STATE OF MICHIGAN

COURT OF APPEALS

CHERYL DEBANO-GRIFFIN, Plaintiff-Appellee,	UNPUBLISHED December 16, 2010
v	No. 282921 Lake Circuit Court
LAKE COUNTY and LAKE COUNTY BOARD OF COMMISSIONERS, Defendants-Appellants.	LC No. 05-006469-CZ

ON REMAND

Before: ZAHRA, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

This case is before this Court on remand from the Michigan Supreme Court. Defendants Lake County and Lake County Board of Commissioners appeal from the trial court's denial of their motion for summary disposition in this action under the Whistleblowers' Protection Act (WPA).[1] In its previous opinion, this Court concluded that plaintiff Cheryl Debano-Griffin failed to establish that she was engaged in protected activity.[2] Accordingly, this Court reversed and remanded the case to the trial court for entry of an order granting defendants' motion for summary disposition.[3] On appeal, the Supreme Court reversed this Court's decision, holding that Debano-Griffin's was engaged in protected activity when she reported a "suspected violation of a law."[4] The Supreme Court also remanded the case for consideration of the issues not addressed by this Court during our initial review of the case.[5] Pursuant to the Supreme Court's

[1] MCL 15.361 *et seq*.

[2] *Debano-Griffin v Lake County*, unpublished opinion per curiam of the Court of Appeals, issued October 15, 2009 (Docket No. 282921), slip op pp 4.

[3] *Id.*

[4] *Debano-Griffin v Lake County*, 486 Mich 938 (2010).

[5] *Id.*

remand order, we now address whether Debano-Griffin established a causal connection between her complaints and the elimination of her position.[6] We reverse and remand.

I. FACTS

Debano-Griffin brought this WPA action alleging that defendants eliminated her position as director of Lake County's 911 department because she reported an improper transfer of county funds.[7] Defendants moved for summary disposition under MCR 2.116(C)(10), arguing, among other things, that Debano-Griffin could not establish a causal connection between her complaints about the handling of funds and her subsequent layoff. Defendants cited Debano-Griffin's deposition testimony, in which she asserted her belief that the two events were causally connected but offered no supporting evidence. In response, Debano-Griffin argued that the protected activity must be *one of* the reasons for the adverse employment action, but it does not have to be the *only* reason.[8] Debano-Griffin argued that defendants' representatives' references to budget constraints were just a pretext, which shifted the burden to defendants to disprove the contention. The trial court denied defendants' motion for summary disposition. The case proceeded to trial, and the jury returned a verdict in favor of Debano-Griffin.

Defendants appealed, challenging the trial court's denial of their motion for summary disposition. In a 2-1 decision, this Court reversed and remanded for entry of judgment in favor of defendants. The majority concluded that Debano-Griffin failed to show a genuine issue of material fact on the question whether she was engaged in a protected activity under the WPA. Having decided the appeal on that basis, consideration of the causation issue was unnecessary. However, as the Supreme Court has instructed on remand, we now consider the causation issue.

II. CAUSAL CONNECTION

A. STANDARD OF REVIEW

Defendants argue that the trial court erred in denying their motion for summary disposition because Debano-Griffin offered no evidence of causation beyond a coincidence in the timing of events and her unsupported belief that defendants eliminated her position because of her reporting activities. Whether Debano-Griffin has established a prima facie case under the WPA is a question of law that this Court reviews de novo.[9]

---

[6] See *Debano-Griffin*, unpub op at 4 (finding it unnecessary to address the causation issue at that time).

[7] The background facts were detailed in this Court's previous opinion, *id.* at 1-2, and need not be reiterated here.

[8] See M Civ JI 107.03.

[9] *Manzo v Petrella*, 261 Mich App 705, 711; 683 NW2d 699 (2004).

B. LEGAL STANDARDS

To establish a prima facie case under the WPA, Debano-Griffin must show that (1) she was engaged in a protected activity as set forth in the act, (2) defendants discharged her, and (3) a causal connection existed between the protected activity and the discharge.[10] As stated, because the Supreme Court has determined that Debano-Griffin has shown that she was engaged in a protected activity, only the causation element is at issue on remand.

To establish that an adverse employment action was motivated by the employee's engagement in protected activity, the WPA requires more than showing a sequential link in the chain of events between the protected activity and the employment action. A plaintiff must "demonstrate that the adverse employment action was in some manner influenced by the protected activity."[11] A plaintiff must show more than merely a temporal connection between events: "[A] temporal relationship, standing alone, does not demonstrate a causal connection between the protected activity and any adverse employment action. Something more than a temporal connection between protected conduct and an adverse employment action is required to show causation where discrimination-based retaliation is claimed."[12]

Although the WPA is a "remedial statute" that "must be liberally construed in favor of the persons it was intended to benefit[,]"[13] liberal construction of the WPA "does not transform mere speculation into a genuine issue of material fact."[14] A jury may not be permitted to guess.[15]

With respect to the causation element, this Court has held that summary disposition is appropriate where the causation element of a plaintiff's WPA claim is predicated solely on a coincidence in the timing of events.[16] In *Taylor v Modern Engineering, Inc*, the defendant was an automotive engineering firm that had hired the plaintiff to make wooden models.[17] Over the course of the ten years that the plaintiff worked for the defendant, he spent less of his time in that capacity because computer-aided design and manufacturing decreased the need for handmade models.[18] The defendant terminated the plaintiff's employment in February 1999, stating as its

---

[10] *Ernsting v Ave Maria College*, 274 Mich App 506, 510-511; 736 NW2d 574 (2007).

[11] *West v GMC*, 469 Mich 177, 185; 665 NW2d 468 (2003).

[12] *Id.* at 186.

[13] *Henry v Detroit*, 234 Mich App 405, 409; 594 NW2d 107 (1999).

[14] *West*, 469 Mich at 188 n 15.

[15] *Skinner v Square D Co*, 445 Mich 153, 166; 516 NW2d 475 (1994).

[16] *Taylor v Modern Engineering, Inc*, 252 Mich App 655, 662; 653 NW2d 625 (2002).

[17] *Id.* at 656.

[18] *Id*.

reason that the plaintiff's skills were no longer needed.[19] The plaintiff alleged that he was fired because he had reported safety concerns about conditions in the plant.[20] Specifically, in January 1999, he had told one of the defendant's representatives that he intended to report his concerns to a governmental agency.[21] In mid-February 1999, the plaintiff told his supervisor that he had contacted the Department of Labor about filing a complaint.[22]

This Court affirmed the trial court's grant of summary disposition in favor of the employer because "the short time between [the] plaintiff's participation in protected activity and the termination of [the] plaintiff's employment, without more, is insufficient to establish that the stated reason was a mere pretext."[23] The *Taylor* panel explained: "The lack of evidence other than the timing of [the] plaintiff's termination in relation to his participation in protected activity fails to create a genuine issue of material fact that the termination was retaliatory. Rather, [the] plaintiff's reliance solely on the timing of his termination merely serves to encourage speculation."[24]

If the plaintiff successfully proves a prima facie case under the WPA, the burden shifts to the defendant to articulate a legitimate business reason for its decision to discharge the plaintiff.[25] If the defendant produces evidence establishing the existence of a legitimate reason for the discharge, the plaintiff then has the opportunity to prove that the legitimate reason offered by the defendant was not the true reason, but was only a pretext.[26]

C. APPLYING THE STANDARDS

We conclude that Debano-Griffin offered no evidence to create a genuine issue of material fact on the causation element of her WPA claim. And even assuming that Debano-Griffin established her prima facie case, defendants have offered a legitimate, budgetary reason for firing her. And she has failed to offer evidence that this business reason was merely a pretext.

The fact that Debano-Griffin's position was eliminated from the 2005 budget after she reported the improper transfer of funds is evidence only of a temporal connection between

---

[19] *Id.* at 656-657.

[20] *Id.* at 657.

[21] *Id.*

[22] *Id*. at 658.

[23] *Id.* at 662.

[24] *Id*.

[25] *Shaw v Ecorse*, 283 Mich App 1, 8; 770 NW2d 31 (2009); *Roulston v Tendercare, Inc*, 239 Mich App 270, 280-281; 608 NW2d 525 (2000).

[26] *Shaw*, 283 Mich App at 8, citing *Roulston*, 239 Mich App at 280-281.

events. This sequence of events, standing alone, "does not demonstrate a causal connection between the protected activity and any adverse employment action[.]"[27] Debano-Griffin was required to offer some evidence from which a jury could infer that her reporting activities influenced defendants' decision to eliminate her position.[28] Because she failed to offer any such evidence, defendants were entitled to summary disposition.

We reverse the trial court's decision denying defendants' motion for summary disposition and remand for entry of judgment in favor of defendants. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ William C. Whitbeck

---

[27] *West*, 469 Mich at 186. See also *Shively v Battle Creek Public Schools*, unpublished opinion per curiam of the Court of Appeals, issued February 1, 2005 (Docket No. 249716) (affirming summary disposition in favor of the defendant on the causation element because the plaintiff "failed to show evidence of such intent other than his own subjective belief and one teacher's comment that [the defendant] was in 'damage control' after plaintiff's report" of workplace safety violations); *Upton v Phoenix Composite Solutions, Inc*, unpublished opinion per curiam of the Court of Appeals, issued January 12, 2010 (Docket No. 292044) (affirming summary disposition because "there is no evidence other than timing that Upton's protected activity triggered any unwarranted adverse employment action"). Compare with *Shaw*, 283 Mich App at 15-16 (concluding that question of fact existed where, "in addition to the temporal connection," the plaintiff was told that he was "in trouble" and that the defendant would "go after [him]" because he testified in a discrimination suit against the defendant, and where the plaintiff was subjected to "unprecedented" disciplinary action); *Vandyke v Leelanau Co*, unpublished opinion per curiam of the Court of Appeals, issued February 23, 2010 (Docket No. 286775) (July 26, 2010, Docket No. 140882) (concluding that a question of fact existed where, in addition to temporal proximity, the plaintiff's actions were discussed at the termination meeting and her superior expressed his displeasure at her reporting activities).

[28] *West*, 469 Mich at 185.