

STATE OF MICHIGAN  
COURT OF APPEALS

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PETER MASSOGLIA,

Plaintiff-Appellant,

v

OTTAWA FOREST PRODUCTS, INC.,

Defendant-Appellee.

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UNPUBLISHED

October 25, 2007

No. 275794

Gogebic Circuit Court

LC No. 06-000110-CZ

Before: Owens, P.J., and Bandstra and Davis, JJ.

PER CURIAM.

In this action alleging unlawful retaliation for filing a worker's compensation claim, plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff began working for defendant as a laborer in May 2004. He claimed that he began experiencing work-related stress in November 2005, due to harassment by coworkers. In February 2006, after additional incidents of harassment, plaintiff informed defendant's plant manager, the person responsible for handling worker's compensation claims, that he wanted to file a claim because of the stress he was experiencing on the job. The manager began to fill out a report for the claim, but approximately 40 minutes later, after meeting with one of defendant's owners, terminated plaintiff. According to defendant, plaintiff was fired because his worker's compensation claim was not considered legitimate, and instead, it was believed that plaintiff was using the worker's compensation claim as a bargaining tool to have one of his coworkers fired.

This Court reviews a trial court's decision on summary disposition *de novo*. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The trial court granted summary disposition under MCR 2.116(C)(10), which tests the factual support for a claim. Summary disposition should be granted if, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995).

Plaintiff's claim is premised on MCL 418.301(11), which 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 this act or because of the exercise by the employee on behalf of himself or herself or others of a right afforded by this act.

It is not disputed that, by advising the plant manager, the person responsible for handling all worker's compensation claims, of his intent to file a claim, plaintiff was protected by MCL 418.301(11).

To establish a worker's compensation retaliation claim, the burden is on the plaintiff to prove a causal connection between the protected activity (the filing of the claim) and the adverse employment action. *Chiles v Machine Shop, Inc*, 238 Mich App 462, 470; 606 NW2d 398 (1999). Therefore, plaintiff had the burden of proving (1) that he made a claim for worker's compensation benefits, (2) that he suffered an adverse employment action, (3) that defendant's offered reason for its actions was a mere pretext, and (4) that defendant's true reason for its actions was in retaliation for plaintiff having filed a worker's compensation claim. *Id.* Defendant may prevail only if retaliation was not a motivating factor in its decision. *Id.*

We believe that plaintiff established a genuine issue of material fact in support of his claim. The evidence showed that plaintiff approached the plant manager about filing a worker's compensation claim and was fired shortly thereafter. There also was no dispute that plaintiff was experiencing problems at work with his coworkers and that he obtained some limited treatment for stress associated with his job.

The trial court found that defendant had legitimate reasons for firing plaintiff because it determined that he was the person causing problems at work, not his coworkers, and that plaintiff did not have a valid claim for worker's compensation benefits. Viewed in a light most favorable to plaintiff, however, the evidence established a genuine issue of material fact whether defendant was motivated, in part, because of plaintiff's request to file a worker's compensation claim. The timing of defendant's decision to fire plaintiff, approximately 40 minutes after plaintiff decided to file a worker's compensation claim, lends credibility to plaintiff's position that he was fired in retaliation for making the claim. Although defendant claims that plaintiff was fired because he was the person causing problems at work, there was no evidence of any other disciplinary action against plaintiff and it was only after plaintiff made his worker's compensation claim that he was abruptly fired. Viewed in a light most favorable to plaintiff, there is a genuine issue of material fact whether defendant's true reason for firing plaintiff was a mere pretext to retaliate against him for filing a claim. See *Chiles, supra* at 470-471. Therefore, the trial court erred in granting defendant's motion for summary disposition.

We reverse and remand. We do not retain jurisdiction.

/s/ Donald S. Owens  
/s/ Richard A. Bandstra  
/s/ Alton T. Davis