

NOT DESIGNATED FOR PUBLICATION

LAURA GREER * **NO. 2004-CA-0033**
VERSUS * **COURT OF APPEAL**
MAGNOLIA INVESTMENT * **FOURTH CIRCUIT**
INC. D/B/A CHECKMATE *
SERVICES * **STATE OF LOUISIANA**

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2002-12455, DIVISION "A"
Honorable Carolyn Gill-Jefferson, Judge

Judge Roland L. Belsome

(Court composed of Judge David S. Gorbaty, Judge Leon A. Cannizzaro Jr.,
Judge Roland L. Belsome)

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AFFIRMED

STATEMENT OF THE CASE

On August 7, 2002, Laura Greer (“Greer”) filed a Petition for Damages alleging her employer, Magnolia Investment d/b/a Checkmate Services (“Magnolia”) terminated her employment in violation of La. R.S. 23:1361, because she asserted a workers’ compensation claim. In response to the petition Magnolia filed An Exception of No Cause/No Right of Action and an Answer denying Greer’s allegations. Magnolia also filed a Motion

for Summary Judgment on September 17, 2003.

A Supplemental and Amending Petition was filed on April 25, 2003, naming Chailland Business Services (“Chailland”) as a joint and solidary obligor liable to Greer for her alleged wrongful termination. Chailland was contracted to handle payroll and related matters for Magnolia. Chailland did not answer the lawsuit, but rather filed a Motion for Summary Judgment on September 22, 2003.

Magnolia’s and Chailland’s Motions for Summary Judgment were addressed by the trial court on October 3, 2003. The trial court granted both motions and dismissed Greer’s claims with prejudice. In ruling from the bench the judge stated, that on the evidence presented, Greer failed to meet her burden to establish a genuine issue of material fact to support a violation of La. R.S. 23:1361. The Judgment was reduced to writing and signed on October 13, 2003.

This appeal arises from the October 13, 2003 judgment dismissing Greer’s claims against Magnolia and Chailland. Appellant’s brief does not address defendant Chailland; however, Chailland did file a response in support of its dismissal by the trial court.

STATEMENT OF FACTS

On May 24, 2001, Greer was scheduled to meet with her supervisor,

Bobby Wilson (“Wilson”). Greer contends, while in route to the meeting, she fell down descending the staircase at Magnolia. Greer continued to the meeting and advised Wilson of the fall but did not file a written report of injury or seek medical attention at that time.

Several months later, August 16, 2001, Greer was transporting boxes to storage and reported an aggravation of the neck and back injuries she claimed to have suffered as a result of the May 24, 2001 fall. She did not report the injuries that day and did not seek medical attention. Days later, Greer went to the emergency room and followed up with her primary care physician, Dr. Robert Jeanfreau. At that time, Greer filed a claim with workers’ compensation for the injuries to her neck and back.

Under the instructions of Dr. Jeanfreau and neurologist, Dr. Archibald Melcher, Greer was temporarily totally restricted from work. In late December, Greer was released by Dr. Melcher to return to work on restricted duty. Magnolia informed Greer that work was available within her restrictions and requested that she report to work on January 2, 2002. Subsequently, Greer called and requested a two (2) week vacation. Greer’s supervisor, Wilson, granted the vacation over the phone. Wilson was later advised that vacations were restricted during that time period. Wilson immediately sent correspondence, by overnight mail explaining to Greer that

vacations were restricted during that time period and instructing her to report to work on January 5, 2002. Greer responded by sending correspondence stating that she would return to work on January 16, 2002, as originally discussed. Magnolia terminated Greer on January 8, 2002 for failing to report to work.

ANALYSIS

Greer filed a suit against Magnolia claiming Magnolia violated La. R.S. 23:1361, which prohibits an employer from discharging an employee because they filed a worker's compensation claim.

Appellate courts review summary judgments *de novo*, applying the same criteria used by the trial courts to establish whether summary judgment is appropriate. *Reynolds v. Select Properties, Ltd.*, 93-1480 (La. 4/11/94), 634 So.2d 1180. If "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits," fail to reveal a genuine issue of material fact, the mover is entitled to judgment as a matter of law. La. Code Civ. Proc. Ann. art. 966(B). Applying this standard of review, we find summary judgment appropriate in this case.

Louisiana Revised Statute 23:1361 prohibits an employer from discharging an employee for filing a workers' compensation claim.

La. R.S. 23:1361(B) provides:

B. No person shall discharge an employee from

employment because of said employee having asserted a claim for benefits under the provisions of this Chapter or under the law of any state or of the United States. Nothing in this Chapter shall prohibit an employer from discharging an employee who because of injury can no longer perform the duties of his employment.

The workers' compensation retaliatory discharge statute creates a civil cause of action. The statute charges the employee asserting such a claim with the burden of proving by a preponderance of the evidence that her discharge was because she asserted a workers' compensation claim. At trial the employee is required to establish the necessary facts by a preponderance of the evidence. Essentially, the evidence as a whole must show that the facts are more probable than not. *Nicholson v. Transit Management of Southeast Louisiana*, 781 So.2d 661, 2000-0706, (La.App. 4 Cir. 2/14/01), writ denied, 2001-0721 (La. 5/11/01), 792 So.2d 735.

The Appellant failed to establish a connection between her claim for workers' compensation and the termination. Contrarily, the evidence proved that Magnolia held Greer's position during the four (4) months she was unable to work and thereafter provided work that fit her restrictions, as recommended by her physician. Greer was terminated when she refused to report back to work.

It is not enough to show that an employee filed a workers' compensation claim and was subsequently terminated. The employee must show that she was terminated because she filed a workers' compensation claim. *Id.* at 668. Greer's only support for her allegations was her deposition testimony. Greer initially stated that her supervisor treated her differently after she fell in May. Yet, Greer did not inform Wilson that she was injured in May nor had she filed a claim for workers' compensation. Greer also testified that she believed Wilson wanted to eliminate the position to save the salary. Greer admitted that she had no documentation or witnesses to support her statements.

Greer failed to provide sufficient evidence that her termination was retaliatory for her filing a workers' compensation claim and therefore, the trial court did not err in its ruling dismissing Greer's claims against Magnolia and Chailland. Thus, for the reasons provided this Court affirms the trial court's judgment.

AFFIRMED