract of employment of a teacher employed other than as a classroom teacher, including but not limited to, a superintendent, assistant superintendent, principal, department head or director of curriculum, made with the teacher after the completion of the probationary period, that the teacher shall not be considered to be granted continuing tenure in that other capacity by virtue of the contract of employment, then the teacher shall not be granted tenure in that other capacity, but shall be considered to have been granted continuing tenure as an active classroom teacher in the school district. *Upon the termination of such a contract of employment, if the controlling board does not reemploy the teacher under contract in the capacity covered by the*

*contract, the teacher shall be continuously employed by the controlling board as an active classroom teacher.* Failure of a controlling board to reemploy a teacher in any such capacity upon the termination of any such contract of employment described in this subsection shall not be considered to be a demotion under this act. The salary in the position to which the teacher is assigned shall be the same as if the teacher had been continuously employed in the newly assigned position. Failure of a controlling board to so provide in any such contract of employment of a teacher in a capacity other than a classroom teacher shall be considered to constitute the employment of the teacher on continuing contract in the other capacity and subject to this act. [Emphasis added.]

Defendant does not dispute that plaintiff was a tenured teacher within the meaning of this statute. Accordingly, to the extent that defendant terminated plaintiff's contract as principal, it was obligated to continuously employ him as an active classroom teacher. By failing to do so, defendant effectively discharged plaintiff. Review of a tenured teacher's discharge "is not subject to judicial review until the aggrieved party has exhausted all administrative remedies" under the TTA. *Elgammal v Macomb Co Intermediate School Dist Bd of Ed*, 83 Mich App 444, 449-450; 268 NW2d 679 (1978). MCL 38.104 governs the tenure commission's review of decisions to discharge or demote a teacher. A party aggrieved by the tenure commission's final decision may appeal the order to this Court by leave granted. MCL 38.104(7); *Watt v Ann Arbor Bd of Ed*, 234 Mich App 701, 705; 600 NW2d 95 (1999). When a public employee's wrongful discharge claim is based on a theory of constructive discharge, the exhaustion of remedies requirement is not waived. *Mollett v City of Taylor*, 197 Mich App 328, 336-337; 494 NW2d 832 (1992). We agree with defendant that because plaintiff failed to pursue his administrative remedies under the TTA, his tenure claim was not subject to judicial review.

We disagree with plaintiff's argument that he was not required to first pursue his administrative remedies because defendant failed to notify him of the charges against him and advise him of his rights under the TTA, as required by MCL 38.102. Plaintiff received notice when he learned that defendant had processed his retirement as principal without reassigning him as a teacher. Whether this was sufficient notice under the TTA in view of plaintiff's retirement notice and attempted rescission of that notice are questions properly within the tenure commission's jurisdiction.

For these reasons, we reverse the trial court's decision denying defendant's motion for JNOV with respect to plaintiff's TTA claim.

#### B. Breach of Contract

Defendant argues that the trial court erred in permitting the jury to decide plaintiff's breach of contract claim because plaintiff voluntarily retired. Defendant's argument is based on a misunderstanding of the breach of contract claim that was submitted to the jury. On defendant's motion for a directed verdict at trial, the trial court restricted the breach of contract claim to plaintiff's claim that defendant failed to pay retirement and sick leave benefits to which plaintiff alleged he was contractually entitled upon his separation. The court specifically provided that plaintiff "cannot go forward and ask for damages for breach of contract as a principal." Plaintiff's voluntary retirement did not abrogate his entitlement to compensation for separation benefits. Accordingly, defendant is not entitled to relief with respect to this matter.

### C. Consistency of the Jury's Verdicts

Lastly, defendant argues that it is entitled to a new trial because the jury's verdicts were inconsistent. We disagree. A jury's verdict must be upheld if there is any competent evidence to support it. *Allard, supra* at 406-407. "The jury's verdict must be upheld, even if it is arguably inconsistent, if there is an interpretation of the evidence that provides a logical explanation for the findings of the jury." *Id.* at 407 (internal quotations and citations omitted). A jury's verdicts will be set aside only if they are so logically and legally inconsistent that reconciliation is not possible. *Id.*

The jury's finding that defendant breached its contract by failing to pay plaintiff the full amount of benefits due him upon termination of his employment is not logically or legally inconsistent with its verdict that defendant violated the TTA by failing to reemploy him as a classroom teacher. Although we have concluded that the latter verdict must be reversed for failure to exhaust administrative remedies, there is no legal or logical inconsistency. The jury's verdict regarding the constructive discharge claim, although later vacated, also was not inconsistent with either of the other two verdicts. The jury could have logically found that plaintiff was constructively discharged, and that defendant thereafter failed to pay all benefits that were due him upon his discharge. The jury could have also found that defendant constructively discharged plaintiff and thereafter violated the TTA by not reemploying him as a classroom teacher. Because the jury's verdicts are not so logically and legally inconsistent that reconciliation is not possible, defendant is not entitled to a new trial on this basis.

Affirmed in part, reversed in part, and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher  
/s/ Peter D. O'Connell  
/s/ Kurtis T. Wilder