

STATE OF MICHIGAN
COURT OF APPEALS

JENNIFER GALE,

Plaintiff-Appellant,

v

MICHIGAN STATE UNIVERSITY and
TIMOTHY STEDMAN,

Defendants-Appellees.

UNPUBLISHED
February 17, 2009

No. 282411
Ingham Circuit Court
LC No. 07-000016-CD

Before: Sawyer, P.J., and Servitto and M. J. Kelly, JJ.

PER CURIAM.

In her claim under the Whistle-Blower's Protection Act (WPA), MCL 15.361 *et seq.*, plaintiff appeals from the order of the circuit court granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm.

The facts presented at the motion hearing established that plaintiff was hired, under regular-probationary status, as a receptionist by defendant. Plaintiff had one main supervisor, in charge of hiring and firing, and another supervisor who supervised her daily operations. One day at work, a co-worker told plaintiff a story referencing a condom in regards to the size of his penis, which the trial court determined to be "inherently sexual." Plaintiff did not report this story to anyone on the day she heard it. In response to tension between plaintiff and her co-workers, her main supervisor asked her daily supervisor to compile a list of issues involving plaintiff. Plaintiff's main supervisor stated that he had made the decision not to extend plaintiff's employment beyond her probationary status before requesting the list. After attending a sexual harassment seminar, plaintiff spoke with the organizer of the seminar, and reported the "condom story." The organizer then spoke with plaintiff's main supervisor and her daily supervisor in regards to plaintiff's issues; during this meeting, the main supervisor had and referenced the list of issues he previously requested. One day later, plaintiff was terminated by her main supervisor, at which time she reported the "condom story" to him for the first time.

Plaintiff argues that the trial court erred in finding that there was no genuine issue as to a material fact: whether her termination was retaliatory for reporting the "condom story" to her supervisor. We disagree. The Court reviews de novo a trial court's decision on a motion for summary disposition. *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint, and must be supported by affidavits, depositions, admissions, or other documentary

evidence. MCR 2.116(G)(3)(b); *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004).

In order to establish a prima facie case under the WPA, a plaintiff must show: (1) he or she was engaged in protected activity as defined by the act; (2) he or she was discharged or discriminated against; and (3) a causal connection exists between the protected activity and the discharge or adverse employment action. *Shallal v Catholic Social Services of Wayne Co*, 455 Mich 604, 609; 566 NW2d 571 (1997). In other words, a plaintiff must show that the adverse employment action was in some manner influenced by the protected activity. *West v Gen Motors Corp*, 469 Mich 177, 185; 665 NW2d 468 (2003). Further, a plaintiff must show more than a temporal relationship, standing alone, in order to demonstrate a causal connection between the protected activity and any adverse employment. *Id.* at 186.

Plaintiff was engaged in the protected activity when she reported the “condom story” to the organizer of the seminar, and there is no dispute that she was terminated from employment. However, plaintiff’s main supervisor had made the decision to terminate her employment before she reported the “condom story” to him. Thus, there was no evidence establishing a causal connection between the protected activity and her termination, it was merely temporal. *Id.*

Affirmed.

/s/ David H. Sawyer
/s/ Deborah A. Servitto
/s/ Michael J. Kelly