STATE OF MICHIGAN

COURT OF APPEALS

MARY T. FOGWELL,

Plaintiff-Appellant,

V

DANIEL KLEIN,

Defendant-Appellee.

UNPUBLISHED
September 25, 2001

No. 223761
Ingham Circuit Court
LC No. 99-090024-NZ

Before: Cavanagh, P.J. and Markey and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff worked as a hygienist for defendant, a dentist. In the summer of 1997, plaintiff became concerned about the legality of some of defendant's billing practices. She copied various records and sought legal advice concerning her own potential liability for the practices. She placed two calls to an insurance hotline, but terminated both calls without speaking to another person or leaving any information. Plaintiff also contacted the Department of Consumer and Industry Services and requested a complaint form, but did not complete or file the form.

In January 1999, plaintiff and defendant met to discuss various matters. Plaintiff informed defendant of her concerns about the billing practices and told him that she had consulted an attorney and had attempted to contact the insurance hotline. On February 2, 1999, defendant terminated plaintiff's employment when plaintiff declined to indicate whether she intended to stop pursuing the matter. In a letter dated February 2, 1999, defendant informed plaintiff that she was not discharged because she had indicated that she was about to report her suspicions to any public body.

Plaintiff filed suit, alleging that her discharge for protected activity violated the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq*. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that no issue of fact existed as to whether plaintiff had reported or was about to report a suspected violation of the law. The trial court agreed with defendant and granted his motion.

We review a trial court's decision on a motion for summary disposition de novo. *Silver Creek Twp v Corso*, 246 Mich App 94, 97; 631 NW2d 346 (2001). This Court views the evidence submitted in a light most favorable to the non-moving party. *Chop v Zielinski*, 244 Mich App 677, 679; 624 NW2d 539 (2001).

Under the WPA, an employer may not discharge, threaten, or otherwise discriminate against an employee because the employee reports or is about to report a violation or suspected violation of a law, regulation, or rule to a public body. MCL 15.362. To establish a prima facie claim under the WPA, a plaintiff must show that: (1) he was engaged in protected activity; (2) the defendant discharged him; and (3) a causal connection existed between the activity and the discharge. *Chandler v Dowell Schlumberger, Inc*, 456 Mich 395, 399; 572 NW2d 210 (1998). Protected activity consists of: (1) reporting to a public body a violation or a suspected violation of a law, regulation, or rule; (2) being about to report such a violation; or (3) being asked by a public body to participate in an investigation. MCL 15.362. An employee who is about to report a violation or a suspected violation is on the verge of doing so. *Shallal v Catholic Social Services*, 455 Mich 604, 612; 566 NW2d 571 (1997). A nonreporting employee must establish being about to report a violation or a suspected violation by clear and convincing evidence. MCL 15.363(4).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We agree. Plaintiff alleged that defendant discharged her because she engaged in an activity protected under the WPA. The evidence indicated that while plaintiff never actually reported a suspected violation of the law to any public body, she engaged in several activities that indicated she was about to report. These activities included copying of records, attempts to contact the insurance hotline, and obtaining a complaint form. Plaintiff informed defendant of these activities and her concerns with his billing practices only one week prior to her termination even though many of these activities occurred over a year before. In fact, plaintiff was terminated by defendant shortly after she refused to answer a direct question concerning her intentions to stop pursuing the matter. Plaintiff's proof "need not consist of a concrete action to satisfy the 'about to' report element" of the WPA. *Shallal, supra* at 615. A reasonable person could conclude that plaintiff's actions, coupled with her refusal to answer defendant's question about not reporting him, provided clear and convincing evidence to satisfy the "about to report" language of the WPA. See *Shallal, supra* at 615.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Jane E. Markey
/s/ Jessica R. Cooper