

STATE OF MICHIGAN
COURT OF APPEALS

KATHLEEN ANN MOYNAHAN,
Plaintiff-Appellant,

UNPUBLISHED
April 6, 2006

v

EATON COUNTY,

Defendant-Appellee.

No. 258753
Eaton Circuit Court
LC No. 03-000907-CL

Before: Kelly, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

In this case alleging wrongful discharge, plaintiff appeals as of right the trial court’s order granting summary disposition to defendant. We affirm.

Plaintiff argues that the trial court erred by granting summary disposition in favor of defendant in this case involving the Whistleblowers’ Protection Act (WPA), MCL 15.361 *et seq.* We disagree. We review de novo an order granting summary disposition pursuant to MCR 2.116(C)(10). *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). We consider the pleadings, affidavits, depositions, admissions, and other documentary evidence and construe them in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). If the nonmoving party would bear the burden of proof at trial, that party must show there is a genuine issue of material fact by setting forth documentary evidence. *Karbel v Comerica Bank*, 247 Mich App 90, 97; 635 NW2d 69 (2001).

The WPA prohibits an employer from discharging an employee “because the employee . . . reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state” MCL 15.362. Absent direct evidence of a violation, WPA actions are analyzed under a “shifting burdens” test (*McDonnell Douglas* test)¹ with the plaintiff first bearing the burden of establishing a prima facie case.

¹ The shifting burdens framework is an adaptation of the analysis in *McDonnell Douglas v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973). See *De Brow v Century 21 Great Lakes, Inc*, 463 Mich 534, 539; 620 NW2d 836 (2001).

Roulston v Tendercare, Inc, 239 Mich App 270, 280; 608 NW2d 525 (2000). If the plaintiff can establish a prima facie case, “the burden shifts to defendant to identify a legitimate reason for the discharge.” *Id.* If the defendant can establish a legitimate reason, the burden shifts back to the plaintiff to show that the defendant’s reason was merely a pretext for discrimination. *Id.* at 281. For purposes of discussion, we assume without deciding that the trial court correctly ruled that plaintiff established a prima facie case. Thus, we need only examine whether defendant articulated legitimate reasons for plaintiff’s discharge and whether plaintiff presented evidence that the articulated reasons were a pretext for discrimination in violation of the WPA.

Defendant articulated legitimate reasons for plaintiff’s discharge. Plaintiff admitted below that she occasionally had disagreements with her supervisors prior to her discharge. She further admitted that during a Friend of the Court meeting, she became frustrated, raised her voice, and left the meeting, slamming the door behind her. Plaintiff’s supervisors also testified to several instances of insubordinate and divisive behavior by plaintiff ranging from her refusal to perform an investigation to her comment that she “intimidated” a superior. In addition, plaintiff’s supervisors received complaints about her from the public, including formally filed grievances about her behavior. All of these incidents occurred prior to plaintiff’s allegations of possibly improper ex parte communications.

Because defendant articulated legitimate reasons for plaintiff’s discharge, the burden shifted to plaintiff to prove that defendant’s reasons were a mere pretext for discrimination. A plaintiff may prove pretext either directly by showing “that a retaliatory reason more likely motivated the employer or indirectly by showing that the employer’s proffered explanation is unworthy of credence.” *Roulston, supra* at 281.

In this case, the record is devoid of any direct evidence indicating that defendant’s reasons for discharging plaintiff were pretextual. As indirect evidence, plaintiff essentially relies on the close proximity in time between making her allegations and her discharge. But “the short time between plaintiff’s participation in protected activity and the discharge of plaintiff’s employment, without more, is insufficient to establish that the stated reason was a mere pretext.” *Taylor v Modern Engineering, Inc*, 252 Mich App 655, 662; 653 NW2d 625 (2002). A review of the record in the light most favorable to plaintiff reveals that there is nothing beyond the time frame to support plaintiff’s argument.

Plaintiff does not effectively dispute having engaged in unprofessional behavior. She admitted having disagreements with her supervisors and raising her voice, as well as even slamming a door as she left a meeting. In addition, plaintiff, while alleging improper ex parte communications, did not provide a specific instance of any violation. Plaintiff’s superior, Michael Kutas, noted that he did not think plaintiff was specifically discussed during his conference call with Judge Thomas Eveland following plaintiff’s meeting on April 11, 2003. Finally, Judge Eveland testified that he did not even remember anything specifically said by plaintiff at that meeting. Therefore, there was no evidence to reasonably support a conclusion that plaintiff’s superiors considered or were even conscious of plaintiff’s allegations when they decided to discharge her. Thus, plaintiff failed to present sufficient evidence of pretext to avoid summary disposition.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Kathleen Jansen

/s/ Michael J. Talbot