

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA MAKOHON, Personal Representative
of the Estate of THOMAS C. ODETTE, Deceased,

UNPUBLISHED
October 14, 2003

Plaintiff-Appellant,

v

No. 240112
Oakland Circuit Court
LC No. 2001-030727-NZ

DAIMLERCHRYSLER CORPORATION,
DAIMLERCHRYSLER, A.G.,
DAIMLERCHRYSLER BENZ, A.G., and SUSAN
LAMPINEN-HOWARD,

Defendants-Appellees.

Before: Fitzgerald, P.J., and Zahra and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motions for summary disposition under MCR 2.116(C)(4), (8) and (10). Plaintiff also challenges the trial court's order awarding defendants case evaluation sanctions of \$4,118 under MCR 2.403(O). We affirm.

I. Underlying Facts

This case arises from allegations that negligent conduct by defendants DaimlerChrysler Corporation, DaimlerChrysler, A.G., DaimlerChrysler Benz, A.G., (collectively referred to as "DaimlerChrysler"), and Susan Lampinen-Howard caused plaintiff's thirty-nine-year-old husband, Thomas Odette, to commit suicide. Odette, a DaimlerChrysler senior designer in Auburn Hills, was terminated on April 1, 1998, after Lampinen-Howard, a DaimlerChrysler manager in the same design studio, accused him of sexual harassment. Plaintiff alleged that Lampinen-Howard made false accusations against Odette, and that DaimlerChrysler negligently investigated her accusations, which led to Odette's termination, thereby causing him severe mental anguish and his ultimate suicide.

II. Lampinen-Howard's Negligence

A. Plaintiff's Allegations

Plaintiff argues that Lampinen-Howard was not entitled to summary disposition on her negligence claim because she owed Odette, as a member of the general public, a duty to use due

care in making accusations against him. To this extent, plaintiff alleged the following in the complaint:

Ms. Lampinen-Howard had a duty to use due care in advising Chrysler about any difficulties or feelings she had toward Tom Odette. She knew, or should have known, that giving them a copy of a personal protection order was likely to get him fired or disciplined.

Ms. Lampinen-Howard breached the duty of care by falsely accusing Mr. Odette of “stalking” her, getting a personal protection order, and publishing the order to Chrysler.

As a proximate result of these breaches of care, Plaintiff suffered the damages described about.

In her motion opposing Lampinen-Howard’s motion for summary disposition, and on appeal, plaintiff added that Lampinen-Howard lied about her relationship with Odette, noting that the two had lunched together and were friends, and that, when interviewed by DaimlerChrysler, Odette denied threatening Lampinen-Howard.

B. Standard of Review

This Court reviews de novo a trial court’s decision to grant a motion for summary disposition. *Durcon Co v Detroit Edison Co*, 250 Mich App 553, 556; 655 NW2d 304 (2002).

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone and may not be supported by other evidence. *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). All factual allegations supporting the claim, and any reasonable inferences that can be drawn from the facts, are accepted as true. *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998) citing *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 263; 532 NW2d 882 (1995). The motion is properly granted when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Id.*, citing *Eason, supra*.

When reviewing a motion for summary disposition brought under MCR 2.116(C)(10), this Court considers the affidavits, pleadings, depositions, admissions or any other documentary evidence submitted in a light most favorable to the nonmoving party. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). The motion is proper if no genuine issue of material fact exists, thereby entitling the moving party to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

C. Applicable Law

In order to establish a negligence cause of action, a plaintiff must show “that the defendant owed a legal duty to the plaintiff, that the defendant breached or violated the legal duty, that the plaintiff suffered damages, and that the breach was a proximate cause of the damages suffered.” *Schultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993). “Duty is essentially a question of whether the relationship between the actor and the injured

person gives rise to any legal obligation on the actor's part for the benefit of the injured person.” *Moning v Alfonso*, 400 Mich 425, 438-439; 254 NW2d 759 (1977). “Whether a defendant owes any duty to a plaintiff to avoid negligent conduct in a particular circumstance is a question of law for the court to determine.” *Schmidt v Youngs*, 215 Mich App 222, 224; 544 NW2d 743 (1996), citing *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995). But if the determination of duty depends on factual findings, those findings must be made by the jury. *Holland v Liedel*, 197 Mich App 60, 65; 494 NW2d 772 (1992). If a court determines as a matter of law that a defendant owed no duty to a plaintiff, summary disposition is appropriate under MCR 2.116(C)(8). *Dykema v Gus Macker Enterprises, Inc*, 196 Mich App 6, 9; 492 NW2d 472 (1992).

In determining whether the defendant owed the plaintiff a duty, courts examine a number of factors, including:

(1) foreseeability of the harm, (2) degree of certainty of injury, (3) existence of a relationship between the parties involved, (4) closeness of connection between the conduct and injury, (5) moral blame attached to the conduct, (6) policy of preventing future harm, and (7) the burdens and consequences of imposing a duty and the resulting liability for breach. [*Terry v Detroit*, 226 Mich App 418, 424; 573 NW2d 348 (1997) (citations omitted).]

D. Analysis

We agree with the trial court that Lampinen-Howard was entitled to summary disposition on plaintiff's negligence claim because there is no basis for concluding that Lampinen-Howard owed Odette a legal duty.¹ Lampinen-Howard and Odette were mere co-employees, and there are no facts that give rise to any legal obligation on Lampinen-Howard's part for Odette's benefit. *Moning, supra*. No duty is imposed by statute nor is there a contract between the parties giving rise to a duty. Further, the parties did not have a special relationship. Plaintiff's reliance on *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 15; 596 NW2d 620 (1999) (quoting *Clark v Dalman*, 379 Mich 251, 261; 150 NW2d 755 (1967)), for the proposition that Lampinen-Howard owed a general duty of care to Odette is misplaced and inapplicable to these facts. Furthermore, imposing a duty on Lampinen-Howard under the circumstances alleged in this case would deter possible victims of harassment from reporting objectionable conduct, and the burden of imposing such a duty would be considerable. Therefore, because Lampinen-Howard did not owe a duty to Odette, the trial court properly granted her summary disposition on plaintiff's negligence claim.²

¹ The trial court presumably found that Odette's personal injury was caused by his loss of employment, and consequently, the exclusive provision of the WDCA is not applicable to this claim. See *Robinson v Chrysler Corp*, 139 Mich App 449, 451; 363 NW2d 4 (1984) (“a mental injury which arises from the *loss* of employment simply cannot logically arise out of and in the course of employment”) (emphasis in original) (internal citation omitted).

² We also note that, even if this Court were to determine that Lampinen-Howard did owe Odette a duty, the submitted evidence failed to show a genuine issue of material fact with regard to whether she breached a duty of care by falsely reporting Odette's conduct to DaimlerChrysler.

(continued...)

III. DaimlerChrysler's Negligence

A. Plaintiff's Allegations

In support of her negligence claims against DaimlerChrysler, plaintiff alleged the following in her complaint:

Chrysler owed a duty to Mr. Odette to act with due care in hiring employees with whom he would work, and to whom he would be exposed. Chrysler had a duty to use due care to protect its employees from unnecessary and unreasonable risk of harm.

Chrysler knew, or in the exercise of reasonable negligence should have known, that Ms. Lampinen-Howard had a history of falsely accusing male co-workers or stalking her or otherwise acting improperly toward her.

Chrysler breached its duty of due care in at least the following ways:

a. introducing into their workforce a woman with a history of making false stalking accusations against her co-workers, without taking steps to warn the co-workers, or to adequately monitor her behavior.

b. failing to properly investigate the basis for any accusation she made of improper behavior on the part of her co-workers;

c. in the alternative, failing to ask Daimler-Benz the reason for Ms. Lampinen-Howard's termination, and failing to discover her record and propensity;

d. failing to take into proper account in Mr. Odette's firing Ms. Lampinen-Howard's history of making false accusations against male co-workers;

e. terminating Mr. Odette immediately based on the allegations, rather than re-assigning him or suspending him pending a thorough investigation;

(...continued)

The documentary evidence established that Odette sent Lampinen-Howard numerous e-mails requesting social dates, that he sent her gifts, and that he came to her home unannounced. The evidence also showed that approximately nine months before Lampinen-Howard reported Odette's conduct to the police and DaimlerChrysler, she sent him an e-mail requesting that he "LEAVE [HER] ALONE!" Moreover, according to DaimlerChrysler's investigation notes, Odette admitted that he wanted more than friendship with Lampinen-Howard and that he had gone "over the boundary." He also admitted that he went to her home unannounced in March 1998. Additionally, according to a March 1998, police report, Odette acknowledged to the police that he had "been sending messages, cards, etc., and that he would stop doing this immediately." Lampinen-Howard properly reported Odette's conduct to DaimlerChrysler. In sum, because plaintiff cannot establish a prima facie case of negligence against Lampinen-Howard, the trial court properly dismissed the claim.

f. failing to adequately and thoroughly investigate the allegations.

It was foreseeable that terminating a married man under these circumstances would cause both Mr. Odette and his wife emotional distress and mental anguish.

B. Negligent Investigation and Termination

Plaintiff argues that the trial improperly dismissed her claim for negligent investigation and termination.³ We disagree. It is undisputed that Odette was an at-will employee of DaimlerChrysler. Generally, employment for an indefinite term is presumed to be terminable at any time at the will of either party. See *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich 692, 694-695; 316 NW2d 710 (1982); *Lynas v Maxwell Farms*, 279 Mich 684, 687; 273 NW 315 (1937). Thus, Odette could be terminated at any time for any, or no, reason.

Nevertheless, plaintiff alleges that DaimlerChrysler had a duty to act with due care in its investigation and subsequent termination, and breached that duty by summarily accepting Lampinen-Howard's accusations. But there is no right arising at common law as a matter of public policy, separate and distinct from any contractual right, to be evaluated or correctly evaluated before being discharged from employment. *Ferrett v General Motors Corp*, 438 Mich 235, 245; 475 NW2d 243 (1991); *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 82; 480 NW2d 297 (1991). Because plaintiff's claims of negligence are based on a duty she claims existed as part of Odette's employment contract, she has not alleged a breach of duty separate and distinct from the alleged breach of contract, and her claim therefore fails as a matter of law. *Id*; *Gonyea, supra*. Accordingly, the trial court properly granted DaimlerChrysler summary disposition on this claim.

Plaintiff also contends that, despite Odette's status as an at-will employee, the wrongful termination claim is actionable under the public policy exception to at-will employment. "Indeed, in *Suchodolski, supra*, our Supreme Court recognized that some grounds for terminating an employee may be so contrary to Michigan's public policy that an exception may be made to the at-will employment doctrine." *John Psaila v Shiloh Industries Inc*, ___ Mich App ___; ___ NW2d ___ (Docket No. 236975, issued September 9, 2003), slip op at 3. The Court identified three sources as supporting recognition of an action for wrongful discharge grounded on public

³ In regard to plaintiff's claim that DaimlerChrysler negligently investigated Lampinen-Howard's claim of harassment, the trial court determined that the claim was barred under exclusive remedy provision of the WDCA, MCL 418.131. In support of its decision, the trial relied on *Downer v Detroit Receiving Hosp*, 191 Mich App 232, 235-236; 477 NW2d 146 (1991), as the basis for its decision. In *Downer*, this Court held that the plaintiff's claim of negligent hiring was barred by the exclusive provision of WDCA. However, unlike the present case, the plaintiff's personal injury in *Downer* arose from sexual harassment during the employment period. Here, DaimlerChrysler's negligence was alleged to cause Odette's termination, and ultimately his death. Because Odette's personal injury arose after his loss of employment, the WDCA is not applicable. Moreover, this Court has held that claims of negligent investigation are not within the exclusive remedy provision of the WDCA. *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 81-82; 480 NW2d 297 (1991).

policy. One source is explicit legislative statements prohibiting the discharge, discipline, or other adverse treatment of employees who act pursuant to a statutory right or duty, such as the Whistleblowers' Protection Act, MCL 15.361 *et seq.* *Suchodolski, supra* at 695 and n 2. A second type of discharge protected by public policy is when an employee is fired for refusing or failing to violate a law in the course of employment. *Id.* at 695. As the third source, the Court noted that appellate courts have recognized that an employer cannot retaliate against and discharge an employee where the reason for the "discharge was the employee's exercise of a right conferred by a well-established legislative enactment." *Id.* at 696. See also *Vagts v Perry Drug Stores, Inc*, 204 Mich App 481, 484; 516 NW2d 102 (1994).

Here, plaintiff alleges in her brief that DaimlerChrysler's duty to use due care regarding investigating and terminating Odette arose out of the Civil Right Act, MCL 37.2101 *et seq.*, rather than an employment contract. Under the Civil Right Act, an employer or its agent cannot discriminate "against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of . . . sex." *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 358; 597 NW2d 250 (1999) citing MCL 37.2202(1)(a). To this end, plaintiff claims that Odette was "treated differently" when it was assumed that "men are sexual harassers and that when a women reports sexual harassment, the report is true unless the man forcefully proves that every statement is a lie."

Here, plaintiff's civil rights argument must fail. We initially note that, because plaintiff's complaint did not state a claim of discrimination, this issue is not properly before this Court. See MCR 2.111(B)(1); *Pro-Staffers, Inc v Premier Manufacturing Support Services, Inc*, 252 Mich App 318, 328-329; 651 NW2d 811 (2002). Moreover, in her brief, plaintiff fails to adequately argue this claim, and fails to cite relevant case law to support a discrimination claim. A party may not merely announce a position and then leave it to this Court to discover and rationalize the basis for the claim. *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984). Accordingly, plaintiff's civil rights argument is without merit. In sum, the trial court properly dismissed plaintiff's negligence claims against DaimlerChrysler

IV. Intentional Infliction of Emotional Distress

A. Applicable Law

"To establish a claim of intentional infliction of emotional distress, the plaintiff must show (1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress." *Bernhardt v Ingham Regional Medical Center*, 249 Mich App 274, 278; 641 NW2d 868 (2002).⁴ To constitute extreme and outrageous conduct sufficient to support a claim for intentional infliction of emotional distress, the conduct must have been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community. *Id.* Liability does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.

⁴ The Michigan Supreme Court has never specifically recognized or adopted the tort of intentional infliction of emotional distress. *Smith v Calvary Christian Church*, 462 Mich 679, 686 n 7; 614 NW2d 590 (2000).

Doe v Mills, 212 Mich App 73, 91; 536 NW2d 824 (1995). As a panel of this Court has explained:

It is not enough that the defendant has acted with an intent that is tortuous or even criminal, . . . or even that his conduct has been characterized by “malice,” or a degree of aggravation that would entitle the plaintiff to punitive damages for another tort . . . The test is whether the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to claim, “Outrageous!” [*Graham v Ford*, 237 Mich App 670, 674-675; 604 NW2d 713 (1999) (citations and quotations omitted).]

Furthermore,

[t]he conduct, although it would otherwise be extreme and outrageous, may be privileged under the circumstances. The actor is never liable, for example, where [s]he has done no more than to insist upon [her] legal rights in a permissible way, even though [s]he is well aware that such insistence is certain to cause emotional distress. [*Roberts v Auto- Owners Ins Co*, 422 Mich 594, 603; 374 NW2d 905 (1985), quoting Restatement Torts, 2d, § 46, comment g, p 76.]

It is initially a matter for the trial court to determine whether the defendant’s conduct reasonably may be regarded as so extreme and outrageous as to permit recovery. *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 582; 603 NW2d 816 (1999). But if reasonable persons could differ, it is for the jury to determine whether the conduct was sufficiently extreme and outrageous to result in liability. *Id.*

B. DaimlerChrysler

In support of her intentional infliction of emotional distress claim against DaimlerChrysler, plaintiff alleged the following in the complaint:

Chrysler knew, or should have known, that Ms. Lampinen-Howard had a history of making false stalking claims against co-workers. Chrysler knew or should have known, that firing a married man based on an allegation of stalking a woman was likely to cause him and his wife severe embarrassment, humiliation, grief, and pain.

Nevertheless, when Ms. Lampinen-Howard alleged that Mr. Odette was stalking her, it treated the matter as a threat against Ms. Lampinen-Howard, without considering the possibility that Mr. Odette was merely the latest victim of Ms. Lampinen-Howard. Chrysler fired Mr. Odette on the basis of an allegation of stalking, without proper investigation or corroboration.

Mr. Odette buckled under the severe emotional distress and humiliation of the episode, fled to his home, support, and country and his life ended, whether by accident or design, in an exhaust-filled garage at his parent’s vacation home in Canada.

[Plaintiff] arrived home unexpectedly early, found a disturbing note from her husband, rushed to his aid only to find herself to have arrived too late to help the man she loved. These events threw her life into an emotional whirlwind of grief, anxiety, desperation, depression, and anger that she has yet to fully recover from. Her life and personality have been irreversibly altered by the [sic] Chrysler's negligence.

Taking plaintiff's allegations as true, we conclude that none of DaimlerChrysler's alleged conduct rises to the level of being "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Graham, supra* at 674. Further, in her deposition, plaintiff testified that the extreme and outrageous conduct that DaimlerChrysler engaged in was hiring Lampinen-Howard even though she had a "very questionable work record and employing her in a male dominated environment." But plaintiff also testified that, apart from her belief that Lampinen-Howard was terminated from her former job, there was no other aspect of Lampinen-Howard's work history that she was claiming is questionable. Because reasonable minds could not differ regarding whether DaimlerChrysler's conduct was extreme and outrageous, the trial court did not err by granting its motion for summary disposition.

C. Lampinen-Howard

With regard to Lampinen-Howard, plaintiff alleged that the following conduct established the claim:

Ms. Lampinen-Howard knew or should have known that allegations of stalking would result in Chrysler taking action against Mr. Odette. She also knew, or should have known, that accusing a married man of stalking her would naturally cause the man and his family pain, grief, embarrassment, and humiliation.

With this knowledge, Ms. Lampinen-Howard falsely falsely [sic] accused Mr. Odette of "stalking" her, she obtained a personal protection order, and she published to order to Chrysler.

This action inflicted severe emotional distress and mental anguish on Mr. Odette, causing him to flee to his home, support, and country and his life ended, whether by accident or design, in an exhaust-filled garage at his parent's vacation home in Canada.

Losing her husband under these circumstances caused plaintiff severe emotional distress.

We conclude that plaintiff failed to present evidence from which a jury could reasonably and logically conclude that Lampinen-Howard's alleged wrongful conduct was the cause of plaintiff's injuries. While plaintiff maintains that false allegations of sexual harassment are the type of extreme and outrageous behavior contemplated to prove a case of intentional infliction of emotional distress, plaintiff failed to demonstrate that the allegations were false. Although plaintiff claimed that Lampinen-Howard was untruthful about Odette's conduct, the

documentary evidence, which included Odette's own admissions, established otherwise. Further, it cannot be said that Lampinen-Howard's conduct of accusing Odette of sexual harassment under the circumstances presented was so atrocious and intolerable that it would arouse the resentment of an average member of the community and lead him to exclaim, "Outrageous!" *Graham, supra* at 675. Even if Lampinen-Howard's conduct of reporting her complaints to DaimlerChrysler and to the police could be questioned, she was insisting on her legal rights in a permissible way, which is not actionable. See *Roberts, supra*. Because reasonable minds could not differ regarding whether Lampinen-Howard's conduct was extreme and outrageous, the trial court did not err by granting her motion for summary disposition on plaintiff's intentional infliction of emotional distress claim.

V. Bullard-Plawecki Employee Right to Know Act

We reject plaintiff's claim that the trial court erred by dismissing her claim that defendants violated the Bullard-Plawecki Employee Right to Know Act, MCL 423.501 *et seq.*, by refusing her the opportunity to review Odette's personnel record.

A. Standard of Review

An issue involving statutory interpretation is reviewed *de novo* as a question of law. *Oakland Co Bd of Co Road Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998). The primary goal of judicial interpretation of statutes is to give effect to the intent of the Legislature; the first criterion in determining intent is the specific language of the statute. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999). This determination is accomplished by examining the plain language of the statute itself. If the statutory language is unambiguous, it is presumed that the Legislature intended the clearly expressed meaning, and the court must enforce the statute as it is written. *DiBenedetto v West Shore Hospital*, 461 Mich 394, 402; 605 NW2d 300 (2000); *Heinz v Chicago Rd Investment Co*, 216 Mich App 289, 295; 549 NW2d 47 (1996). Nothing will be read into a statute that is not within the manifest intention of the Legislature as gathered from the act itself. *In re Ramsey*, 229 Mich App 310, 314; 581 NW2d 291 (1998).

B. Analysis

The Bullard-Plawecki Employee Right to Know Act provides, in pertinent part:

An employer, upon written request which describes the personnel record, shall provide *the employee* with an opportunity to periodically review at reasonable intervals, generally not more than 2 times in a calendar year or as otherwise provided by law or a collective bargaining agreement, the employee's personnel record if the employer has a personnel record for that employee. [MCL 423.503 (emphasis added).]

The act also entitles every employee to a copy of his personnel file. MCL 423.504. The purpose of the act is to provide a method for ensuring that erroneous employment information that might harm an employee is corrected by providing *employees* an opportunity to review and dispute the information contained in their personnel files. See MCL 423.505.

The question here is whether, under the act, plaintiff, as Odette's personal representative, was entitled to review his personal file. The act defines "employee" as "a person currently employed or formerly employed by an employer." MCL 423.501(2)(a). If a statute specifically defines a given term, that definition alone controls and must be applied as defined. *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 136; 545 NW2d 642 (1996). The definition of "employee" is clear and unambiguous. Further, nowhere in the statute is there any suggestion that the Legislature intended to include personal representatives or widows of deceased employees within the meaning of "employee," nor is there any judicial authority supporting such a proposition. Therefore, the trial court properly dismissed this claim.

VI. Case Evaluation Sanctions

A. Background

On December 21, 2001, case evaluation occurred. Defendants accepted the evaluation, and plaintiff rejected it by not filing a response. On January 22, 2002, the trial court mailed a notice that plaintiff had rejected the evaluation. On January 29, 2002, plaintiff filed a motion requesting that she be allowed to change her rejection of the case evaluation against DaimlerChrysler only to an acceptance. On February 19, 2002, the trial court entered an order denying the motion. After the trial court granted defendants' motions for summary disposition, it awarded defendants case evaluation sanctions in the amount of \$4,118, under MCR 2.403(O).

B. Standard of Review

A trial court's grant of case evaluation sanctions is subject to de novo review on appeal. *Elia v Hazen*, 242 Mich App 374, 376-377; 619 NW2d 1 (2000). But because a trial court's decision with regard to the "interest of justice" provision of MCR 2.403(O)(11) is discretionary, this Court reviews that decision for an abuse of discretion. See *Luidens v 63rd Dist Court*, 219 Mich App 24, 35-37; 555 NW2d 709 (1996). An abuse of discretion is found only in extreme cases in which the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Dep't of Transportation v Randolph*, 461 Mich 757, 768; 610 NW2d 893 (2000).

C. Applicable Law

MCR 2.403(O) provides, in pertinent part:

(1) If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation . . .

* * *

(2) For the purpose of this rule "verdict" includes,

* * *

(c) a judgment entered as a result of a ruling on a motion after rejection of the case evaluation.

* * *

(11) If the “verdict” is the result of a motion as provided by subrule (O)(2)(c), the court may, *in the interest of justice*, refuse to award actual costs. [Emphasis added.]

This Court recently noted that the “interest of justice” exception, MCR 2.403(11), has been interpreted in the context of the analogous offer of judgment rule, MCR 2.405(D), which provides for an award of costs when a settlement offer has been rejected. *Haliw v City of Sterling Heights*, ___ Mich App ___; ___ NW2d ___ (Docket No. 237269, issued August 5, 2003), slip op at 3. In *Luidens, supra* at 31-33, this Court held that, because the purpose of MCR 2.405 is to encourage settlement and deter protracted litigation, the “interest of justice” exception is limited in its application to “unusual circumstances.” See also *Stitt v Holland Abundant Life Fellowship (On Remand)*, 243 Mich App 461, 472; 624 NW2d 427 (2000). Although not exclusive, “unusual circumstances” include situations where a case involves an issue of public interest or an area of law that is unsettled, when substantial damages are involved, or when there is misconduct or gamesmanship by a party, such as making a de minimis offer after a case evaluation award is rejected in order to avoid sanctions. *Luidens, supra* at 35-36. Unless unusual circumstances require the application of the “interest of justice” exception, MCR 2.403(O)(11), the general rule of awarding case evaluation sanctions, MCR 2.403(O)(1), must be enforced. *Haliw, supra*.

D. Analysis

Here, we conclude that plaintiff has proffered no unusual circumstances that implicate the interest of justice exception. Contrary to what plaintiff asserts, she did not raise any legitimate issues of first impression. Further, plaintiff’s claim under the Bullard-Plawecki Employee Right to Know Act, MCL 423.501 *et seq.*, was contrary to the plain language of the statute. Finally, although plaintiff fleetingly suggests that defendants were involved in gamesmanship, she has failed to provide support for this claim. As noted by defendants, it is conspicuous that it was actually plaintiff who initially rejected the offer, by failing to respond, and sought to accept only after DaimlerChrysler filed an acceptance. In sum, because plaintiff failed to raise any unusual

circumstances to invoke the interest of justice exception, the trial court did not abuse its discretion by awarding defendants case evaluation sanctions.⁵

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Brian K. Zahra

/s/ Karen M. Fort Hood

⁵ On August 12, 2003, defendants filed a supplemental authority under MCR 7.212(F), bringing to this Court's attention the recent decision in *Haliw*, *supra*. In particular, defendants noted that, in *Haliw*, this Court held that the phrase "actual costs" within the meaning of MCR 2.403(O) includes reasonable appellate attorney fees. Defendants request that, pursuant to that holding, this Court remand this case to the trial court for an award of appellate attorney fees. We decline to do so. Unlike the facts in *Haliw*, where the defendant requested appellate attorney fees in the trial court, there is no indication here that defendants made such a request below. When filing a supplemental authority under MCR 7.212(F), a party may not raise new issues.