STATE OF MICHIGAN

COURT OF APPEALS

FREEDOM ADULT FOSTER CARE CORP., Plaintiff-Appellant,	UNPUBLISHED March 9, 2001
v	No. 219918 Berrien Circuit Court
BERRIEN COUNTY COMMUNITY MENTAL HEALTH SERVICES BOARD, RIVERWOOD CENTER and MARSHA LAYA, Defendants-Appellees.	LC Nos. 95-003017-CZ 96-000660-CZ

Before: Doctoroff, P.J., and Holbrook, Jr., and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for directed verdict. Plaintiff had filed a claim against defendants, its former employer, for alleged violations of the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq.*; MSA 17.428(1) *et seq.* We affirm.

Plaintiff is a non-profit corporation that provides alternative residential services to individuals with mental illnesses. Defendant Berrien County Community Mental Health Services Board (hereinafter the Board), the governing body of Riverwood Center, is a community mental health agency that governs mental health service providers serving Berrien County. In 1992, plaintiff contracted for one year with the Board to provide seven days per week, twenty-four hours per day, care for clients of the Board residing in two group homes in Berrien County. Plaintiff provided services under a program called Alternative Intermediate Services (AIS). Defendant Marsha Laya was the AIS program director at Riverwood. At the time plaintiff signed its 1992 contract, plaintiff also agreed to provide services to a third home in Berrien County called Victoria. The Board renewed plaintiff's contracts in both 1993 and 1994. However, in 1995, the Board terminated its contract with plaintiff for the Victoria home and decided not to renew plaintiff's contracts for the two remaining homes.

Plaintiff filed two complaints resulting from its employment relationship with defendants. Plaintiff filed its first complaint against defendants on September 15, 1995, in Berrien County. In this complaint, plaintiff alleged that defendants were liable to plaintiff for defamatory comments made by Laya against plaintiff. Plaintiff filed a second complaint against defendants

in Oakland County on September 29, 1995. In this complaint, plaintiff alleged that defendants violated the WPA by discharging and discriminating against plaintiff after plaintiff had reported suspected violations of law committed by defendants to various public bodies. Defendants' filed a motion to change the venue of plaintiff's WPA claim to Berrien County, and the court granted this motion. Plaintiff's claims were later consolidated.

Thereafter, the trial court granted defendants' motion for summary disposition on plaintiff's defamation claim, but denied summary disposition on plaintiff's WPA claim. A jury trial was held on plaintiff's WPA claim in January 1999. At the close of plaintiff's case-in-chief, the trial court granted defendants' motion for directed verdict, concluding that plaintiff had failed to produce any evidence to show that defendants' proffered nondiscriminatory reason was pretextual and that defendants acted in retaliation to plaintiff's complaints. All of the issues raised by plaintiff on appeal stem only from the lower court's handling of plaintiff's WPA claim.

First, plaintiff argues that the trial court erred in its decision to grant defendants' motion for a change of venue on its WPA claim. We disagree. "Although the trial court's decision on a change of venue is discretionary, the moving party has the burden of demonstrating inconvenience of prejudice, and a pervasive showing must be made." *Chilingirian v City of Fraser*, 182 Mich App 163, 165; 451 NW2d 541 (1989). After reviewing the record, we are convinced that defendants satisfied this burden. Defendants established that it would have been inconvenient to defend these two actions, which involved the same parties and basically the same facts, in two different counties on opposite sides of the state. Accordingly, we find no abuse of discretion on the part of the trial court.

Next, plaintiff argues that the trial court abused its discretion when it denied plaintiff's motion to set aside the mediation evaluation conducted in this case or to order remediation of the case. We disagree. In denying plaintiff's motion, the trial court observed that plaintiff had failed to object to defendants' late submission of their mediation summary. The court also noted that mediation was merely a tool for settlement and that remediation would not serve any useful purpose for the parties in this case. The court stated that remediation would only serve to add costs for the parties and that any subsequent mediation would be problematic in determining which mediation evaluation would take priority. After reviewing the record, we find no abuse of discretion on the part of the trial court.

Next, plaintiff argues that the trial court erred in granting defendants' motion for directed verdict. We disagree. We review the grant or denial of a directed verdict de novo. *Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997). When reviewing a trial court's ruling on directed verdict motion, we consider the evidence and every reasonable inference arising therefrom in a light most favorable to the nonmoving party. *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 663; 575 NW2d 745 (1998).

Plaintiff's WPA claim is based on MCL 15.362(2); MSA 17.428(2)(2), 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.

"To establish a prima facie case, a plaintiff must demonstrate that (1) the plaintiff was engaged in a protected activity as defined by the act, (2) the plaintiff was subsequently discharged, and (3) there existed a causal connection between the protected activity and the discharge." *Roberson v Occupational Health Centers of America, Inc*, 220 Mich App 322, 325; 559 NW2d 86 (1996). Once the plaintiff establishes the prima facie case, "the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the adverse [employment] action." *Phinney v Perlmutter*, 222 Mich App 513, 563; 564 NW2d 532 (1997).

After concluding that plaintiff had established the first two prongs of the prima facie case, the trial court then turned to the issue of a legitimate, nondiscriminatory reason for defendants' actions. The court concluded that the record was devoid of evidence that the proffered nondiscriminatory reason was only a pretext. *Id.* We agree with the conclusions reached by the trial court. Further, we also believe that plaintiff failed to show any causal connection between the protected activity and the Board's actions.[1]

Finally, we reject plaintiff's argument that the trial court abused its discretion in awarding mediation sanctions to defendants or in denying plaintiff's subsequent motion to reduce the mediation sanctions. While there is some confusion in the hearing transcript, we believe it is reasonable to conclude that the court's final award of 400 hours of attorney fees to defendants addressed all concerns from the parties, including plaintiff's objection to certain hours claimed by defendants. See MCR 2.119(F)(3).

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[1] Plaintiff alleges that defendants had plaintiff investigated by the Department of Mental Health (DMH) after plaintiff complained to various individuals at Riverwood regarding the noncompliance of the resident programs for the AIS homes. However, plaintiff has not provided any evidence to show that plaintiff's complaints caused the investigation. Plaintiff also alleges that the Board failed to inform plaintiff of its recipient rights violations in response to plaintiff's complaints about the resident programs at the AIS homes. Dan Souheaver, plaintiff's president, stated that although a recipient rights officer will typically contact the service provider before reporting such violations to the Department of Social Services (DSS), this practice was not followed in this case. However, plaintiff has not provided any evidence to show that the recipient rights officer's failure to directly report any violations to plaintiff was in any way related to plaintiff's complaints regarding the resident programs. The only evidence supporting this theory was mere speculation by Souheaver. Plaintiff also lodged complaints directly to DMH. However, Souheaver stated that he did not report any alleged violations to DMH until May 1995 and did not write a letter to DMH until September 1995. There is no evidence to reflect that defendants had any objective notice from plaintiff that such a report was filed against them.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Donald E. Holbrook, Jr.
/s/ Michael R. Smolenski