STATE OF MICHIGAN

COURT OF APPEALS

JAMES STEFANSKI,

Plaintiff-Appellant,

v

SAGINAW COUNTY 911 COMMUNICATIONS CENTER AUTHORITY,

Defendant-Appellee.

UNPUBLISHED
August 13, 2025
11:31 AM

No. 364851
Saginaw Circuit Court
LC No. 22-046428-NZ

ON REMAND

Before: RIORDAN, P.J., and MURRAY and M. J. KELLY, JJ.

PER CURIAM.

This case involving the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq*., returns to us on remand from our Supreme Court. *Stefanski v Saginaw Co 911 Communications Center Authority*, ___ Mich ___, ___; ___ NW3d ___ (2025) (Docket No. 166663); slip op at 2. In its opinion, the Supreme Court held that reporting a violation of the common law is a protected activity under MCL 15.362. *Id*. at ___; slip op at 1-2. The Court remanded to us "for consideration of whether gross negligence is a violation of 'a' law and whether plaintiff's actions constituted a 'report' under the WPA." *Id*. at ___; slip op at 2. For the reasons stated in this opinion, we conclude that gross negligence is a violation of a law and that there is a genuine question of material fact with regard to whether plaintiff, James Stefanski, reported a violation of the common law under the WPA. As a result, we reverse the trial court order granting defendant, Saginaw County 911 Communications Center Authority, summary disposition, and we remand for further proceedings.

I. BASIC FACTS

The basic facts and procedural history were stated by our Supreme Court:

> Plaintiff, James Stefanski, is a former employee of defendant, Saginaw County 911 Communications Center Authority (Saginaw County 911). Stefanski was hired by defendant as a 911 dispatcher trainee in 2012 and was promoted to a

full-time dispatcher in 2013. Stefanski remained in this position until November 2021 when he resigned after being suspended without pay for 90 days. The reason given for this suspension was that Stefanski had a pattern of excessive nonscheduled absences (NSAs). Stefanski believed that this reason was pretextual and that the actual reason for the suspension was his disagreement with his supervisors regarding a July 2021 911 call (the Burnham call).

The details of the Burnham call are largely undisputed. At approximately 4:25 a.m. on July 5, 2021, supervisor Logan Bissell answered a 911 call. The caller, who lived on Burnham Street in Saginaw, reported that she had heard three gunshots and that there was a woman yelling outside to call 911. The caller, as well as someone in the background of the call, indicated that they believed that the woman outside had been shot. The coding of calls is discretionary, and Bissell coded the call as a "1010J," which indicates that shots had been fired. According to Stefanski, emergency medical services are not dispatched when a call is coded this way, so emergency medical services were not sent to the scene after this initial call. Stefanski was not present when this initial call was taken; however, he arrived to work shortly thereafter around 5:25 a.m.

At approximately 5:50 a.m., a different employee answered another call placed by the Burnham Street caller. The caller stated that the woman was lying on her porch, that she did not know if the woman was breathing, and that the police had not arrived. The call taker yelled to the dispatcher who was overseeing the city's law-enforcement radio and asked for an update on the Burnham shooting. The dispatcher answered that she did not have a shooting on Burnham Street, only a shots-fired incident. Emergency medical services were then sent to the scene. When they arrived, the woman who had been shot was in full cardiac arrest, and she died shortly thereafter from her injuries.

Later that morning, Stefanski and other employees reviewed the call notes. Stefanski believed that the Burnham call had been improperly coded. In his view, the call should have been coded as a "40J," which would have indicated that someone was shot and required that emergency medical services be dispatched to the scene. Stefanski testified that he did not understand why the call was coded as "shots fired," which does not require that emergency medical services be dispatched to the scene, when the caller stated that she believed someone had been shot. Stefanski and others pressured a supervisor to review the audio recording of the call. The supervisor reviewed the audio recording and stated that he did not hear anything out of the ordinary. When Stefanski questioned the supervisor's conclusion, the supervisor allegedly became angry and told him and others to "let it go."

In the following days, Stefanski and others continued to question the events of the Burnham call and how it had been handled by supervisors. During this time, Stefanski listened to the audio recording of the call, which he believed confirmed his opinion that Bissell had improperly coded the call, despite the supervisor's conclusion to the contrary. After an internal investigation, it was determined that

Bissell's actions were not negligent and that his coding of the call was a "judgment call." Stefanski disagreed with this determination. He testified that he suspected that the supervisors were covering for each other. Stefanski was upset by this incident because he had heard on the news that law enforcement was being blamed for the delayed response and the victim's death. In his view, law enforcement was not responsible for the delayed response—the alleged improper coding was.

During the last week of July 2021, Stefanski expressed his views to Daniel Weaver, director of Saginaw County 911. Stefanski testified that during this conversation he questioned how they could let the police "take the fall" for this. He also told Weaver that the call was unambiguous and that "there's absolutely no way that you can get that there was not somebody shot on Burnham Street." He asked Weaver what was going to happen with Bissell. In response, Weaver reiterated that this was a judgment call and that he would not question Bissell's decision.

In the weeks that followed, Stefanski missed several days of work. On August 2, 2021, he received and signed a Level 1 NSA notice. This notice is sent after an employee accrues five NSAs. On August 16, 2021, Stefanski received a Level 2 NSA notice. This notice is sent after an employee accrues seven NSAs. After receiving this second notice, Stefanski initiated another conversation with Weaver. During the conversation, Weaver advised Stefanski that he did not want him to revert to his "old ways" regarding the accumulation of NSAs. Stefanski told Weaver that he was having medical issues, including chest pain, and that he was having a lot of stress and anxiety because of the job. He testified that he told Weaver that the increased stress and anxiety was because of the Burnham call, Bissell's gross negligence, and how this matter had been dismissed. Stefanski stated that part of his issue was that if Bissell was not a supervisor, but instead a regular employee like Stefanski, then Bissell would have been subject to discipline in some way, e.g., a suspension, a write-up, termination, or retraining. Stefanski further told Weaver that he viewed the supervisors as a "boys club" and that the handling of the Burnham call was causing a morale issue. He told Weaver that he "felt the urge to go to the Board with the issue" because it was not being handled internally. Stefanski testified that Weaver told him that he did not want to talk about the issue and that their conversation was over.

Subsequently, Stefanski alleges, he was treated differently at work. He claims that he "got shafted in the hallway" and was never called into the director's office unless it was to talk about the NSA policy. Additionally, he testified that he was no longer greeted by supervisors in the morning, that he received "crappy" assignments, and that he was given desk assignments that he did not want.

In October, Stefanski went on a medical leave of absence and was given a return-to-work date of November 10. However, on November 10 he was still sick, so he called out for his November 10 and November 11 shifts. On November 12, Weaver called Stefanski and told him to not report for his shift. On November 15, Weaver called Stefanski and informed him that the call was a disciplinary hearing and that all potential discipline was "on the table," including a write-up, suspension,

and termination. Among other things, Stefanski and Weaver discussed his absences and photographs that were posted on his social media on the days he called off work. On November 18, Stefanski received a letter indicating that he was being placed on a 90-day unpaid suspension because of his NSAs.

Believing that the reason for his suspension was pretextual, Stefanski resigned and filed the present suit. He alleged that, in violation of MCL 15.362, Saginaw County 911 constructively discharged him in retaliation for his report to Weaver that Bissell's actions constituted gross negligence and that this violation of the common law was a violation of Michigan law under the WPA.

Saginaw County 911 moved for summary disposition under MCR 2.116(C)(8) and (C)(10), arguing that Stefanski did not engage in activity protected by the WPA because gross negligence is not a violation of a law or regulation or rule promulgated pursuant to law. Saginaw County 911 further argued that even if a report of gross negligence were actionable under the WPA, Stefanski did not make a report or a threat to report under the statute because he did not indicate that Bissell's conduct violated a law, he did not report any hidden violation of the law, and he did not make a charge of illegality. The trial court granted summary disposition to Saginaw County 911, concluding that reporting an employee's perceived negligence or gross negligence—a violation of the common law—was not a protected activity under the WPA.

Stefanski appealed, and the Court of Appeals affirmed in an unpublished per curiam opinion. See *Stefanski v Saginaw Co 911 Communications Ctr Auth*, unpublished per curiam opinion of the Court of Appeals, issued January 4, 2024 (Docket No. 364851). In affirming the trial court's ruling, the Court of Appeals relied on *Landin v Healthsource Saginaw, Inc*, 305 Mich App 519, 532-533; 854 NW2d 152 (2014). In that case, the Court of Appeals concluded that the plaintiff's report of malpractice did not fall under the WPA. *Id*. at 532. Applying Landin to the present case, the Court of Appeals concluded that reporting a violation of the common law is not a protected activity under the WPA. *Stefanski*, unpub op at 5-6. Thus, the Court of Appeals held that Stefanski was not engaging in a protected activity when he allegedly reported Bissell's gross negligence. *Id*. [*Stefanski*, ___ Mich at ___; slip op at 2-7 (footnote omitted).]

II. SUMMARY DISPOSITION

A. STANDARD OF REVIEW

A trial court's decision on a motion for summary disposition is reviewed de novo. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009).

B. ANALYSIS

Stefanski brought his WPA claim under MCL 15.362, which provides:

> 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, or a person acting on behalf of 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, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

A plaintiff can establish a prima facie case under MCL 15.362 by showing that "(1) he was engaged in a protected activity as defined by the act, (2) the defendant discharged him, and (3) a causal connection exists between the protected activity and the discharge." *Chandler v Dowell Schlumberger Inc*, 456 Mich 395, 399; 572 NW2d 210 (1998). As relevant to this case, "reporting to a public body a violation of a law, regulation, or rule" is a protected activity. See *Stefanski*, ___ Mich at ___; slip op at 9, quoting *Chandler*, 456 Mich at 399. Further, as recently explained by our Supreme Court, the phrase "a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States" includes a violation of the common law. *Stefanski*, ___ Mich at ___; slip op at 11.

Our Supreme Court has tasked us with determining whether gross negligence is a violation of "a" law. *Id*. at ___; slip op at 1-2. Because the WPA is a remedial statute, it "must be liberally construed to favor the persons that the Legislature intended to benefit." *Anzaldua v Neogen Corp*, 292 Mich App 626, 631; 808 NW2d 804 (2011). "The underlying purpose of the WPA is protection of the public." *Id*. The word "a" is (unsurprisingly) undefined by MCL 15.362. However, our Supreme Court has explained:

> "The" and "a" have different meanings. "The" is defined as "definite article. 1. (used, esp. before a noun, with a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article a or an) . . ." *Random House Webster's College Dictionary*, p 1382. [*Massey v Mandell*, 462 Mich 375, 382 n 5; 614 NW2d 70 (2000).

More recently, our Supreme Court explained:

> "A" is an indefinite article, which is often used to mean "any." *Merriam-Webster's Collegiate Dictionary*, (11th ed). Whether "A" should be read as referring to a discrete item or as referring to one of many potential items depends on the context in which it is used. [*Southern Dearborn Environmental Improvement Ass'n, Inc v Dep't of Environmental Quality*, 502 Mich 349, 368; 917 NW2d 603 (2018) (footnotes omitted).]

In context, it is apparent that the use of the word "a" in MCL 15.362 is meant to denote a reported violation of a singular law. And, again, the term "law" includes violations of the common law. *Stefanski*, ___ Mich at ___; slip op at 1-2.

Under the common law, a plaintiff can bring a claim for gross negligence. *Xu v Gay*, 257 Mich App 263, 267-268; 668 NW2d 166 (2003). In order to establish such a claim, the plaintiff must prove that the defendant engaged in "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." *Id*. at 269-270. "Grossly negligent conduct must be conduct that is substantially more than negligent" and that instead amounts to "a willful disregard of safety measures and a singular disregard for substantial risks." *Bellinger v Kram*, 319 Mich App 653, 659-660; 904 NW2d 870 (2017) (quotation marks and citations omitted).

The same definition of gross negligence applies to claims brought under MCL 691.1407(8)(a) of the Governmental Tort Liability Act (GTLA), MCL 691.1401 *et seq*. Likewise, in *Jennings v Southwood*, 446 Mich 125, ___; 521 NW2d 230 (1994), our Supreme Court held that the same definition must be used in connection with the application of the Emergency Medical Services Act (EMSA), MCL 333.20965(1), *et seq*. Further, as recognized by *Xu*, that definition of gross negligence "is used in many other Michigan statutes that provide limited immunity to certain groups, but allow liability for gross negligence. See MCL 257.606a (Michigan Vehicle Code); MCL 324.81131 and MCL 324.81124 (Revised Judicature Act)." *Xu*, 257 Mich App at 269. Based upon the foregoing cases and statutes, it is apparent that a claim for gross negligence reflects a violation of a singular, well-defined principle of the common law. As a result, reporting gross negligence is a protected activity under the WPA.

Next, we must determine whether Stefanski's actions constituted reporting claim of gross negligence under the WPA. *Stefanski*, ___ Mich at ___; slip op at 2. The trial court did not reach this issue, nor did we in our prior opinion. However, we have little difficulty determining that a question of fact remains as to whether Stefanski reported that Bissell's conduct amounted to gross negligence.

At the outset, we turn to the definition of "report" set forth in *Rivera v SVRC Industries, Inc*, 327 Mich App 446, 464; 934 NW2d 286 (2019), vacate in part on other grounds 507 Mich 962 (2021), which held that:

> Under the WPA, a plaintiff "reports" a violation of the law when he or she "makes a charge" of illegality against a person or entity or "makes known" to a public body pertinent information related to illegality. Plaintiff in this case did neither in her conversation with Mair. Her discussion with Mair cannot reasonably be seen as "charging" LS with illegal conduct, and plaintiff did not make anything known to Mair that he did not already know by virtue of plaintiff's earlier communications with defendant.

In this case, Stefanski's conversation with Weaver can be reasonably seen as charging Bissell with unlawful conduct, specifically, with gross negligence related to his handling of the Burnham shooting. Indeed, viewing the record in the light most favorable to Stefanski, the record reflects that he disagreed regarding how Bissell coded the call, that he believed Bissell needed retraining or discipline, that he believed that others would have been retrained or disciplined if they had

miscoded a call, and that a woman had died as a result of Bissell's miscoding of the call. Regardless of whether Stefanski used the words "gross negligence" when making his report, his allegations amounted to a charge that Bissell's actions were grossly negligent. His actions show that he acted with the purposeful intent of bringing to Weaver's attention Bissell's grossly-negligent conduct that had led to the death of a woman and to ensure that such grossly negligent coding of a 9-1-1 call not occur again in the future.

Moreover, a type-1 whistleblower—which is what Stefanski is in this case—is defined as someone "who, on his own initiative, takes it upon himself to communicate the employer's wrongful conduct to a public body in an attempt to bring the, as yet hidden, violation to light to remedy the situation or harm done by the violation." *Henry v City of Detroit*, 234 Mich App 405, 410; 594 NW2d 107 (1999). Here, viewed in the light most favorable to the nonmoving party, the record reflects that Stefanski reported an unknown violation of law to Weaver in an attempt to remedy the situation or harm done by the violation. Indeed, although defendant was aware of the underlying facts involving the Burnham shooting, it determined that Bissell's actions were not negligent and that no corrective action needed to be taken against him. Stefanski's report that Bissell improperly coded the call and his call for Bissell to be retrained or disciplined, therefore, brought to light a claim that Bissell's actions were grossly negligent.

III. CONCLUSION

In sum, we conclude that gross negligence constitutes a violation of "a" law and that there is a question of fact as to whether Stefanski's conduct constituted a report under MCL 15.362. Accordingly, we reverse the trial court order granting defendant summary disposition and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. Stefanski may tax costs as the prevailing party. MCR 7.219(A).

/s/ Michael J. Riordan
/s/ Christopher M. Murray
/s/ Michael J. Kelly