**IN THE COURT OF APPEALS OF IOWA**

No. 8-995 / 08-1002
Filed March 26, 2009

**CARMELA TUTTLE,**
Plaintiff-Appellee,

**vs.**

**KEYSTONE NURSING CARE CENTER, INC.,**
Defendant-Appellant.

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Appeal from the Iowa District Court for Benton County, Mitchell E. Turner, Judge.

Defendant appeals from a district court order denying its motion for judgment notwithstanding the verdict following a jury verdict in favor of plaintiff in her wrongful discharge action. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Iris E. Muchmore and Kerry A. Finley of Simmons Perrine, P.L.C., Cedar Rapids, for appellant.

John Werner of John Werner, P.L.C., Toledo, and Alison Werner Smith of Hayek, Brown, Moreland, & Smith, L.L.P., Iowa City, for appellee.

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

**DOYLE, J.**

Keystone Nursing Care Center, Inc. appeals from a district court order denying its motion for judgment notwithstanding the verdict following a jury verdict in favor of its former employee, Carmela Tuttle, in her wrongful discharge action. We affirm in part, reverse in part, and remand.

***I. Background Facts and Proceedings.***

This case arose in September 2006 when Tuttle was terminated from her employment at Keystone. Tuttle, a licensed practical nurse, was employed by Keystone as a night shift charge nurse. As such, she was required to supervise the certified nursing assistants (CNAs) who worked with her. Tuttle had difficulty managing some of the CNAs, particularly Kelly Pringle and Sharon Valentine. In November 2004 Tuttle received a verbal disciplinary warning after she and Pringle became involved in a loud argument about whether Pringle and Valentine properly cleaned the wheelchairs in their hall. Tuttle had complained to Keystone's administrator, Susan Meyer, and the director of nursing, Robyn Allen, on prior occasions about the quality of care these CNAs were providing to the residents. Tuttle's annual performance evaluations subsequently instructed her to "[c]ontinue to work on relationship [with] CNAs." Unfortunately, her relationship with them did not improve.

On August 31, 2006, Tuttle became engaged in another heated exchange with Pringle and Valentine about the proper placement of "chux," an absorbent bed liner, on residents' beds. The argument, which Pringle and Valentine each tape-recorded, took place over the course of several minutes in multiple residents' rooms. It began when Pringle refused to position the chux in the

manner Tuttle directed. Tuttle was concerned that the way the CNAs were placing the chux on beds put the residents at risk for skin infections. Tuttle demonstrated the way she wanted Pringle and Valentine to position the chux by laying it on top of an elderly patient. That resident can be heard on one of the recordings saying, "Take that off of me," and "Shut up." Linda McElroy, a nurse who witnessed the incident, stated she

> heard [Tuttle] clearly yelling at the CNA's that were in a resident's room and that [Tuttle] was standing in the doorway of the resident's room. [McElroy] . . . eventually went in the resident's room as the resident was stating, "what should I do, get that off of me," as [Tuttle] was placing the chux on top of the resident to demonstrate how she wanted it done. [McElory] stated, that [Tuttle] was "hollering over" the resident and that the resident was upset by the incident.

Meyer and Allen did not learn about the incident until September 5, 2006. After talking to the individuals involved and listening to the tape recordings, Meyer and Allen determined Pringle, Valentine, and Tuttle should be terminated immediately "as a result of acting in an unprofessional and inappropriate manner in front of patients." Meyer additionally told Tuttle she was being fired for "patient abuse" and reported the incident to the Iowa Department of Inspections and Appeals (DIA) as a potential case of dependent adult abuse. A representative from DIA later informed Meyer that no abuse had occurred.

Following her termination, Tuttle brought a wrongful discharge action against Keystone seeking both compensatory and punitive damages. Keystone moved for summary judgment. In Tuttle's resistance to Keystone's summary judgment motion, Tuttle alleged she was terminated from her employment at Keystone in violation of a public policy in favor of protecting the elderly from

abuse.[1] Tuttle asserted her conduct in "correcting the [CNAs] from improperly tending to patients" was in furtherance of that policy and was a determinative factor in her discharge. In reply, Keystone argued, "While there is admittedly a public policy interest in protecting the elderly from abuse, Tuttle was not engaged in any activity in furtherance of that policy. More importantly, her discharge in no way threatened that public policy."

The district court denied Keystone's motion for summary judgment, ruling, "[Keystone] acknowledges, and the Court finds, there is a public policy interest in protecting the elderly from abuse." The court further determined "the public policy would be undermined if an individual was discharged from her employment for engaging in protecting the elderly from abuse."

The case proceeded to a jury trial. At the close of Tuttle's evidence, Keystone moved for a directed verdict on the wrongful discharge claim, arguing in relevant part that

> [p]rior to submitting this case to the jury, the Court must decide as a matter of law whether: 1) the **particular acts** in which [Tuttle] was engaged are protected by a clearly defined public policy; and 2) that policy would be undermined by [Tuttle's] discharge.

In support thereof, Keystone stated, "We don't dispute there is a public policy against elder abuse," but it asserted Tuttle could not show her conduct on August 31, 2006, was necessary to prevent elder abuse. It further asserted she could not show her discharge threatened the public policy in favor of preventing

[1] In addition to alleging that her termination was wrongful "in violation of public policy," Tuttle's petition alleged her termination "constituted a breach of her employment contract and a breach of the implied covenants of good faith and fair dealing" and that Keystone's "conduct in procuring and relying on the surreptitious audio tape" violated Iowa Code section 808B.2(1)(d) (2007). These claims were dismissed by the district court in its summary judgment and directed verdict rulings, and Tuttle does not challenge their dismissal on appeal.

elder abuse or that her protected conduct was the reason for her dismissal. The district court denied Keystone's motion as to that claim, stating,

> I find that instructing subordinate health care providers in the proper care of elder patients, that that is . . . in furtherance of the policy of the State of Iowa and that a firing on that basis would be detrimental or harmful to the State of Iowa.
>
> . . . .
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> And my ruling is if her discharge was because she was instructing subordinate health care providers on the proper way of delivering care to elderly patients, then yes, the discharge would be in violation or would be damaging to . . . the Iowa public policy in favor of protecting elder patients.

The court also denied Keystone's motion for directed verdict as to Tuttle's claim for punitive damages.

The jury returned a verdict in favor of Tuttle. It awarded her $84,204.90 in compensatory damages and $32,500 in punitive damages. Keystone filed a motion for judgment notwithstanding the verdict and, alternatively, for a new trial, which the district court denied.

Keystone appeals and raises the following issues:

I. Whether Tuttle Was Not, as a Matter of Law, Engaged in a Protected Activity
II. Whether Tuttle's Discharge Jeopardized Public Policy
III. Whether the Evidence Was Sufficient to Support a Finding That Prevention of Elder Abuse Was the Determining Factor in Tuttle's Discharge
IV. Whether the Evidence Can Support a Punitive Damage Award
V. Whether the District Court Erred in Allowing Tuttle's Counsel To Introduce Undisclosed and Unfounded Evidence Regarding Keystone's Alleged Financial Condition During Closing Argument
VI. Whether The District Court Erred in Allowing Mallory to Testify

***II. Scope and Standards of Review.***

"We review rulings by the district court on a motion for judgment notwithstanding the verdict for errors at law." *Jasper v. H. Nizam, Inc.*, ____ N.W.2d ____, ____ (Iowa 2009). The issue we must determine is whether there was sufficient evidence to generate a jury question. *Easton v. Howard*, 751 N.W.2d 1, 5 (Iowa 2008). In deciding this issue we, like the district court, must view the evidence in the light most favorable to the nonmoving party and take into consideration all reasonable inferences that could be fairly made by the jury, regardless of whether that evidence is contradicted. *Slocum v. Hammond*, 346 N.W.2d 485, 493-94 (Iowa 1984). If substantial evidence in the record supports each element of a claim, the motion for directed verdict must be overruled. *Easton*, 751 N.W.2d at 5.

On the other hand, our review of a motion for a new trial based on discretionary grounds is for abuse of discretion. *Jasper*, ____ N.W.2d at ____. We also review a district court's decision as to compliance with section 668.11 for an abuse of discretion, *Hantsbarger v. Coffin*, 501 N.W.2d 501, 505 (Iowa 1993), as we do a court's decision on whether to extend the time allowed to designate expert witnesses. *Donovan v. State*, 445 N.W.2d 763, 766 (Iowa 1989); *Hill v. McCartney*, 590 N.W.2d 52, 54 (Iowa Ct. App. 1998).

***III. Wrongful Discharge in Violation of Public Policy.***

***A. Clarity and Jeopardy Elements.***

The parties agree Tuttle was an employee-at-will. Therefore, she could be fired "for any lawful reason or for no reason at all." *Lloyd v. Drake Univ.*, 686

N.W.2d 225, 228 (Iowa 2004). However, a discharge is not lawful if it violates public policy. *Id.* When a protected activity has been recognized through the implementation of an underlying public policy that would be undermined if an employee were discharged from employment for engaging in that activity, an action for the tort of wrongful discharge exists. *Davis v. Horton*, 661 N.W.2d 533, 535 (Iowa 2003). An employee asserting a wrongful discharge claim based on a violation of public policy must establish:

> (1) existence of a clearly defined public policy that protects employee activity [the clarity element]; (2) the public policy would be jeopardized by the discharge from employment [the jeopardy element]; (3) the employee engaged in the protected activity, and this conduct was the reason for the employee's discharge [the causation element]; and (4) there was no overriding business justification for the termination [the absence of justification element].

*Jasper*, ____ N.W.2d at ____; *Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d 275, 282 n.2 (Iowa 2000).

"It is generally recognized that the existence of a public policy, as well as the issue whether that policy is undermined by a discharge from employment, presents questions of law for the court to resolve." *Fitzgerald*, 613 N.W.2d at 282. "On the other hand, the elements of causation and motive are factual in nature and generally more suitable for resolution by the finder of fact." *Id.* Thus, the "difficult task for courts is to determine which claims involve public policy and which claims involve private disputes between employers and employees governed by the at-will employment doctrine." *Jasper*, ____ N.W.2d at ____. Keystone claims the district court in this case improperly abdicated its duty to

determine the existence of the first two elements to the jury. We conclude otherwise.

As our above discussion makes clear, the first step in determining whether the plaintiff has stated a cause of action for the tort of wrongful discharge in violation of public policy is to ascertain whether a clear, well-recognized public policy exists. *See Fitzgerald*, 613 N.W.2d at 282. "This important element sets the foundation for the tort and it is necessary to overcome the employer's interest in operating its business in the manner it sees fit." *Id.* "It also helps ensure that employers have notice that their dismissal decisions will give rise to liability." *Id.*

In determining whether a clear, well-recognized public policy exists, our supreme court has primarily looked to our statutes but also indicated our Constitution to be an additional source. *Id.* at 283 (expressing a "reluctance to search too far beyond our legislative pronouncements and constitution to find public policy to support an action"). Most recently, the court in *Jasper*, ____ N.W.2d at ____, declared administrative regulations are also a proper source for public policy due to the "fundamental congruence between statutes and administrative regulations." In doing so, the court recognized that

> our wrongful-discharge cases that have found a violation of public policy can generally be aligned into four categories of protected activities: (1) exercising a statutory right or privilege; (2) refusing to commit an unlawful act; (3) performing a statutory obligation; and (4) reporting a statutory violation.

*Jasper*, ____ N.W.2d at ____ (internal citations omitted). The court stated that its "adherence in our prior cases to identifying statutes as a source of public policy is consistent with our earlier pronouncement that the tort of wrongful

discharge should exist in Iowa only as a narrow exception to the employment-at-will doctrine." *Id.*

The parties in this case agreed, and the district court found, there is a clear and well-defined public policy in the state of Iowa in favor of the "prevention of elder abuse." They did not, however, identify the source of that public policy in the district court proceedings. In its ruling on defendant's motion for summary judgment, the district court relied on the United States Supreme Court's statement in *Washington v. Glucksberg*, 521 U.S. 702, 731, 117 S. Ct. 2258, 2273, 138 L. Ed. 2d 772, 795 (1997), that "the State has an interest in protecting vulnerable groups— including the poor, the elderly, and disabled persons—from abuse, neglect, and mistakes" in finding "there is a public policy interest in protecting the elderly from abuse." However, *Glucksberg* is not a wrongful termination case. Nor has our supreme court recognized judicial pronouncements as a proper source of public policy. *See Fitzgerald*, 613 N.W.2d at 283 (identifying proper sources of public policy). On appeal, Tuttle relies on Iowa Code chapter 235B as a declaration of a public policy that prohibits an employer from discharging an employee that acts to prevent elder abuse. But that statute is primarily concerned with the reporting of suspected dependent adult abuse. *See generally* Iowa Code ch. 235B. We thus question whether a clear, well-recognized public policy exists in this case.

However, we are prevented from deciding that issue because Keystone did not challenge the existence of the public policy supporting Tuttle's wrongful discharge claim until its reply brief. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must

ordinarily be both raised and decided by the district court before we will decide them on appeal."); *see also Sun Valley Iowa Lake Ass'n v. Anderson*, 551 N.W.2d 621, 642 (Iowa 1996) (stating an issue raised for the first time in a reply brief is not properly presented to the court). Up to that point, it had conceded a public policy existed in favor of preventing elder abuse, acknowledging in its appellate brief that "[t]he District Court reiterated, and Keystone agreed, that there is a public policy in Iowa against elder abuse." Thus, because the parties agreed in the district court proceedings that there is a clear and well-defined public policy in the state of Iowa in favor of the "prevention of elder abuse," we will assume without deciding that such a policy exists in this case. This brings us to Keystone's primary argument throughout the district court proceedings and on appeal: whether Tuttle's conduct jeopardized that policy. *See Fitzgerald*, 613 N.W.2d at 283-84 ("Once a clear public policy is identified, the employee must further show the dismissal for engaging in the conduct jeopardizes or undermines the public policy.").

The jeopardy element "requires the employee to show the conduct engaged in not only furthered the public policy, but dismissal would have a chilling effect on the public policy by discouraging the conduct." *Id.* at 284. "The conduct of the employee must be tied to the public policy, so that the dismissal will undermine the public policy." *Id.* Thus, an "essential element of proof to establish the discharge undermines or jeopardizes the public policy necessarily involves a showing the dismissed employee engaged in conduct covered by the public policy." *Id.* at 287. "No jeopardy can be shown if the plaintiff fails to match the conduct with the public policy." *Id.* at 287 n.5.

As Keystone recognizes, in denying the motion for directed verdict, the district court determined that if Tuttle was "instructing subordinate health care providers in the proper care of elder patients," such conduct would be "in furtherance of the policy of the State of Iowa" in favor of preventing elder abuse and "that a firing on that basis would be detrimental or harmful to the State of Iowa." In so ruling, the court additionally stated,

> [Y]ou say hollering and screaming, they say instructing. [The jury is] going to have to decide which of those two it is. If it is instructing, then I do find that that is in furtherance of the State's policy to protect against elder abuse. Now, if it is hollering and screaming, then I wouldn't find that . . . but I'm not the one who is going to make the decision . . . as to which of those two things actually happened.

Keystone argues the court erred in leaving "it for the jury to determine whether Tuttle had been engaged in such instruction or otherwise protected conduct."[2] We do not agree.

Most courts recognize, as do we, that a judge ought to decide "what public policy is and what kind of conduct is necessary to realize the public policy." Henry H. Perritt, Jr., *The Future of Wrongful Dismissal Claims: Where Does*

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[2] Keystone further argues the district court's "refusal to require the identification of a particular act necessitated a misstatement of the applicable legal standard" in Jury Instruction No. 11. That instruction provided in part that Tuttle was simply required to prove she was "*acting in furtherance* of Iowa's Public Policy of protecting residents from elder abuse" in order to establish her wrongful discharge claim. (Emphasis added.) Keystone asserts the district court should have identified the "particular act" Tuttle was engaged in rather than allowing the jury to make a "general finding" that Tuttle was "acting in furtherance" of a public policy. It did not, however, identify any instructional error as an issue on appeal in its statement of issues. Nor does it cite or argue any authority in support of such an issue. *See* Iowa R. App. P. 6.14(1)(*c*). "[O]ur review is confined to those propositions relied upon by the appellant for reversal on appeal." *Hyler v. Garner*, 548 N.W.2d 864, 870 (Iowa 1996). We consider only the errors specifically assigned by Keystone and adequately supported by analysis and authority. *Id.* Thus, we need not and do not address any supposed error in submitting such an instruction to the jury.

*Employer Self Interest Lie?*, 58 U. Cin. L. Rev. 397, 401 (1989); *see also Fitzgerald*, 613 N.W.2d at 282 (stating these questions are generally capable of resolution by a motion for summary judgment). The jury, on the other hand, "decides only the actual questions of what conduct the employee engaged in and what the employer's motivation was." Perritt, 58 U. Cin. L. Rev. at 402; *see also Fitzgerald*, 613 N.W.2d at 282 (stating the elements of causation and motive are factual in nature and generally more suitable for resolution by the finder of fact). The district court in this case thus correctly identified the public policy and the type of conduct necessary to realize that policy in its ruling on Keystone's motion for directed verdict. It also correctly allowed the jury to determine whether Tuttle was actually engaged in that conduct and what Keystone's motivation was in discharging her.

In light of the foregoing, we reject Keystone's contention that "[i]t is not sufficient that a factual question may exist in this regard." *See, e.g.*, *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."); *Teachout v. Forest City Cmty. Sch. Dist.*, 584 N.W.2d 296, 301 (Iowa 1998) (finding district court properly determined a factual issue existed as to whether plaintiff was engaged in a protected activity). We must now determine whether the court erred in finding sufficient evidence present in the record to show that Tuttle's dismissal from Keystone undermined the public policy in favor of preventing elder abuse.

In determining whether Tuttle established the jeopardy element of her claim, we must review her conduct in this case to determine if it sufficiently

matched the public policy of preventing elder abuse. *Fitzgerald*, 613 N.W.2d at 287. In doing so, we view the evidence in the light most favorable to her, as the party against whom the motion was made, regardless of whether that evidence is contradicted. *Slocum*, 346 N.W.2d at 494. We also afford her all reasonable inferences that could be fairly made by the jury, *Easton*, 751 N.W.2d at 5, and disregard all evidence favorable to Keystone as the nonmoving party that the jury is not required to believe. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150-51, 120 S. Ct. 2097, 2110, 147 L. Ed. 2d 105, 122 (2000).

At trial, Tuttle testified that "[f]or the residents' protection and their own safety, I felt it was best that the Chux would be placed so that when they would wet, that the wetness would even channel further away from them." She related that her argument with the CNAs on August 31, 2006, was an attempt to instruct them in the proper way to position the chux for the protection of the residents. Her concern was "always . . . for the resident's well-being and for the protection of the resident that was under my care." Meyer and Allen likewise testified that they believed Tuttle's "sole interest" in her argument with the CNAs "was to protect her residents."

Tuttle also presented the expert testimony of Dr. Dennis Mallory. He testified that if a chux is improperly placed underneath an elderly patient, "you may cause a skin tear . . . and any undue pressure, particularly with moisture . . . can cause breakdown," which could lead to an often fatal skin infection. Thus, in his opinion, Tuttle "did what she was supposed to do to intervene for the patient's welfare." He believed, after listening to the tape recordings of the argument, that

her conduct "was an attempt . . . to prevent neglect, mistreatment, and abuse of" her elderly patients.

These facts permit a reasonable inference to be drawn that Tuttle's conduct in instructing her CNAs as to the proper placement of chux on the beds of the nursing home's residents was in furtherance of the parties' agreed-upon public policy in favor of preventing elder abuse and that her dismissal for engaging in such conduct "would have a chilling effect on the public policy by discouraging the conduct." *Fitzgerald*, 613 N.W.2d at 284; *see also* Perritt, 58 U. Cin. L. Rev. at 408 (stating the answer to whether "the threat of dismissal is likely in the future to discourage the employees from engaging in similar conduct" "almost always will be 'yes'"). There are, of course, other inferences that could be drawn from the evidence. However, the procedural posture of this case dictates that we must resolve these factual disputes in a light most favorable to Tuttle as the nonmoving party. *Slocum*, 346 N.W.2d at 494. In light of the inferences we are required to draw in favor of Tuttle, we conclude there was sufficient evidence to support a determination that Tuttle engaged in policy-based conduct. *See Fitzgerald*, 613 N.W.2d at 289 ("We simply recognize a tort for discharge in violation of a public policy . . . and leave it to the jury to determine if the facts support the claim.").

***B. Causation Element.***

We next consider whether the evidence was sufficient to support a causal connection between the conduct engaged in by Tuttle and her discharge. This element "requires the employee to show the protected activity engaged in by the employee was the 'determinative factor in the employer's decision' to terminate the employee." *Jasper*, ____ N.W.2d at ____ (citation omitted). Keystone argues Tuttle failed to establish this element because there was no evidence that Tuttle believed elder abuse had occurred as a result of the CNAs' actions that she was attempting to correct. We do not agree.

The parties have framed the public policy at work in this case as the *prevention* of elder abuse. Thus, Tuttle was only required to show she was discharged for her effort to prevent elder abuse. Tuttle's statement in her deposition that "absolutely no abuse had occurred" is therefore not significant, especially when that statement is considered in context. In making that statement, Tuttle was denying Keystone's claim that *she* had abused a resident in her care by arguing with Pringle and Valentine in front of that resident.

We believe upon viewing the evidence in the light most favorable to Tuttle that a reasonable juror could conclude Tuttle's protected conduct was the "determinative factor in the decision to terminate" her employment at Keystone. *Fitzgerald*, 613 N.W.2d at 289. "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 (citation omitted).

Meyer testified that Tuttle was terminated due to her conduct on August 31, 2006, in arguing with the CNAs about the proper placement of the chux on residents' beds. She believed Tuttle acted in a "disrespectful" manner "to both the residents and the staff" and Tuttle "had other alternatives" available to her to correct the CNAs' behavior. Tuttle, however, testified that she had to take corrective action immediately or "by morning [the resident] could actually have an open sore and that sore could ultimately lead to . . . an infection." Tuttle also testified that she had complained to Allen on multiple occasions throughout her tenure as the night shift charge nurse about the quality of care these CNAs provided to Keystone's residents and that Allen "rarely followed through." Her personnel records are replete with instances of her complaints about the CNAs in her charge and their failure to provide adequate care to their elderly patients. In response to her complaints, Meyer told her at one point that she "would appreciate [Tuttle] not making the staff feel inferior in the future."

Although the "causation standard is high," it generally "presents a question of fact." *Fitzgerald*, 613 N.W.2d at 289. Thus, if there is a dispute, as here, "over the conduct or the reasonable inferences to be drawn from the conduct, the jury must resolve the dispute." *Id.* Based on the above-mentioned facts in the record, we conclude a reasonable jury could find that Tuttle's conduct in attempting to prevent the CNAs from abusing the elderly patients in their care was the "reason which tip[ped] the scales decisively" towards terminating her employment. *See Smith v. Smithway Motor Xpress, Inc.*, 464 N.W.2d 682, 686 (Iowa 1990). Because the heart of this case involved a dispute over the

reasonable inferences that could be drawn from Tuttle's conduct, the jury was the proper entity to resolve the dispute. *See Fitzgerald*, 613 N.W.2d at 289.

***IV. Punitive Damages.***

Keystone next claims the evidence presented in this case was insufficient to support the submission of Tuttle's claim for punitive damages. In *Jasper*, ____ N.W.2d at ____, our supreme court recognized that "[g]enerally, punitive damages may be awarded in an action for wrongful discharge from employment in violation of public policy." Wrongful discharge in violation of public policy will give rise to a claim for punitive damages when the discharge is committed with either actual or legal malice. *Jasper*, ____ N.W.2d at ____ (stating legal malice is shown when the wrongful conduct is committed with a reckless or willful disregard for the consequences of the conduct).

However, "when the grounds for the discharge have been recognized for the first time in the instant case to be in violation of public policy," our supreme court has refused to permit punitive damages in that action. *Id.* This is because an employer cannot willfully and wantonly disregard the rights of an employee derived from some specific public policy when that policy has not first been declared by the legislature or our courts to limit the discretion of the employer to discharge an employee at the time of the discharge. *Id.*

There has been no declaration by our courts or legislature that the public policy identified and agreed upon by the parties in this case would support a tort of wrongful discharge. We therefore conclude the district court erred in denying Keystone's motion for directed verdict on Tuttle's punitive damages claim. *See id.*; *see also Lara v. Thomas*, 512 N.W.2d 777, 782 (Iowa 1994) ("[P]unitive

damages should not be awarded when a new cause of action for retaliatory discharge is recognized."); *accord Smith*, 464 N.W.2d at 687. We thus reverse the award of punitive damages and remand for entry of judgment accordingly. We thus need not and do not address Keystone's claim that the court's "initial error of allowing punitive damages to be submitted to the jury was compounded by the introduction of unfounded, inaccurate and undisclosed 'evidence' about Keystone's supposed income."

***V. Expert Witness.***

Keystone finally claims the district court erred in allowing Tuttle's expert witness, Dr. Mallory, to testify. She argues he was not timely designated in violation of Iowa Code section 668.11 and Iowa Rule of Civil Procedure 1.508(3). We reject this claim for the following reasons.

As Tuttle rightly observes, section 668.11 does not apply to this case. That section sets forth rules for disclosure of expert witnesses in liability cases involving professional negligence. *See* Iowa Code § 668.11 ("A party in a professional liability case brought against a licensed professional . . . ."). This is not a professional negligence case, nor was it tried as such as Keystone attempts to contend. Furthermore, rule 1.508(3) simply provides that a previously undisclosed expert witness must be identified "*as soon as practicable*, but in no event less than 30 days prior to the beginning of trial except on leave of court." Iowa R. Civ. P. 1.508(3) (emphasis added).

Trial in this matter was originally scheduled for February 4, 2008. That trial date was continued on November 5, 2007. A few days after the continuance, Tuttle filed a motion seeking permission from the court to designate

Dr. Mallory as an expert witness. A new trial date had not yet been set. The district court granted Tuttle's motion and entered a new order establishing deadlines for designation of expert witnesses. *See* Iowa R. Civ. P. 1.508(5) (stating the court has discretion to compel a party to disclose an expert witness to ensure that such disclosures "occur within a reasonable and specific time before the date of trial"). Tuttle formally designated Dr. Mallory as an expert witness on December 13, 2007. Keystone thereafter filed a designation of a rebuttal expert witness. The trial in this case did not begin until May 5, 2008. In light of the foregoing, we cannot conclude the district court abused its discretion in allowing Tuttle to designate Dr. Mallory as an expert witness months in advance of the trial. *Cf. Preferred Mktg. Assoc. Co. v. Hawkeye Nat'l Life Ins. Co.*, 452 N.W.2d 389, 393 (Iowa 1990) (determining court did not abuse its discretion in allowing expert witness designated only one week before trial to testify); *Sullivan v. Chicago & Nw. Transp. Co.*, 326 N.W.2d 320, 324 (Iowa 1982) (finding sanction barring railroad's expert from testifying was proper where expert not named until three weeks before trial).

***VI. Conclusion.***

We find there was substantial evidence to generate a jury question on Tuttle's wrongful discharge claim in violation of the public policy identified by the parties in this case. The district court's ruling denying Keystone's motion for judgment notwithstanding the verdict is thus affirmed as to that claim. However, based upon our conclusion that the court erred in denying Keystone's motion as to Tuttle's punitive damages claim, we reverse the award of punitive damages

and remand for entry of judgment accordingly. Keystone's other assignments of error are without merit.

The judgment of the district court is therefore affirmed in part and reversed in part. We remand for entry of judgment in accordance with our opinion. Costs shall be assessed one-half to each party.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**