

STATE OF MICHIGAN
COURT OF APPEALS

RONALD B. CRICHTON,

Plaintiff-Appellant,

v

OXFORD EMERGENCY SAFETY AUTHORITY
(OESA), and GARY L. FORD,

Defendants-Appellees.

UNPUBLISHED
December 1, 1998

No. 206514
Oakland Circuit Court
LC No. 96-532294 CL

Before: Sawyer, P.J., and Wahls and Hoekstra, JJ.

MEMORANDUM.

Plaintiff appeals from the circuit court order granting the motion for summary disposition filed by defendants Oxford Emergency Safety Authority (OESA) and Gary Ford. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, a detective for the Village of Oxford, was assigned to the Oakland County Narcotics Enforcement Team (NET). While so assigned, plaintiff contacted the Wayne County Prosecutor and stated that he believed that the City Manager for the City of Harper Woods and Ford had committed a crime. The Wayne County Prosecutor responded and indicated that an investigation had revealed no violation of law.

When the OESA ordinance officer was injured and could not return to work, defendants recalled plaintiff from NET and assigned him to work as the ordinance officer. Plaintiff performed the duties for a short time, and ultimately returned to work as a detective.

Plaintiff filed suit alleging, *inter alia*, that defendants violated the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq.*; MSA 17.428(1) *et seq.*, by changing his work location from NET to ordinance officer in retaliation for his participation in activities protected under the WPA. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), (8) and (10). The trial court granted the motion. Regarding plaintiff's WPA claim, the court found that while plaintiff was engaged in a protected activity, no issue of fact existed as to whether he suffered materially adverse change in the

conditions of his employment as a result of retaliation for those activities. *Kocsis v Multi-Care Management, Inc*, 97 F3d 876 (CA 6, 1996).

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 202; 544 NW2d 727 (1996).

To establish a prima facie case under the WPA, a claimant must establish: (1) that he was engaged in protected activities as defined by the WPA; (2) that he was subsequently discharged, threatened, or otherwise discriminated against; and (3) that a causal connection existed between the protected activities and the discharge, threat, or discrimination. *Phinney v Perlmutter*, 222 Mich App 513, 553; 564 NW2d 532 (1997).

On appeal, plaintiff argues that the trial court improperly relied on *Kocsis, supra*, a case dealing with the federal Americans With Disabilities Act, 42 USC 12101 *et seq.*, to find that he was required to establish that he suffered a materially adverse change in his employment conditions in retaliation for his protected activities. Michigan interprets the WPA more broadly. A viable claim can be asserted for loss of opportunity or discrimination that results in only non-economic loss. *Melchi v Burns Int'l Security Services, Inc*, 597 F Supp 575 (ED Mich, 1984). Even assuming arguendo that the trial court applied the correct standard, the evidence showed that he suffered a materially adverse change in his employment conditions when he was relegated to the position of ordinance officer.

The party opposing a motion for summary disposition on the basis that no genuine issue of fact exists cannot rest upon the mere allegations in the pleadings but must, by affidavit or otherwise, set forth specific facts demonstrating that a genuine issue of material fact exists. *Ringewold v Bos*, 200 Mich App 131, 135-136; 503 NW2d 716 (1993). Plaintiff presented no affidavits or deposition testimony in his initial opposition to defendants' motion.

Federal law provides an appropriate model for interpretation of WPA provisions that have not been interpreted by courts of this state. *Melchi, supra*, 597 F Supp at 581. Plaintiff did not demonstrate that an issue of fact existed as to whether he suffered adverse treatment as a result of his protected activities. He did not lose his status as a detective or suffer a reduction in pay when he was assigned to temporary duty as an ordinance officer. Plaintiff did not establish that an issue of fact existed as to whether defendants' proffered reasons for assigning him to temporary duty as an ordinance officer were pretextual. *Eckstein v Kuhn*, 160 Mich App 240, 246-247; 408 NW2d 131 (1987). Finally, plaintiff offered no evidence to create an issue of fact as to the existence of a causal connection between the allegedly adverse treatment and his protected activities.

Affirmed.

/s/ David H. Sawyer
/s/ Myron H. Wahls
/s/ Joel P. Hoekstra