

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

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JESSIE RENIEWICZ,

Plaintiff-Appellant,

v

K & M LOGISTICS, INC.,

Defendant-Appellee.

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UNPUBLISHED

December 16, 2021

No. 355385

Ingham Circuit Court

LC No. 19-000163-CZ

Before: GADOLA, P.J., and SWARTZLE and CAMERON, JJ.

PER CURIAM.

Plaintiff was a truck driver who was injured in a work-related incident. Defendant paid plaintiff's workers' compensation claim in full and held plaintiff's job open for 10 months until he could return to work. Before returning to work, plaintiff told defendant that he could no longer drive a manual-transmission truck. When plaintiff returned to work, however, defendant assigned him to drive a manual-transmission truck. Plaintiff refused to do so, left the office, and went home; defendant interpreted plaintiff's actions as him quitting, but plaintiff claims he was fired. Plaintiff then filed a complaint alleging violations of the Worker's Disability Compensation Act of 1969 (WDCA), MCL 418.101 *et seq.*, and the Persons with Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.* The trial court granted summary disposition to defendant and plaintiff appeals. We affirm.

**I. BACKGROUND**

Plaintiff worked for defendant from June 2014 to May 2017 as a truck driver. In June 2016, plaintiff was injured while unloading a truck. Plaintiff filed a workers' compensation claim, which defendant paid in full, and plaintiff was on workers' compensation leave for approximately 10 months.

According to plaintiff, he had hip surgery and, after completing physical therapy, he decided that he would not be able to use a clutch, which was needed to operate a manual-transmission truck. Plaintiff alleges that he spoke with the facility manager, Bok Ong, on two

occasions in approximately January 2017, and Ong verbally agreed to allow plaintiff to use an automatic-transmission truck when he returned to work. (Ong claims plaintiff never told him that plaintiff would need to drive an automatic-transmission truck when he returned to work.)

Plaintiff's doctor cleared him to work with no restrictions. Plaintiff claimed that when he returned to work he was assigned a manual-transmission truck that was inoperable because it had a broken axle. Plaintiff waited two hours, but he was not assigned a new truck, so he left to get breakfast. After he left, plaintiff received a text message stating that he was no longer employed with defendant.

Plaintiff's immediate supervisor, Shawn Benavidez, testified that, when plaintiff returned to work, he was initially assigned an automatic-transmission truck, which turned out to have a broken axle. According to Ong, that truck's cargo was moved to a different truck with a manual transmission, but plaintiff left before the second truck was ready. Ong contacted plaintiff, who stated that he would "be right back," but in subsequent text messages plaintiff stated that he was not returning and refused to drive a manual-transmission truck. In the text messages, plaintiff claimed that Benavidez assigned him to a "crap truck" so plaintiff would quit and that he was at home because he was not going to let Benavidez "bully" him. Ong told plaintiff that he would have someone named Lee switch plaintiff to an automatic-transmission truck the next day and asked plaintiff if he was going to return to work to complete his route. Plaintiff stated that he would not return to work that day, but requested that Ong "let [him] know what [Ong] and Lee come up with." Ong told plaintiff, "By you coming into work then leaving because of [Benavidez] and being in a manual truck . . . you have decided to quit. . . . Again by you leaving today means you are no longer employed with [defendant]."

Plaintiff filed this action, alleging that defendant retaliated against him in violation of the WDCA. Plaintiff also raised a failure-to-accommodate claim under the PWDCRA. The trial court granted defendant's motion for summary disposition under MCR 2.116(C)(10) and denied plaintiff's motion for reconsideration. This appeal followed.

## II. ANALYSIS

"We review de novo a trial court's decision to grant or deny a motion for summary disposition." *Sherman v City of St Joseph*, 332 Mich App 626, 632; 957 NW2d 838 (2020) (citations omitted). When deciding a motion for summary disposition under MCR 2.116(C)(10), we consider the evidence submitted in a light most favorable to the nonmoving party. *Payne v Payne*, \_\_\_ Mich \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2021) (Docket No. 354057), slip op at 4. This Court reviews a motion brought under MCR 2.116(C)(10) "by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Patrick v Turkelson*, 322 Mich App 595, 605; 913 NW2d 369 (2018). "Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Sherman*, 332 Mich App at 632.

### A. WORKER'S DISABILITY COMPENSATION ACT

Plaintiff argues that the trial court erred by granting summary disposition to defendant on his WDCA-retaliation claim. The purpose of the WDCA is to "promptly deliver benefits to

employees injured in the scope of their employment.” *Cuddington v United Health Servs, Inc*, 298 Mich App 264, 272; 826 NW2d 519 (2012) (cleaned up). MCL 418.301(13) provides, “A person shall not discharge an employee or in any manner discriminate against an employee because the employee filed a complaint or instituted or caused to be instituted a proceeding under this act or because of the exercise by the employee on behalf of himself or herself or others of a right afforded by this act.”

As explained by this Court in *Cuddington*, 298 Mich App at 275,

To establish a prima facie case of retaliation under the WDCA, an employee who has suffered a work-related injury must present evidence: (1) that the employee asserted a right to obtain necessary medical services or actually exercised that right, (2) that the employer knew that the employee engaged in this protected conduct, (3) that the employer took an employment action adverse to the employee, and (4) that the adverse employment action and the employee’s assertion or exercise of a right afforded under MCL 418.315(1) were causally connected.

Only the third and fourth elements are at issue in this case. Plaintiff argues that defendant took an action adverse to his employment by firing him. Plaintiff claims that he did not quit when he left work and refused to return until defendant provided him with an automatic-transmission truck to drive. Ong interpreted these same actions as defendant quitting. Thus, the parties clearly dispute the material fact of whether plaintiff quit or was fired, but we need not decide that issue here because—even if he was fired—plaintiff cannot establish that he was fired for claiming worker’s compensation benefits.

Plaintiff’s job was held open for 10 months after he was injured and he returned to work without any restrictions from his doctor. The parties dispute whether the first truck defendant provided to plaintiff when he returned to work had an automatic or manual transmission. They agree, however, that this truck was not drivable and that the substitute truck defendant provided for plaintiff had a manual transmission. While waiting for this new truck, plaintiff left work and claimed he was going out to eat breakfast. In reality, however, plaintiff returned home and refused to return to work after learning that he would have to drive a manual-transmission truck that day. Ong assured plaintiff that he could drive an automatic-transmission truck the next day, but plaintiff refused to return to work and drive the manual-transmission truck. Ong interpreted plaintiff’s refusal to return to work as plaintiff quitting. Even if Ong viewing plaintiff as quitting by refusing to return to work amounted to Ong firing plaintiff, this act clearly was not retaliation for plaintiff claiming worker’s compensation benefits. Rather, any retaliation was a response to plaintiff refusing to perform his job responsibilities. Thus, plaintiff cannot establish that defendant fired him for claiming worker’s compensation benefits.

## B. PERSONS WITH DISABILITIES CIVIL RIGHTS ACT

Plaintiff argues that the trial court erred by granting summary disposition to defendant on his PWDCRA claim because defendant violated the PWDCRA by retaliating against him because of his disability. But plaintiff alleged in his complaint that defendant violated the PWDCRA by failing to accommodate his disability, not that it retaliated against him in violation of the PWDCRA. Plaintiff raised his PWDCRA-retaliation claim for the first time in his motion for

reconsideration. Thus, this argument is unpreserved. See *Vushaj v Farm Bureau Gen Ins Co of Mich*, 284 Mich App 513, 519; 773 NW2d 758 (2009). As a general rule, “a failure to timely raise an issue waives review of that issue on appeal.” *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008) (quotation marks and citation omitted). Thus, defendant has waived this issue by failing to raise it timely.

Even if we were to address this issue, however, plaintiff’s PWDCRA-retaliation claim would still fail for two reasons. First, plaintiff abandoned the issue by failing to cite to adequate legal authority to support his position. In the PWDCRA-retaliation portion of his brief, plaintiff failed to cite to any Michigan cases for the applicable legal standards for a PWDCRA-retaliation claim. Thus, he abandoned the issue. See *Cheesman v Williams*, 311 Mich App 147, 161; 874 NW2d 385 (2015). Second, plaintiff’s PWDCRA-retaliation claim would also fail on the merits because his hip injury did not qualify as a disability. Plaintiff has not established that his hip injury was anything other than a temporary medical condition to which the PWDCRA does not apply. See *Chiles v Machine Shop, Inc*, 238 Mich App 462, 479; 606 NW2d 398 (1999).

### III. CONCLUSION

For the reasons stated in this opinion, we affirm the trial court’s order granting summary disposition to defendant. Defendant, as the prevailing party, may tax costs under MCR 7.219.

/s/ Michael F. Gadola  
/s/ Brock A. Swartzle  
/s/ Thomas C. Cameron