ATTORNEY FOR APPELLANT:

CLARK W. HOLESINGER
Valparaiso, Indiana

ATTORNEYS FOR APPELLEE:

ELIZABETH A. KNIGHT
Knight, Hoppe, Jurnik & Knight, Ltd.
Rosemont, Illinois

IN THE COURT OF APPEALS OF INDIANA

DAVE HUCKABY,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 37A05-0909-CV-511
	)	
JASPER COUNTY SHERIFF'S OFFICE,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE JASPER SUPERIOR COURT
The Honorable James R. Ahler, Judge
Cause No. 37D01-0902-CT-055

June 8, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Dave Huckaby ("Huckaby") appeals the Jasper Superior Court's dismissal of his complaint for constructive, retaliatory discharge pursuant to Indiana Trial Rule 12(B)(6). On appeal, Huckaby appeals and argues that the trial court erred in granting the Jasper County Sheriff's ("Sheriff") motion to dismiss for failure to state a claim.

Facts and Procedural History

On February 2, 2009, Huckaby filed a complaint alleging that after fourteen years as an employee of the Jasper County Sheriff's department, he was subjected to unjustified discipline. Huckaby alleged that this discipline was a means to force his resignation. Huckaby stated that he resigned only after being threatened with the loss of his pension.

On March 17, 2009, the Sheriff filed a motion to dismiss pursuant to Indiana Trial Rule 12(B)(6). On May 12, 2009, the trial court held a hearing on the Sheriff's motion to dismiss. On July 10, 2009, the trial court granted the Sheriff's motion. Huckaby now appeals.

Standard of Review

Huckaby argues that the trial court erred when it granted the Sheriff's Indiana Trial Rule 12(B)(6) motion to dismiss. Our standard of review of a trial court's grant or denial of a motion to dismiss for failure to state a claim is de novo. Cripe, Inc. v. Clark, 834 N.E.2d 731, 733 (Ind. Ct. App. 2005). A Trial Rule 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted tests the legal sufficiency of a claim, not the facts supporting it. City of South Bend v. Century Indem. Co., 821 N.E.2d 5, 9 (Ind. Ct. App. 2005), trans. denied. On review, we examine the complaint in the light most favorable to the non-moving party, drawing every reasonable inference in

favor of that party. Id. "We stand in the shoes of the trial court and must determine if the trial court erred in its application of the law." Id. The trial court's grant of a motion to dismiss is proper only if it is apparent that the facts alleged in the complaint are incapable of supporting relief under any set of circumstances. Id. "In making this determination, we look only to the complaint and may not resort to any other evidence in the record." Id.

Discussion and Decision

"Indiana follows the doctrine of employment at will, under which employment may be terminated by either party at will, with or without reason." Wior v. Anchor Indus., Inc., 669 N.E.2d 172, 175 (Ind. 1996). The presumption of at-will employment is strong, and our supreme court is disinclined to adopt broad and ill-defined exceptions to the employment-at-will doctrine. Orr. v. Westminster Village N., Inc., 689 N.E.2d 712, 717 (Ind. 1997). Our supreme court has clearly held that "[r]evision or rejection of the [employment-at-will] doctrine is better left to the legislature." Morgan Drive Away, Inc. v. Brant, 489 N.E.2d 933, 934 (Ind. 1986). Huckaby claims that the employment-at-will doctrine does not limit an employee's right of action when the employee is forced to resign to save his statutorily created pension.

Our supreme court has recognized only three exceptions to the employment-at-will doctrine. First, if an employee establishes that "adequate independent consideration" supports an employment contract, the court generally will conclude that the parties intended to establish a relationship in which the employer may terminate the employee only for good cause. Orr, 689 N.E.2d at 718. Second, our supreme court has recognized

a public policy exception to the doctrine if a clear statutory expression of a right or a duty is contravened. Wior, 669 N.E.2d at 177, n. 5. Third, an employee may invoke the doctrine of promissory estoppel by pleading the doctrine with particularity, demonstrating that the employer made a promise to the employee, that the employee relied on the promise to his detriment, and that the promise otherwise fits within the Restatement test for promissory estoppel. Orr, 689 N.E.2d at 718.

Huckaby contends that his claim is allowed pursuant to the public policy exception because his pension benefits were governed by statute and a cause of action exists if an employee is discharged "solely for exercising a statutorily conferred right." See Appellant's App. p. 5. In Baker v. Tremco, Inc., 917 N.E.2d 650, 655 (Ind. 2009), our supreme court determined that a claim based on constructive retaliatory discharge falls within the public policy exception. Our supreme court noted that constructive retaliatory discharge could only be applied to previously-recognized exceptions to the employment at will doctrine. Id. Our supreme court has recognized only two scenarios under the public policy exception to the at-will doctrine.

The first is found in Frampton v. Central Indiana Gas Co., 260 Ind. 249, 297 (Ind. 1973). In Frampton, our supreme court held that a constructive retaliatory discharge claim existed where the employee was terminated after exercising his right to file a worker's compensation claim. In its opinion, our supreme court stated that ". . . when an employee is discharged solely for exercising a statutorily conferred right an exception to the general rule must be recognized." Id. at 428.

The second is found in McClanahan v. Remington Freight Lines, Inc., 517 N.E.2d 390 (Ind. 1988). In McClanahan, our supreme court held that "firing an employee for refusing to commit an illegal act for which he would be personally liable is as much a violation of public policy declared by the legislature as firing an employee for filing a workmen's compensation claim." Id. at 392- 93. In short, an employee cannot be fired for refusing to commit an illegal act or breach a statutorily-imposed duty.

In order for the constructive retaliatory discharge claim of an at-will employee to survive a Trial Rule 12(B)(6) motion to dismiss, the employee must allege in his complaint that he is entitled to bring a retaliatory discharge claim under an exception to the employment at will doctrine and that he was constructively discharged. See Frampton, 297 N.E.2d at 428.; Cripe, 834 N.E.2d at 740 (Robb, J., dissenting).

It is unnecessary to determine whether Huckaby was constructively discharged because Huckaby's constructive retaliatory discharge claim does not fall within the facts or rationales of either Frampton or McClanahan. His claim is not related to the exercise of a statutory right, and it did not arise because Huckaby refused to commit an illegal act or breach a statutorily-imposed duty.

Huckaby was not constructively discharged because he attempted to exercise a statutorily conferred right as he claims. Huckaby alleges that he was "threatened by [Sheriff] that he would not be entitled to his full pension if he did not resign, but if he did resign, his pension would not be harmed." Appellant's App. p. 9. While Huckaby's allegation relates to his pension, Huckaby was not discharged because of an attempt to

exercise any statutory right to his pension, much less a statutory right recognized as an exception to our general rule regarding at-will employment.

Even when we accept Huckaby's allegations as true which we must when reviewing a dismissal under Trial Rule 12(B)(6), Huckaby's constructive retaliatory discharge claim does not fall within Frampton or McClanahan. The trial court did not err when it granted the Sheriff's motion to dismiss Huckaby's complaint pursuant to Indiana Trial Rule 12(B)(6).

Affirmed.

MAY, J., and BRADFORD, J., concur.