STATE OF MICHIGAN

COURT OF APPEALS

GARY THOMPSON,

Plaintiff-Appellant,

v

GREDE FOUNDRIES, INC., and NANCY BARRIOS,

Defendants-Appellees.

UNPUBLISHED
September 28, 2004

No. 247587
Tuscola Circuit Court
LC No. 02-021254-CL

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition of plaintiff's claim that his discharge from defendants' employment was contrary to public policy. We affirm.

Defendant Grede Foundries, Inc. (defendant), hired plaintiff in August 1999. According to plaintiff, his job responsibilities included insuring that safety measures required by the Michigan Occupational Safety and Health Act (MIOSHA), MCL 408.1001 *et seq.*, were enforced by defendant. Defendant discharged plaintiff from its employment on October 22, 1999. Shortly after his discharge, plaintiff filed suit against defendants alleging that his discharge was improper as contrary to public policy. According to plaintiff's complaint, defendant discharged him because he refused to certify defendant's workplace as MIOSHA compliant when, in fact, it was not. Defendants moved for summary disposition pursuant to MCR 2.116(C)(8), alleging that plaintiff failed to state a claim upon which relief could be granted. The trial court granted defendants' motion and allowed plaintiff two weeks to amend his complaint. In lieu of amending his complaint, plaintiff filed this appeal.

We review de novo a trial court's decision to grant summary disposition under MCR 2.116(C)(8). *Beaty v Hertzberg & Golden, PC*, 456 Mich 247, 253; 571 NW2d 716 (1997). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the pleadings alone. *Lane v KinderCare Learning Centers, Inc*, 231 Mich App 689, 692; 588 NW2d 715 (1998). All factual allegations in support of the claim are accepted as true, as well as any reasonable inferences or conclusions drawn from the facts. *Id.* The motion should only be granted where the claim is so clearly unenforceable as a matter of law that no factual development could justify a right to recovery. *Id.*

Generally, in the absence of a contractual basis for holding otherwise, either party to an employment contract for an indefinite term may terminate the contract at any time for any, or no, reason. *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich 692, 694-695; 316 NW2d 710 (1982). However, there is an exception to this rule that is "based on the principle that some grounds for discharging an employee are so contrary to public policy as to be actionable." *Id.*, 695. Generally, "these proscriptions are found in explicit legislative statements prohibiting the discharge, discipline, or other adverse treatment of employees who act in accordance with a statutory right or duty." *Id.* MIOSHA contains a retaliatory discharge proscription. *Id.*, n 2. Specifically, the retaliatory discharge prohibition in MIOSHA provides:

> A person shall not discharge an employee or in any manner discriminate against an employee because the employee filed a complaint or instituted or caused to be instituted a proceeding under or regulated y this act or has testified or is about to testify in such a proceeding or because of the exercise by the employee on behalf of himself or herself or others of a right afforded by this act. [MCL 408.1065(1).]

The existence of a specific legislative prohibition against retaliatory discharge is determinative of the viability of plaintiff's public policy claim. *Dudewicz v Norris Schmid, Inc*, 443 Mich 68, 79; 503 NW2d 645 (1993). A public policy claim is sustainable only when there is not an applicable statutory prohibition against discharge in retaliation for the conduct at issue. *Id.*, 80. Michigan courts have consistently denied a public policy claim where the statute involved did contain a prohibition against retaliatory discharge. *Id.*, 79.

According to plaintiff, the retaliatory discharge protection of MCL 408.1065(1) only applies to employees who were discharged for seeking to enforce MIOSHA rules or otherwise exercising their rights under MIOSHA. Plaintiff contends that because he merely refused to certify defendant's workplace as MIOSHA compliant when it was not, the protection against retaliatory discharge in MCL 408.1065(1) does not apply to or protect him. Therefore, plaintiff alleges that because there is not an applicable statutory prohibition against retaliatory discharge for his conduct, he has a sustainable cause of action predicated on a theory of a violation of public policy. We disagree.

MCL 408.1065(1) prohibits an employer from discharging an employee "because of the exercise by the employee on behalf of himself or herself or others of a right afforded by this act." Because plaintiff alleged that he refused to certify defendant's business as MIOSHA compliant, he was exercising a right afforded by MIOSHA, and his actions were protected under MCL 408.1065(1). Therefore, plaintiff must seek relief in accordance with the administrative remedies as set forth in MIOSHA itself. MCL 408.1065(2)-(8).

We agree with the trial court's application of *Schwartz v Michigan Sugar Co*, 106 Mich App 471; 308 NW2d 459 (1981), and adopt the trial court's reasoning in this opinion. We also conclude, as did the trial court, that because plaintiff's refusal to violate a MIOSHA rule or regulation constitutes an exercise of his rights under MIOSHA, plaintiff has failed to state a claim for a violation of public policy.

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood