

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WILLIE HARRIS,

Plaintiff-Appellant,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

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UNPUBLISHED

September 13, 2002

No. 231052

Ingham Circuit Court

LC No. 99-091092-NZ

Before: Whitbeck, C.J., and Sawyer and Kelly, JJ.

PER CURIAM.

Plaintiff Willie Harris appeals as of right the order granting defendant General Motors Corporation's (GM) motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

**I. Basic Facts And Procedural History**

GM hired Harris as an hourly worker in 1973. On December 16, 1997, GM transferred Harris to a salaried position as supervisor of maintenance in the body shipping area. There were a number of complaints about Harris's performance, and at a meeting in mid-August 1999, he was informed that his performance was not meeting expectations. Shortly after the meeting, Harris's immediate supervisor, Don Davis, received three more complaints about Harris. The complaints alleged that Harris had been absent from the jobsite, he used company property improperly, and he had company employees install shocks on his personal automobile.

During the last week of August 1999 Harris suffered an injury to his right shoulder. Although he claimed that the injury took place at work, he also stated that the injury occurred while he was working on the construction of his new home. On August 27, 1999, Harris went to work, and then visited a medical clinic, where he was told to not return to work until September 2, 1999. Harris was on vacation until September 7, 1999.

Harris was called into a meeting on September 8, 1999, where he was asked about several instances of misconduct. It was alleged that plaintiff was late to work, parked his vehicle on company property, allowed employee mechanics to install shock absorbers on his personal van, pre-paid himself for 10½ hours of work per day instead of entering the actual amount of time he had worked, and allowed a contractor to come to his office for personal business. Harris admitted to the misconduct. A second meeting was scheduled that day. Harris was asked to

bring in medical records verifying his injury, a receipt for the shock absorbers, and the date that the contractor met with him. GM suspended Harris after the meeting. On September 17, 1999, Harris met with the plant personnel director, who terminated him for two of the acts of misappropriation: reporting late for work and inputting pay records for a full shift, and using company labor to replace shocks on his personal vehicle.

After GM terminated Harris from his salaried position, Harris brought this action alleging that his discharge violated the Persons With Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.*, and that his discharge in anticipation of a worker's compensation claim violated MCL 418.301(11). Harris asserted that the matters reviewed at the September 8, 1999, meeting had already been addressed, and he had been disciplined for that conduct. He asserted that the real reason for the termination was his medical condition, as evidenced by GM's request for his medical records before his termination.

After hearing oral argument on November 1, 2000, the trial court granted GM's motion for summary disposition. The trial court ruled that Harris had been fired for cause, it was not unreasonable for GM to request Harris's records because his hours were in question, and that Harris was not fired in anticipation of his choice to file a worker's compensation claim.

## II. Appeal

On appeal, Harris argues that the trial court made improper factual determinations in granting GM's motion. He adds that there was evidence that the misconduct was only a pretext for the retaliation, he was engaged in protected activity when he reported his injury, and that reasons for the termination were pretextual because GM had addressed those issues previously. GM, however, responds that Harris did not engage in any protected activity, and could not demonstrate a *prima facie* case. GM also maintains that, even if Harris provided evidence of a *prima facie* case, he did not rebut the non-discriminatory reasons for his termination.

## III. Standard Of Review

This Court reviews the grant of a motion for summary disposition *de novo*.<sup>1</sup>

## IV. Legal Standard

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim.<sup>2</sup> When deciding a motion for summary disposition under MCR 2.116(C)(10), "the trial court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party to determine whether a genuine issue of any material fact exists to warrant a trial."<sup>3</sup> The nonmoving party cannot simply rest on allegations or denials, but must present evidence showing that a material

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<sup>1</sup> *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

<sup>2</sup> *Id.*

<sup>3</sup> *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999); see also MCR 2.116(G)(5).

issue of fact is in dispute requiring resolution at trial.<sup>4</sup> This holds true for every element of the prima facie case.<sup>5</sup>

## V. Retaliation

Turning to the easiest question first, as a matter of law, we conclude that the trial court did not err when it summarily disposed of Harris's retaliation claim. MCL 418.301(11) prohibits discharge in retaliation for filing a worker's compensation claim, but there is no cause of action for a discharge made in anticipation of a future claim.<sup>6</sup> There is no evidence on the record that Harris ever actually filed a worker's compensation claim.

## VI. PWDCRA

With respect to Harris's PWDCRA claim, he had to establish that

(1) he is "disabled" as defined by the statute, (2) the disability is unrelated to the plaintiff's ability to perform the duties of a particular job, and (3) the plaintiff has been discriminated against in one of the ways set forth in the statute.<sup>[7]</sup>

If Harris made out this prima facie case of discrimination, GM had to articulate a legitimate, non-discriminatory reason for his termination.<sup>8</sup> Then Harris had to offer evidence that the reason GM articulated for his discharge was a pretext for discrimination.<sup>9</sup>

Even assuming that Harris provided sufficient evidence in response to the motion for summary disposition to established his prima facie case, he did not offer admissible evidence to rebut GM's non-discriminatory reason for his termination. Harris admitted committing the misconduct GM cited as the reason for the discharge. He provided no evidence that this misconduct was a pretext for discriminatory conduct. Thus, GM was entitled to have this claim summarily dismissed as well.

Affirmed.

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ Kirsten Frank Kelly

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<sup>4</sup> *Smith v Globe Life Ins Co*, 460 Mich 446, 455, n 2; 597 NW2d 28 (1999), citing MCR 2.116(G)(4).

<sup>5</sup> See *Richardson v Michigan Humane Society*, 221 Mich App 526, 527-528; 561 NW2d 873 (1997).

<sup>6</sup> See *Griffey v Prestige Stamping, Inc*, 189 Mich App 665, 668-669; 473 NW2d 790 (1991).

<sup>7</sup> *Chiles v Machine Shop, Inc*, 238 Mich App 462, 473; 606 NW2d 398 (1999).

<sup>8</sup> *Hall v McRea Corp*, 238 Mich App 361, 370; 605 NW2d 354 (1999).

<sup>9</sup> *Id.*