IN THE COURT OF APPEALS OF IOWA

No. 7-411 / 06-1729
Filed October 12, 2007

JULIE HOLDING,
Plaintiff-Appellant,

vs.

GRAHAM MANUFACTURING CORPORATION and ASSA ABLOY DOOR GROUP, L.L.C.,
Defendants-Appellees.

Appeal from the Iowa District Court for Cerro Gordo County, John Stuart Scoles, Judge.

Plaintiff appeals district court decision to grant defendant's motion for judgment notwithstanding the verdict. **REVERSED AND REMANDED.**

Jackie D. Armstrong, Kim R. Sniker, and David E. Funkhouser of Brown, Kinsey, Funkhouse & Lander, P.L.C., Mason City, for appellant.

Randall E. Nielsen of Pappajohn, Shriver, Eide & Nielsen P.C., Mason City, for appellee.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MAHAN, P.J.

Julie Holding was terminated from her position at Graham Manufacturing Corporation, a wholly owned division of Assa Abloy Door Group, L.L.C., on or about May 14, 2003. She filed the present lawsuit contending Graham terminated her employment because she was seeking workers' compensation benefits. A jury concluded the termination was done in retaliation and awarded her $1 million in total damages.[1] Graham filed a motion for judgment notwithstanding the verdict (JNOV) challenging the sufficiency of the evidence behind the verdict and the damages awarded by the jury. The district court granted Graham's motion for JNOV finding there was insufficient evidence to prove Holding's pursuit of workers' compensation benefits was the determining factor in Graham's decision to discharge Holding. Because the court found there was not sufficient evidence to prove liability, it did not reach Graham's alternative claim regarding the damages awarded by the jury. Holding appeals, claiming there was sufficient evidence to support the jury's verdict.

I. Standard of Review

We review a district court ruling on a motion for JNOV for correction of errors at law. *Midwest Home Distrib., Inc. v. Domco Indus. Ltd.*, 585 N.W.2d 735, 738 (Iowa 1998). We, as the district court, must view the evidence in the light most favorable to the party against whom the motion was made, regardless of whether that evidence is contradicted. *Slocum v. Hammond*, 346 N.W.2d 485, 494 (Iowa 1984). "[T]he court must draw all reasonable inferences in favor of the

[1] The jury awarded $50,000 for past wages, $25,000 for past mental pain and suffering, $150,000 for lost future wages, and $775,000 in punitive damages.

nonmoving party, and it may not make credibility determinations or weigh the evidence." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150-51, 120 S. Ct. 2097, 2110, 147 L. Ed. 2d 105, 122 (2000) (citations omitted). Although we review the record as a whole, we must disregard all evidence favorable to Graham, the moving party, that the jury is not required to believe. *Id.* at 151, 120 S. Ct. at 2110, 147 L. Ed. 2d at 122. Stated another way, we will give credence to the evidence favoring Holding, the non-moving party, as well as that evidence supporting Graham, the moving party, so long as that evidence is uncontradicted and unimpeached, at least to the extent that evidence comes from disinterested witnesses. *See id.*, 120 S. Ct. at 2110, 147 L. Ed. 2d at 122.

When reviewing whether the district court erred in granting a motion for JNOV, our review focuses on whether there was sufficient evidence to justify submitting the question to the jury. *Slocum*, 346 N.W.2d at 494. If there is substantial evidence in support of each element of the plaintiff's claim, the motion should have been denied. *See id.* (citations omitted).

II. Background Facts

Holding began working for Graham in February of 1999. Her training supervisor rated her job skills between "good" and "excellent." In November 1999 Holding and two other employees were given a joint disciplinary warning because several doors produced during their shift were of poor quality. Despite this warning, Holding received several raises and was promoted in October 2001 to the booking department.[2] On April 17, 2002, Holding injured her back at work.

[2] She also received a disciplinary warning for absenteeism. This warning noted Holding had called in sick to work and that "2 absences in less than 3 months is excessive."

The doctor put her on light duty and on May 30, 2002, referred her to a specialist. Holding gave this referral note to her department supervisor, Robert Morrison.

Days later, Morrison disciplined her for substandard performance. Under Graham's disciplinary program, Morrison had the option to discipline Graham with a verbal warning or a "step" warning. The step warning is a severe warning because an employee is automatically terminated if they receive four step warnings within a specified time frame. Morrison gave Holding a step warning.

On June 14, 2002, Holding's doctor faxed Graham more specific work restrictions. Three days later, Holding received a second step warning from Morrison's assistant, a junior level manager at Graham. This written violation also indicated she was being disciplined for substandard performance.

Graham held monthly all-employee meetings to discuss workers' compensation costs by department. Morrison arranged a meeting with Jeff Neuwohner, Graham's safety manager in charge of workers' compensation, to discuss Holding.

On June 26, 2002, Holding's doctor notified Graham's workers' compensation insurer that Holding had a herniated disc with nerve root impingement. Two days later, Morrison sent the following email to Nancy Troe, a person in the human resource department:

> [Holding's] back injury caused her to go home early tonight. After giving the matter some thought, I reviewed the minutes of our meeting with Jeff [Neuwohner], and remembered that light duty workers comp people can be denied pay if they refuse work, so I've come up with a light duty list that falls within her restrictions: inventory, clean cull boards, sweep blue shed, hose down loading docks 1 and 2, dust west wall of machining, blow out under conveyors, dust conveyors, dust unused machines, wash fork lifts, make 2 1/8" plugs, sweep empty trailers, clean rest rooms . . . .

> Also, her former job has come open in prefinish, I would like your help with a counseling session that under the circumstances, it might be in her best interests and an improvement to her physical and emotional health to bid out of the booking area. I'll be in at 2 as usual and hope to confer with you on this matter at that time.

Holding met with Morrison and Troe on June 29. After the meeting, Holding reluctantly agreed to take a decrease in pay and other seniority benefits to transfer to her former department. Morrison and Troe wrote a memo documenting their meeting with Holding. While Morrison's email only discussed Holding's back injury and did not mention her work performance, the memo created by Troe and Morrison to memorialize the meeting noted that their concern only centered on her work performance, not her back injury.

When Holding reported to her new department, her supervisor, Jim Proctor, refused to look at her work restrictions. Instead, he told her to give them to the human resource department. When given the restrictions by human resources, he questioned whether they were truly necessary.

On July 26, 2002, Holding was injured when a coworker pushed a stack of doors onto her ankle. The incident report documenting the accident indicates the injury was not Holding's fault. Holding missed work for one month and then returned to work with the same work restrictions for her back.

On September 23, 2002, Holding twisted her knee at work. She was on temporary work restrictions for this injury for one week. The day after her work restrictions ended, Proctor spoke with her about her future with the company in light of Graham's "excessive injury" policy.

Holding hired an attorney to help get her workers' compensation benefits paid. Her attorney contacted Graham's workers' compensation insurance company on January 16, 2003.

In March Holding received her third step warning. Proctor issued this substandard performance warning because Holding had damaged sixteen doors using a particular sanding machine.

Holding wrote a note to the human resources department expressing her frustrations with Proctor. Two weeks later, Proctor gave her a fourth step warning for substandard performance. Pursuant to Graham's discipline policy, she was summarily terminated.

The key factual disputes at trial surrounded the basis behind the disciplinary violations and the alleged threats made by her supervisors throughout the disciplinary process. Holding claimed her first, second, and fourth step warnings were improper because the mistakes that served as the basis for the warnings were all made by other employees or temporary employees in her department. Evidence indicated the last mistake that led to the fourth step warning and therefore her termination was indeed made by someone else. Despite the fact that Holding was not a supervisor or even a "lead" person in the department, her supervisors informed her that she was a "senior" person and therefore responsible for the mistakes of the other workers.

In regard to the third step warning, she presented evidence that she operated the sanding machine in the manner in which she was instructed. She also testified that the first time she was told not to use that specific machine

when sanding that particular type of door was when she received the step warning.

Holding also challenged Morrison's claim that other employees complained about her work performance. Morrison specifically identified one coworker, Dawn Ingersoll, as a person who tendered complaints about Holding's work quality. However, Ingersoll's trial testimony painted a much different picture. She stated that Holding worked "very well." Most importantly, she indicated that she had never complained about Holding's work and Morrison's claim that she had done so was false. Other coworkers testified that Holding was a good employee and had "excellent" sanding techniques.

Holding also testified that the meeting held on June 29, 2002, after Morrison sent the "workers comp people" email, was not a meeting whereby she willingly agreed to be demoted to her old position. Holding was told she had to either agree to the demotion or she would receive a third step warning and be terminated. Similarly, she stated her meeting with Proctor about the excessive injury policy consisted of threats that she would be terminated if she was injured again.

Holding also presented additional evidence suggesting Proctor's disdain for her work injuries. Her doctor had prescribed that she be allowed to rest on a chair during certain work times. Holding placed her name on this chair and left it in her work area. Once, while Holding was not working, Proctor picked up her chair and threw it across the room. He also allegedly made disparaging comments about her work restrictions while throwing the chair.

Finally, Holding produced evidence that other coworkers not pursuing workers' compensation claims were either not disciplined or lightly disciplined for the same or similar violations. For example, the employee who made the mistake that resulted in Holding's first step warning only received a verbal warning.

While much of the testimony from Holding and her coworkers was contradicted by Graham, the procedural posture of this case dictates that we must resolve these factual disputes in a light most favorable to Holding, the non-moving party. *Slocum*, 346 N.W.2d at 493. Therefore we will not attempt to engage in credibility determinations or weigh the evidence between the two parties. *See Reeves*, 530 U.S. at 150, 120 S. Ct. at 2110, 147 L. Ed. 2d at 122.

III. Merits

Under Iowa law, an employer generally may discharge an at-will employee at any time for any reason. *Theisen v. Covenant Med. Ctr., Inc.*, 636 N.W.2d 74, 79 (Iowa 2001). In recent years three exceptions have surfaced to add employee protections to the employer/employee relationship. *Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d 275, 281 (Iowa 2000). Generally, these exceptions fall into three categories: (1) discharges in violation of public policy, (2) discharges in violation of employee handbooks which constitute a unilateral contract, and (3) discharges in violation of a covenant of good faith and fair dealing. *Id.* The public policy exception is at issue in the present case because Holding claims she was terminated for pursuing her statutory right to compensation for a work-related injury. *See Springer v. Weeks & Leo Co.*, 429 N.W.2d 558, 560-61 (Iowa 1988) (concluding an employee-at-will had a remedy for damages when

terminated for pursuing a statutory right to compensation for a work-related injury); *see also Niblo v. Parr Mfg., Inc.*, 445 N.W.2d 351, 353 (Iowa 1989) (cause of action for wrongful termination exists where employee merely threatened to file workers' compensation claim).

To recover damages under the public policy exception to the employment at-will doctrine, "a plaintiff must establish (1) engagement in a protected activity, (2) adverse employment action, and (3) a causal connection between the two." *Teachout v. Forest City Cmty. Sch. Dist*., 584 N.W.2d 296, 299 (Iowa 1998). The first two elements are not challenged on appeal; the fighting issue is whether Holding presented sufficient evidence to prove there was a causal connection between her pursuit of workers' compensation benefits and Graham's decision to terminate her employment.

"[T]he elements of causation and motive are factual in nature and generally more suitable for resolution by the finder of fact." *Fitzgerald*, 613 N.W.2d at 282. "Thus, if there is a dispute over the conduct or the reasonable inferences to be drawn from the conduct, the jury must resolve the dispute." *Id.* at 289. Nevertheless, the "causation standard is high." *Id.* Our supreme court has expressed this causal connection as a question of whether the plaintiff's pursuit of workers' compensation benefits was the *determinative factor* in the defendant's decision to discharge the plaintiff. *Smith v. Smithway Motor Xpress, Inc.*, 464 N.W.2d 682, 686 (Iowa 1990); *see also Teachout*, 584 N.W.2d at 301 ("The employee's engagement in protected conduct must be the *determinative* factor in the employer's decision to take adverse action against the employee."). "A factor is determinative if it is the reason that 'tips the scales decisively one

way or the other,' even if it is not the predominant reason behind the employer's decision." *Teachout*, 584 N.W.2d at 302 (quoting *Smith*, 464 N.W.2d at 686). Proof that the adverse employment action occurred after protected employee conduct, without more, is insufficient to generate a fact question on the determining factor issue. *Phipps v. IASD Health Servs. Corp.*, 558 N.W.2d 198, 203 (Iowa 1997).

Causation was the principal issue in this case and was disputed at every stage of the proceedings. The district court denied Graham's motion for summary judgment, specifically finding Holding had chronicled "various actions and communications which may permit a jury to infer that [her] pursuit of her workers' compensation benefits was a 'determining factor' in the defendants' decision to terminate her." The district court also denied Graham's two separate motions for directed verdict on this issue. However, after the jury returned its verdict finding the termination was based on a retaliatory motive, the district court reversed its prior decisions and concluded there was not sufficient evidence to prove a causal connection between Holding's efforts to pursue a workers' compensation claim and her eventual termination. In its ruling, the court stated

> Even when viewing the evidence in the light most favorable to Holding, the court concludes that there was insufficient evidence to make out a prima facie case . . . . The plaintiff's claim in this regard is based upon speculation and conjecture. If the evidence presented in this case generated a jury question, then it is difficult to imagine a case where a jury issue would not be generated. Any time an employee receiving workers' compensation benefits was discharged, he or she could claim retaliation. To make a prima facie case, however, requires more. The court concludes that Holding failed to generate a jury question on the issue of whether her pursuit of workers' compensation benefits was the determining factor in her discharge.

This ruling implies Holding failed to prove causation because her proof was based solely on the circumstantial evidence that all of the disciplinary step warnings occurred after her work injury and after Graham received the doctor's note referring her to a specialist.

While a temporal argument, standing alone, is insufficient to generate a fact question on the causation issue, *Phipps*, 558 N.W.2d at 203, our review of the record reveals other circumstantial evidence to support her causation argument.

First, when taking the evidence in the light most favorable to Holding, a reasonable juror could conclude she was disciplined under false pretenses because most, if not all, of the four step warnings for improper performance did not reflect any mistake on her behalf. The evidence also showed she was punished much more severely than the employees who had actually committed the mistakes. Similarly, the all-employee meeting to discuss workers' compensation costs in each department, followed by Morrison's "workers comp people" memo suggesting that Holding be pushed out of his department, may be viewed as showing that Holding was demoted because of the expenses associated with her workers compensation benefits. And finally, Proctor's actions and threats demonstrate his open hostility towards her work-injury claims.

In sum, we find the totality of this evidence constitutes more than just a temporal analysis. Holding was not required to prove that Graham engaged in a coordinated, fourteen-month conspiracy to terminate her employment. She only had to prove her pursuit of workers compensation benefits was the determinative factor in the decision to terminate her employment. Based on the above-

mentioned facts in the record, we conclude a reasonable person could find that her pursuit of workers compensation benefits was "the reason which tip[ped] the scales decisively" towards terminating her employment. *See Smith*, 464 N.W.2d at 686. Because the heart of this case involved a dispute over the reasonable inferences that could be drawn from Graham's conduct, the jury was the proper entity to resolve the dispute. *See Fitzgerald*, 613 N.W.2d at 289 ("[i]f there is a dispute over the conduct or the reasonable inferences to be drawn from the conduct, the jury must resolve the dispute.").

IV. Conclusion

Having considered all arguments raised on appeal, whether or not specifically addressed in this opinion, we find there was substantial evidence to generate a jury question on the issue of whether Holding's pursuit of workers' compensation benefits was the determining factor in her discharge. Therefore, we reverse the trial court's ruling granting judgment notwithstanding the verdict on the issue of liability. We remand for further proceedings not inconsistent with this decision.

REVERSED AND REMANDED.