

STATE OF MICHIGAN
COURT OF APPEALS

JIHAD A. HACHEM,

Plaintiff-Appellant,

v

CITY OF DEARBORN HEIGHTS and BILAL
BAZZI,

Defendants-Appellees.

UNPUBLISHED

June 20, 2024

No. 367544

Wayne Circuit Court

LC No. 22-001951-CD

Before: YATES, P.J., and BORRELLO and GARRETT, JJ.

PER CURIAM.

In this action filed under the Whistleblowers’ Protection Act (WPA), MCL 15.361 *et seq.*, plaintiff, Jihad Hachem, filed suit against his employer, city of Dearborn Heights and Dearborn Heights Mayor Bilal (Bill) Bazzi (collectively defendants), for wrongful termination. Hachem alleged defendants terminated his employment because he reported that his neighbor (an alleged Bazzi “crony”) violated city ordinances by paving over his backyard, leading to flooding in surrounding yards. The circuit court summarily dismissed Hachem’s complaint under MCR 2.116(C)(10), and Hachem appealed as of right. The circuit court erred in summarily dismissing Hachem’s retaliatory discharge claim. Although the questions of fact are close, they are still questions of fact. Summary disposition is not appropriate if the court must resolve issues of witness credibility, and credibility contests abound in this case. We vacate the order granting summary disposition in defendants’ favor and remand for continued proceedings.

I. BACKGROUND

Hachem served as director for the Dearborn Heights Community and Economic Development Department (CEDD) from February 2016 through December 2021. Hachem was appointed by former Dearborn Heights Mayor Daniel Paletko. When Paletko passed away in December 2020, the city council appointed Councilman Bazzi as the interim mayor. At that time, Bazzi became Hachem’s boss.

Hachem asserts that at some point his neighbor’s neighbor, Hassan Saab, paved his entire backyard in concrete to serve as a deck for his inground pool. In the summer of 2021, Hachem’s

yard flooded for the first time and he believed it was caused by runoff from Saab's concrete slab. In late July or early August 2021, Hachem showed Bazzi pictures and videos of the flooding and blamed the flooding on Saab's concrete. Hachem described:

A. I told him that my back yard has been flooded for the first time, and that Mr. Saab's concrete, which . . . seemed to be pretty high, is causing the water to come into my back yard and flood my back yard, coming close to my house. I showed him a video, and I showed him the pictures.

Q. How did . . . the Mayor respond to that?

A. He just looked at me, and said don't worry about ordinances. Worry about your department.

* * *

A. . . . I thought by bringing this up, he would take action and address the situation.

Q. What could he have done?

A. Check with ordinances, check with building department, maybe go look at the property. Do whatever action he needs to do to make sure that is in compliance.

Hachem discussed the issue with Bazzi again in late August 2021, before a city council meeting. Bazzi "just brushed me off at the time, saying it's not the time, and we'll talk about it at a different time." Hachem admitted he never cited the ordinance sections allegedly violated by Saab, claiming it was general knowledge for city department heads that property owners could only build up 30 to 35% of the property, and that if someone paves 100% of the property "obviously there is something wrong." But Hachem "believed" he "said it's against the ordinance of the City."

Hachem alleged that following his reports, Bazzi "exhibited a hostile tone and demeanor toward" him. Hachem further alleged that Bazzi "regularly attempted to micromanage the CEDD in [Hachem's] absence, undermined [Hachem] with his subordinates and was hypercritical of his performance." Bazzi refused to take meetings with Hachem, preventing Hachem from successfully doing his job. Hachem was required to file reports with the state and federal governments, but could not timely file them without Bazzi's approval. Mayor Bazzi won the November 2021 general election, and started his first term as elected mayor in January 2022. Bazzi terminated Hachem in December 2021. Bazzi described: "I unappointed him." Bazzi explained that he reorganized city departments and eliminated Hachem's position.

Hachem filed suit, alleging wrongful termination in violation of the WPA. Hachem alleged his termination was based on his report of an ordinance violation by Saab, "a longtime Bazzi crony." After describing the hostile work environment that followed his report, Hachem alleged Bazzi waited to terminate him to ensure his support in winning the election. Hachem further alleged that Bazzi had "a predisposition to retaliate against those who refuse to violate the law in

his service or who report his illegal activity,” and cited examples of other employees terminated following Bazzi’s appointment.

Following discovery, defendants sought summary disposition under MCR 2.116(C)(10). Defendants contended that Hachem’s conversations with Bazzi about flooding, which came during a state of emergency after record rainfall in Wayne County, were not “reports” or “protected activity” under the WPA. Defendants cited a lack of evidence of causation. And defendants asserted Bazzi’s employment decision was based on legitimate, nondiscriminatory reasons: the reorganization of Hachem’s former department, Hachem’s failure to meet job expectations, and Bazzi’s lack of trust in Hachem after his unauthorized three-week vacation to Lebanon and arrest while there.

Hachem retorted that he referred to an ordinance violation during his discussions with Bazzi, and claimed the immediacy of Bazzi’s changed treatment of him was evidence of causation. Hachem refuted Bazzi’s criticisms of his performance with a congratulatory letter sent to him by the United States Department of Housing and Urban Development. He testified at his deposition that Bazzi approved his vacation plans, but had someone destroy the notes in Hachem’s desk to prove that point. Hachem further noted he entered the vacation in the city’s leave request system and it was approved by someone in the mayor’s office. Hachem denied that he was arrested in Lebanon, claiming he was merely detained briefly at the airport.

Hachem argued that Bazzi’s ever-changing reasons for his termination were mere pretext. Hachem presented evidence to support that Bazzi had terminated Mayor Paletko’s chief-of-staff for reporting Bazzi’s alleged illegal conduct to the FBI, terminated Building Department Director Larry Domski so he could appoint a new director who granted favors to Bazzi’s associates, and fired the police chief, two police officers, and police advisory board members because they refused to breach a union contract and legal requirements to resolve a matter as Bazzi desired. Hachem testified at his deposition that Bazzi’s history of retaliation against him actually began when Bazzi was a city council member. Bazzi telephoned Hachem and threatened Hachem’s wife who had made negative comments about Bazzi to other residents at a city council meeting.

Hachem also presented significant evidence to explain his specific theory that Bazzi terminated him for reporting Saab’s concrete project. Hachem contended the reasons for his termination were mere pretext to cover up Bazzi’s resentment at being complicit in the very ordinance violation brought to his attention. Domski did not testify directly about the backyard paving project at Saab’s house but about the first step of Saab’s “remodeling” project. Saab secured a permit to renovate his newly purchased house. After receiving a tip from another citizen, Domski inspected Saab’s site and discovered he was demolishing his house, not remodeling it. Demolition and reconstruction require different permits and are subject to different regulations. Domski ordered Saab to cease his work. Saab went to Bazzi, who was then on the city council. Domski alleged Saab and Bazzi accused him of demanding a bribe. Although Bazzi later claimed it was just a misunderstanding, Domski was upset by the accusation and refused to supervise Saab’s project any further. The backyard paving project occurred after this disagreement and under the watchful eye of Building Inspector Rick Watland, who Domski alleged was widely known to be corrupt. Hachem supported this version of events by testifying that Saab completed most of his construction work after dark. Hachem contacted the police one night because of the excessive noise. Saab responded with a profanity-laden tirade against him. Hachem claimed,

however, that he did not know of Bazzi's role in Saab's construction scheme when he reported the flooding issue to Bazzi. Hachem contends that Bazzi retaliated because he did not want his participation in this event to come to light.

The circuit court summarily dismissed Hachem's claim. The court noted that the city department directors were at-will employees, appointed "at the liberty of each mayor." Mayor Bazzi replaced several directors after his appointment, including Hachem.

The court acknowledged that Hachem had two conversations with Bazzi about the flooding, stated he believed the flooding was caused by Saab's concrete work, and showed Bazzi a video and pictures of the water in his backyard. "Bazzi then told [Hachem] that he should worry about his own department." Hachem also complained to three city council members and the human resources director and showed them his video as well. But, the court noted, Hachem never reported his concerns to anyone in the building or ordinance departments directly. The court accepted defendants' contention that "Mayor Bazzi gave little to [no] credence to [Hachem's] concern about pooling water from a neighbor-to-neighbor situation" because he was busy dealing with historic flooding throughout the city.

The court summarized the allegations in Hachem's complaint, as well as defendants' position that Hachem failed to make an actual report: as a director, Hachem knew who he should advise about Saab's alleged code violations and never did so. The court also acknowledged defendants' position that there was no causal connection between the reports and Hachem's termination and that Hachem did not overcome the legitimate reasons for his termination.

The court reasoned that although Hachem was an at-will employee, his employer could not terminate his employment if it would contravene public policy.

Termination of at-will employment is typically pr[o]scribed by public policy in Michigan in three situations; one, adverse treatment of the right or duty; an employee's failure [or] refusal to violate a law in the course of employment, employee's exercise of a right conferred by a well established legislative enactment. Also contained within that case is indication that the law does not require a plaintiff to explicitly state that he or she possess an intent to report a violation of the law in the immediate future in order to establish that the plaintiff was about to report such activity. However, and this is what defendant[s] rel[y] on, an employer is entitled to objective notice of a report or threat to report of a whistleblower. And they argue that did not happen in this case.

The court concluded that the evidence did not support that Hachem made a protected report. Hachem did not indicate "which ordinance was violated, nor as a director of the City department did plaintiff make an objective report with the building department or any other City department."

To that end [Hachem's] discussion with defendant Bazzi cannot be characterized as a report under the WPA, but rather inquiry as to whether [Hachem's] neighbor allegedly violated a City ordinance. . . . [Hachem] provided . . . testimony demonstrating from the former building director claiming

that Saa[b] violated an ordinance that was provided three months after [Hachem] was fired and six months after the complaint to defendant Bazzi.

The court ruled that Hachem did not create a triable question of fact that he made a protected report because there was no evidence “Hachem knew of a city ordinance violation at the time he discussed the matter with defendant Bazzi.” The conversation was therefore “an inquir[y] into a city ordinance violation that was at the time hypothetical.” Absent a report, there was no protected activity. To give the ruling more context, the court noted the governor had declared a state of emergency because substantial rainfall had led to significant flooding in the city. Moreover, Hachem shared his videos with others, including the city’s human resources director. That director believed Hachem was merely sharing his hardship, like everyone else in the city at that time. Further, there is no indication that Mayor Bazzi knew Hachem had expressed his concerns to three city council members and the human resources director. Accordingly, the court found no objective notice of a report.

The circuit court continued that even if Hachem’s discussions with Bazzi could be deemed “reports,” he still could not establish the necessary causal connection between those reports and his termination.

All [Hachem] has provided here is that he was fired from his at-will employment . . . four months after the discussion with defendant Bazzi. HR director [Elisabeth Sabota-]Perry did not talk to defendant Bazzi about her conversation with [Hachem]. Nor did defendant Bazzi know that [Hachem’s] neighbor violated a city ordinance by concreting over his backyard with any specificity. Although the employment actions about which [Hachem] complains occurred after this [supposed] report[,], a temporal relationship standing alone does not demonstrate a causal connection between a protect[ed] activity in an adverse employment action.

The court also relied on the city’s charter, which all directors knew gave the mayor authority to replace them with directors of his choosing.

The court also accepted defendants’ evidence that Hachem was terminated for a legitimate, nondiscriminatory reason. Specifically, Bazzi combined two departments to save the city money.

Hachem now appeals the dismissal of his action.

II. STANDARDS OF REVIEW

We review *de novo* a circuit court’s resolution of a summary disposition motion. *Wright v Genesee Co*, 504 Mich 410, 417; 934 NW2d 805 (2019). This “means that we review the legal issue independently, without required deference to the courts below.” *Id.* As summarized in *Williamson v AAA of Mich*, 343 Mich App 496, 502-503, 997 NW2d 296 (2022):

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5),

in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).]

“A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Underlying the trial court’s summary disposition ruling are issues of statutory interpretation, which we also review de novo. *Candler [v Farm Bureau Mut Ins Co of America]*, 321 Mich App [772, 777; 910 NW2d 666 (2017)].

Of import in this case, we must remember that “it is well settled that the circuit court may not weigh the evidence or make determinations of credibility when deciding a motion for summary disposition.” *Patrick v Turkleson*, 322 Mich App 595, 605; 913 NW2d 369 (2018).

III. LEGAL PRINCIPLES

An action for retaliatory discharge in violation of the WPA is governed by MCL 15.362, which states:

An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee’s compensation, terms, conditions, location, or privileges of employment 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 the law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false. . . .

The WPA was enacted to protect “employees who report a violation or suspected violation of state, local, or federal law. . . .” *Whitman v City of Burton*, 493 Mich 303, 312; 831 NW2d 223 (2013) (quotation marks and citation omitted). To achieve this goal, the WPA removes “barriers that may interfere with employee efforts to report” violations and creates “a cause of action for an employee who has suffered an adverse employment action for reporting or being about to report a violation or suspected violation of the law.” *Id.*

To establish a prima facie case of retaliatory discharge under the WPA, a plaintiff must show “(1) the plaintiff was engaged in protected activity as defined by the act, (2) the defendant took an adverse employment action against the plaintiff, and (3) a causal connection exists between the protected activity and the adverse employment action.” *Debano-Griffin v Lake Co*, 493 Mich 167, 175; 828 NW2d 634 (2013) (quotation marks and citation omitted). This showing can be made through direct or circumstantial evidence. Where, as here, the plaintiff’s claims rest on circumstantial evidence from which the factfinder could infer that he or she suffered unlawful retaliation, a burden-shifting analysis applies. Once a prima facie case is established with circumstantial evidence, the burden shifts to the defendant employer to articulate a legitimate business reason for the adverse employment action. If the defendant does so, the burden returns

to the plaintiff to establish that the proffered legitimate reason was merely a pretext for the adverse employment action. *Id.* at 176

IV. ANALYSIS

Hachem contends the circuit court erred in concluding he did not make a report that qualified as protected activity, failed to establish causation, and failed to overcome the legitimate, nondiscriminatory reasons cited by defendants for his termination. There remained triable questions of material fact related to these issues, precluding summary disposition.

A. PROTECTED ACTIVITY

Hachem contends the circuit court erred in determining he failed to create a triable question of fact that he was engaged in a protected activity. “ ‘Protected activity’ under the WPA consists of (1) reporting to a public body a violation” or “suspected violation” “of a law, regulation, or rule; (2) being about to report such a violation to a public body; or (3) being asked by a public body to participate in an investigation.” *Debano-Griffin v Lake Co*, 486 Mich 938, 938; 782 NW2d 502 (2010); *Chandler v Dowell Schlumberger Inc*, 456 Mich 395, 399; 572 NW2d 210 (1998). Defendants do not challenge their status as a public body to whom report of a violation or suspected violation could be made.

The term “report” is not defined in the WPA. In *Hays v Lutheran Soc Servs of Mich*, 300 Mich App 54, 59; 832 NW2d 433 (2013), this Court defined “report” consistent with *Random House Webster’s College Dictionary* (2005), as: “ ‘a detailed account of an event, situation, etc., [usually] based on observation or inquiry.’ ” (Alteration in original.) “An employer is entitled to objective notice of a report or a threat to report by the whistleblower.” *Roulston v Tendercare, Inc*, 239 Mich App 270, 279; 608 NW2d 525 (2000) (quotation marks and citations omitted). This means that the employer must be aware of the employee’s protected activity.

Hachem spoke to Bazzi in either late July or early August of 2021. Hachem told Bazzi that his backyard was flooded for the first time and showed him a video and pictures. Hachem told Bazzi the flooding was caused by Saab’s concrete “which . . . seemed to be pretty high.” Although Hachem could not remember his exact words, he “believed” he “said it’s against the ordinance of the City.” Hachem’s “belief” is bolstered by his remembrance of Bazzi’s response: “[D]on’t worry about ordinances. Worry about your department.” Contrary to the circuit court’s conclusion, this was sufficient to create a triable question of fact that a report was made. Bazzi’s response supports that he objectively understood Hachem was reporting an ordinance violation causing flooding on his property. It is irrelevant at the summary disposition phase that Bazzi testified he remembers this conversation differently. The evidence must be viewed in Hachem’s favor without attempting to resolve credibility contests.

Defendants argue that Saab’s concrete did not violate any city ordinance. As there was no legal violation to report, defendants suggest Saab was not engaged in protected activity. This is not the test. The statute clearly includes protection for an employee reporting “a suspected violation of a law or regulation or rule.” MCL 15.362. In any event, Saab’s concrete work does appear to violate the city’s ordinances. Dearborn Heights City Code, Art V, § 36-106 addresses “Dimensional Standards” pertaining to “District Regulations,” and states that in the Residential 1

district, a maximum 35% of a lot may be covered, i.e., built upon or paved. This includes a 25% limit for the front yard and 35% limit for the backyard.

Defendants also contend that Hachem did not engage in protected activity because his motivation was inconsistent with furthering the ends of the WPA. However, the Supreme Court has rejected this position:

Nothing in the statutory language of the WPA addresses the employee's motivation for engaging in protected conduct, nor does any language in the act mandate that the employee's primary motivation be a desire to inform the public of matters of public concern. Rather, the plain language of MCL 15.362 controls, and we clarify that a plaintiff's motivation is not relevant to the issue whether a plaintiff has engaged in protected activity and that proof of primary motivation is not a prerequisite to bringing a claim. To the extent that *Shallal* [*v Catholic Soc Servs*, 455 Mich 604; 566 NW2d 571 (1997),] has been interpreted to mandate those requirements, it is disavowed. [*Whitman*, 493 Mich at 306.]

It does not matter whether Hachem was motivated to protect his entire neighborhood from encroaching floodwaters or simply by his dislike for Saab. He reported a suspected violation of the Dearborn Heights city ordinances and he wanted the violation rectified. This was sufficient.

B. CAUSATION

Hachem contends the circuit court erred in determining he failed to create a triable fact question regarding causation. To prove causation, a plaintiff is required to present evidence of more than a mere coincidence in timing between the protected activity and the adverse employment action. *Garg v Macomb Co Community Mental Health Servs*, 472 Mich 263, 286; 696 NW2d 646 (2005), amended 473 Mich 1205 (2005). In *Rymal v Baergen*, 262 Mich App 274, 303; 686 NW2d 241 (2004), this Court explained: "A causal connection can be established through circumstantial evidence, such as close temporal proximity between the protected activity and adverse actions, as long as the evidence would enable a reasonable fact-finder to infer that an action had a discriminatory or retaliatory basis."

Hachem contended that almost immediately after reporting that Saab's concrete caused the runoff onto his property, Bazzi started "exhibit[ing] a hostile tone and demeanor toward" him, stopped taking his calls, refused meetings, undermined him with CEDD staff, and micromanaged his department. This made it nearly impossible for him to do his work. Defendants contend that this change in Bazzi's attitude and behavior is insufficient and that Hachem must cite a demotion, pay decrease, termination, or something to that effect. This simply is not the standard. If an employee reports a suspected violation of a law or rule and the employer reacts by ignoring the employee to the extent the employee cannot successfully perform their job, this is retaliation. It affects the general conditions of employment.

Ultimately, Hachem does not contend that a temporal connection between his protected activity and termination, standing alone, supports the causation element. Rather, he contends that Bazzi treated him with hostility following his report and through his termination. Although Bazzi

denies mistreating Hachem in the interim, this again is a credibility contest between two versions of events. This creates a triable question of fact for a jury to consider.

C. LEGITIMATE REASONS FOR TERMINATION OR PRETEXT

Finally, Hachem challenges the circuit court's conclusion that he failed to create a triable fact question regarding pretext.

A plaintiff can establish that a defendant's articulated legitimate . . . reasons are pretexts (1) by showing the reasons had no basis in fact, (2) if they have a basis in fact, by showing that they were not the actual factors motivating the decision, or (3) if they were factors, by showing that they were jointly insufficient to justify the decision. [*Feick v Monroe Co*, 229 Mich App 335, 343; 582 NW2d 207 (1998).]

In the summary disposition context, this Court has observed:

The granting of a motion for summary disposition is especially suspect where motive and intent are at issue or where a witness or deponent's credibility is crucial. Accordingly, where the truth of a material factual assertion of a moving party depends upon a deponent's credibility, there exists a genuine issue for the trier of fact and a motion for summary disposition should not be granted. [*Vanguard Ins Co v Bolt*, 204 Mich App 271, 276; 514 NW2d 525 (1994) (citations omitted).]

When Bazzi terminated Hachem, he stated he was combining the grants and CEDD departments and needed only one director. At his deposition, Bazzi described that he waited until after the general election to make this change because he wanted to "keep things intact until after the elections" because he had become mayor so suddenly. As mayor, however, Bazzi knew he could choose new department heads and create his own "team." Bazzi did not use the word "terminate," claiming he "unappointed" Hachem. Bazzi added to his reasoning for "unappointing" Hachem as the case proceeded. In answer to an interrogatory, defendants added that Bazzi made this decision, in part, "because [Hachem] was not meeting expectations of improving compliance with federal guidelines for use of grant funding." Bazzi added at his deposition that he felt he could not trust Hachem because Hachem took a three-week vacation to Lebanon without proper approval, was arrested while overseas, and then was not forthcoming about the reason for his arrest.

The reasons cited by Bazzi would certainly form a legitimate, nondiscriminatory reason to support Hachem's termination or "unappointment." However, Hachem presented evidence to challenge these reasons. First, Hachem contends that Bazzi waited to terminate him until after the general election because he needed the support of Hachem and his allies to win. Second, Hachem presented an undated letter from HUD congratulating him "on accomplishments made during the past year toward the achievement of departmental objectives," including "continued support" for the city's senior center serving 11,727 senior citizen residents, providing "building improvement funds to the Vista Maria Facility, which houses at-risk women and youth," and being in compliance with audit requirements for the period ending June 30, 2020. Third, Hachem contended he secured approval for his vacation from Bazzi, but claimed that Bazzi (or someone acting on his direction) destroyed the meeting notes Hachem kept in a drawer in his office. Hachem further claimed he entered the vacation into Paylocity (which someone from the mayor's office approved), and that

he was not arrested in Lebanon, only briefly detained at the airport, leaving nothing to report to his employer. Fourth, as noted above, Hachem more than adequately supported his claim that Bazzi terminated him for bringing to light an ordinance violation committed by Saab that Bazzi helped orchestrate through underhanded means.

This evidence standing alone is sufficient to create a triable question of fact that the reasons cited by Bazzi for Hachem's termination were mere pretext. Accordingly, we need not address Hachem's lengthy claim regarding Bazzi's other allegedly retaliatory actions.

Ultimately, Hachem presented sufficient evidence to overcome defendants' summary disposition motion and to send this matter to a jury.

We vacate and remand for continued proceedings. We do not retain jurisdiction.

/s/ Christopher P. Yates
/s/ Stephen L. Borrello
/s/ Kristina Robinson Garrett