

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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BONNIE JEAN PERRY,

Plaintiff-Appellant,

v

HURON COUNTY, a Michigan Municipal  
Corporation,

Defendant-Appellee.

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UNPUBLISHED

July 5, 1996

No. 173241

LC No. 93-008322-NZ

Before: Neff, P.J., and Smolenski and D.A. Johnston,\* JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendant. We affirm.

Plaintiff was terminated from her position as executive secretary for the sheriff of Huron County by the incumbent sheriff effective January 1, 1989. Plaintiff brought this action over four years later alleging, in relevant part, wrongful discharge in violation of a just-cause employment contract. The trial court granted defendant's subsequent motion for summary disposition pursuant to MCR 2.116(C)(10). The trial court found that as of January 1, 1989, no question of fact existed that "plaintiff was an at-will employee and that it was within the powers of the incumbent sheriff to terminate her employment without just cause."

Thereafter, plaintiff moved to amend her complaint to allege a claim of retaliatory discharge in violation of public policy. Plaintiff alleged that she had been terminated by the incumbent sheriff in retaliation for exercising various constitutional and statutory rights.<sup>1</sup> Plaintiff sought damages for loss of back pay, future pay and fringe benefits.

In response, defendant argued, in relevant part, that plaintiff's claim of retaliatory discharge

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\* Circuit judge, sitting on the Court of Appeals by assignment.

sounded in tort pursuant to *Dunbar v Dep't of Mental Health*, 197 Mich App 1; 495 NW2d 152 (1992),<sup>2</sup> and was therefore barred by the three-year limitation period contained in MCL 600.5805(8); MSA 27A.5805(8).

The trial court found defendant's argument dispositive and denied plaintiff's motion. Specifically, the trial court found that the violation of rights alleged by plaintiff were injuries to persons or property and that plaintiff's proposed amendment therefore fell within the three-year limitation period contained in MCL 600.5805(8); MSA 27A.5805(8).

On appeal, plaintiff contends that the trial court erred in denying her motion to amend. Specifically, plaintiff argues that her claim of retaliatory discharge sounds in contract and, therefore, the six-year limitation period contained in MCL 600.5807(8); MSA 27A.5807(8) is applicable.<sup>3</sup>

MCR 2.116(I)(5) provides that where the grounds asserted in a motion for summary disposition are based on 2.116(C)(8), (9) or (10), the court shall give the parties an opportunity to amend their pleadings "unless the evidence then before the court shows that amendment would not be justified." This Court will not reverse a trial court's decision concerning a motion to amend absent an abuse of discretion that results in injustice. *Taylor v Detroit*, 182 Mich App 583, 586; 452 NW2d 826 (1989).

In the absence of disputed facts, the question whether a plaintiff's action is barred by a statute of limitations is a question of law to be determined by the trial judge. *Michigan Employment Security Comm v Westphal*, 214 Mich App 261, 263; 542 NW2d 360 (1995). On appeal, this Court reviews issues of law de novo. *Id.*

As explained in *Phillips v Butterball Farms Co, Inc (After Second Remand)*, 448 Mich 239, 244; 531 NW2d 144 (1995):

The general rule is that "in the absence of a contractual basis for holding otherwise, either party to an employment contract for an indefinite term may terminate it at any time for any, or no, reason." *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich 692, 694-695; 316 NW2d 710 (1982). This Court continued that nevertheless "some grounds for discharging an employee are so contrary to public policy as to be actionable." In addition to statutory causes of action for violation of explicit prohibitions, causes of action have been implied where the employee was discharged for failure or refusal to violate a law in the course of employment.

This Court continued in *Suchodolski* that "the courts have found implied a prohibition on retaliatory discharges when the reason for a discharge was the employee's exercise of a right conferred by a well-established legislative enactment."

In *Phillips*, our Supreme Court held that a claim of retaliatory discharge for filing a worker's compensation claim sounds in tort, not contract.<sup>4</sup> The Court's rationale was that the source of an employee's right against retaliatory discharge for filing a worker's compensation claim does not stem from any implied promise by the employer or term agreed upon by the contracting parties. *Id.* at 246, 248. Rather, the source of such a right by the employee arises independently from the employment contract, i.e., from public policy as expressed in 301(11) of the Workers Disability Compensation Act, MCL 418.301(11); MSA 17.237(301). *Id.* at 246-247. Because the employee's claim of retaliatory discharge sounded in tort, the Court further held that the employee's damages were not limited by contract principles. *Id.* at 251. Accordingly, the employee could recover full compensatory damages, including damages for lost wages and mental and emotional distress. *Id.* at 249-254.

In this case, the source of plaintiff's alleged right against retaliatory discharge does not arise from any implied promise or term agreed upon by defendant or the incumbent sheriff. Rather, the source of plaintiff's alleged right against retaliatory discharge arises independently of plaintiff's at-will employment contract, i.e., from public policy as expressed in the statutory and constitutional provisions plaintiff has cited. Like *Phillips*, we conclude that plaintiff's claim of retaliatory discharge sounds in tort, not contract.<sup>5</sup> Accordingly, we conclude that the trial court did not commit an error of law in determining that the six-year statute of limitations applicable to contract actions did not apply to plaintiff's claim of retaliatory discharge. Therefore, it appears that plaintiff's proposed amendment would not be justified in light of the trial court's holding that plaintiff's tort claim was barred by the three-year limitation period contained in MCL 600.5805(8); MSA 27A.5805(8). See MCR 2.116(I)(5). We note that plaintiff has not pursued on appeal any issue concerning the applicability of other statutory provisions limiting the time within which a tort action must be brought.<sup>6</sup> See, e.g., MCL 600.5813; MSA 27A.5813 ("All other personal actions shall be commenced within the period of 6 years after the claims accrue and not afterwards unless a different period is stated in the statutes."); see also, generally, MCL 600.5805; MSA 27A.5805; *Local 1064, RWDSU, AFL-CIO v Ernst & Young*, 449 Mich 322; 535 NW2d 187 (1995). Thus, we cannot say that the trial court abused its discretion in refusing to permit plaintiff to amend her complaint.

Affirmed.

/s/ Janet T. Neff  
/s/ Michael R. Smolenski  
/s/ Donald A. Johnston

<sup>1</sup> Specifically, plaintiff contended that she had been terminated by the incumbent sheriff for exercising rights granted to her under (1) the First Amendment, US Const, Am I; (2) the standards of conduct for public officers and employees act, MCL 15.341 *et seq.*; MSA 4.1700(71) *et seq.*, and; (3) the political activities by public employees act, MCL 15.401 *et seq.*; MSA 4.1702(1) *et seq.* On appeal, plaintiff has abandoned any claim asserted under the former statute.

<sup>2</sup> In *Dunbar, supra* at 10, this Court held that a claim of retaliatory discharge for having filed a workers' compensation claim sounds in tort, not contract.

<sup>3</sup> As authority for this argument, plaintiff relies on *Mourad v Automobile Club Ins Ass'n*, 186 Mich App 715; 465 NW2d 395 (1991), *Lopus v L&L Shop-Rite, Inc*, 171 Mich App 486; 430 NW2d 757 (1988), and *Watassek v Dep't of Mental Health*, 143 Mich App 556; 372 NW2d 617 (1985). In these cases, this Court held that a claim of retaliatory discharge sounds in contract. *Mourad, supra* at 727; *Lopus, supra* at 489-491; *Watassek, supra* at 564-565. Plaintiff requests that this Court reject the contrary holding in *Dunbar, supra*.

<sup>4</sup> In so holding, the Court expressly noted the conflict between the cases relied on by plaintiff, i.e., *Mourad, Lopus* and *Watassek*, see note 3, *supra*, and the case relied on by defendant, i.e., *Dunbar*. See *Phillips, supra* at 245-246.

<sup>5</sup> See also *Lear v Brighton Twp*, 184 Mich App 605, 607-608; 459 NW2d 26 (1990):

Where the nature and origin of an action to recover damages for injury to property arises by "implication of law," the three-year limitation period under § 5805(8) applies, despite the fact that the claim is stated under a contract theory. . . . However, where the contract action is based upon the breach of an express promise, then the six-year limitation period provided by § 5807(8) applies. [Citations omitted.]

<sup>6</sup> We express no opinion on the applicability of these provisions.