STATE OF MICHIGAN

COURT OF APPEALS

BETTY LYND,

Plaintiff-Appellant,

v

ADAPT INC., DOUG CARR, DON CROSS, and TOM KRAMER,

Defendants-Appellees.

UNPUBLISHED
November 13, 1998

No. 202644
Branch Circuit Court
LC No. 90-050319 CZ

Before: Smolenski, P.J., McDonald and Saad, JJ.

PER CURIAM.

In this action for retaliatory discharge from employment filed under the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq.;* MSA 17.428(1) *et seq.*, plaintiff appeals as of right from the trial court's judgment granting defendants' motion for a directed verdict.[1] Plaintiff also challenges evidentiary rulings made during trial. We reverse and remand.

I

Plaintiff argues that the lower court improperly granted defendants' motion for a directed verdict at the close of plaintiff's case. This Court reviews de novo the grant of a directed verdict. *Meagher v Wayne State University*, 222 Mich App 700, 707; 565 NW2d 401 (1997). We review all the evidence presented up to the time of the motion to determine whether a question of fact existed. *Hatfield v St Mary's Medical Center*, 211 Mich App 321, 325; 535 NW2d 272 (1995). In so doing, we view the evidence in the light most favorable to the nonmoving party, granting plaintiff every reasonable inference and resolving any conflict in the evidence in her favor. *Id.* If reasonable jurors could honestly have reached different conclusions, then neither the trial court nor this Court may substitute its judgment for that of the jury. *Hunt v Freeman*, 217 Mich App 92, 99; 550 NW2d 817 (1996). The grant of a directed verdict is appropriate only when no factual question exists upon which reasonable minds could differ. *Allen v Owens-Corning*, 225 Mich App 397, 406; 571 NW2d 530 (1997).

The WPA protects an employee who "reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of

this state, a political subdivision of this state, or the United States to a public body". MCL 15.362; MSA 17.428(2). To establish a prima facie case under § 2 of the WPA, a plaintiff must show that (1) she was engaged in protected activity as defined by the act, (2) the defendant discharged her, and (3) a causal connection exists between the protected activity and the discharge. *Chandler v Dowell Schlumberger Inc*, 456 Mich 395, 399; 572 NW2d 210 (1998). Here, the element in dispute at trial was the causal connection between plaintiff's planned report to the Department of Social Services (DSS) and her discharge from employment at Adapt, a corporation licensed to operate alternative intermediate services for the mentally retarded.

After viewing the evidence in a light most favorable to plaintiff, *Hatfield, supra* at 325, we must conclude that a question of fact existed regarding the causal connection between plaintiff's discharge and her protected activity. A causal connection can reasonably be inferred from two facts: first, the fact that plaintiff complained to defendants about the incidents of abuse or neglect without any effect apparent to her or her coworkers; and second, the fact that plaintiff was fired the day after her supervisor received notice that she was going to file a complaint with the DSS. Plaintiff has the right to ask the jury to believe the case presented to it, however improbable it might seem. *Hunt, supra* 99. Therefore, we reverse the lower court's judgment for defendants and remand the case for trial of the WPA claim.

We are not persuaded by defendants' arguments. Defendants argue that no reasonable juror could have found that plaintiff's protected activity motivated the decision to terminate her employment, because it was Adapt's policy to report suspected abuse or neglect to the DSS. However, plaintiff and her co-worker, Zegarski, testified that in practice, defendants permitted home supervisors to decide whether a report of abuse or neglect should be forwarded to the DSS or handled "in house." Additionally, plaintiff and her co-worker, Garman, testified that they made oral and written reports without seeing any visible change in procedures or staffing (although Garman assumed that defendant Carr had taken care of the problem she reported). Defendants also rely upon a DSS investigator's statement that plaintiff's complaints were the first DSS received about Adapt. Nevertheless, plaintiff still presented sufficient evidence to create a question of fact.

Defendants also argue that a reasonable juror would have found that plaintiff was discharged because of her poor performance as an employee, specifically, her failure to get along with staff, her harassment of a resident's mother, and her refusal to accept direction from supervisors. However, there was sufficient evidence to establish a question of fact regarding whether these reasons were pretextual. Because this Court is required to grant plaintiff every reasonable inference and resolve any conflict in the evidence in her favor, *Hatfield, supra* at 325, we must conclude that this was a jury triable fact issue.

Defendants also argue that plaintiff filed the DSS report to "punish" defendants, rather than out of genuine concern for the home's clients. However, plaintiff's motivation is not legally relevant. See *Phinney v Perlmutter*, 222 Mich App 513, 554; 564 NW2d 532 (1997) (reporting of misconduct in an agency receiving public money is always in the public interest, even where plaintiff was motivated by personal gain rather than the public good).

Under the applicable standard of review for directed verdicts, defendant was not entitled to judgment as a matter of law. Accordingly, we reverse and remand for a new trial.[2]

II

Plaintiff also raises two evidentiary issues, pertaining to the trial court's limitation of evidence of prior incidents of abuse and pertaining to her attempt to use the MESC transcript as substantive evidence. Because we have already determined that plaintiff is entitled to a new trial, we need not address these issues. Furthermore, plaintiff has not cited any authority in support of her evidentiary arguments, other than a conclusory and irrelevant statement that the MERC transcript is not hearsay within the definition of MRE 801(d)(2).[3] Plaintiff's failure to cite any legal authority in her discussion of this issue can be construed as abandonment of this issue for review. *Speaker-Hines & Thomas, Inc v Dep't of Treasury*, 207 Mich App 84, 90-91; 523 NW2d 826 (1994).

III

Finally, plaintiff claims that the lower court judge should be disqualified because he is prejudiced against plaintiff and plaintiff's counsel. To preserve a judicial disqualification issue for appellate review, the plaintiff must first move for disqualification in the trial court, and then, if the trial court judge denies the party's motion, request referral to the chief judge or state administrator. MCR 2.003(C)(3); *Welch v District Court*, 215 Mich App 253, 258; 545 NW2d 15 (1996). Here, plaintiff has not complied with these procedures. Accordingly, this issue is not preserved.

Furthermore, we see no grounds for disqualification. Plaintiff claims judicial bias, MCR 2.003(B)(1). To disqualify a judge on the basis of bias, a showing of both actual and personal prejudice is required. *Cain v Dep't of Corrections*, 451 Mich 470, 495; 548 NW2d 210 (1996). The challenged bias "must have its origin in events or sources of information gleaned outside the judicial proceeding." *Id.* at 495-496. A judge's opinions, formed on the basis of facts or events occurring in the proceeding will not serve as a basis for disqualification "unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.*, 496 (quoting *Liteky v United States*, 510 US 540, 555; 114 S Ct 1147; 127 L Ed 2d 474 (1994) (emphasis omitted). The party asserting partiality has a heavy burden of overcoming a presumption of impartiality. *Id.*, 497.

Plaintiff alleges that the trial judge's wife, an attorney, has represented Adapt, Inc. However, plaintiff has failed to substantiate this allegation, other than her own statement that she "has known for some time" about the legal relationship. We consider this issue abandoned for insufficient briefing. *Dresden v Detroit Macomb Hospital*, 218 Mich App 292, 300; 553 NW2d 387 (1996). Plaintiff also contends that the trial court's adverse rulings and comments about the prolonged litigation demonstrated prejudice. However, a trial judge's comment that a claim is frivolous does not establish disqualifying bias. *Ferrell v Vic Tanny International, Inc*, 137 Mich App 238, 248; 357 NW2d 669 (1984). Furthermore, repeated rulings against a litigant, even if

the rulings are erroneous, do not establish disqualification. *Wayne Co Prosecutor v Parole Bd*, 210 Mich App 148, 155; 532 NW2d 899 (1995). We therefore reject plaintiff's request for disqualification.

Reversed and remanded. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ Gary R. McDonald
/s/ Henry William Saad

[1] This appeal is the third occasion that plaintiff's case has come before this court. *Lynd v Adapt, Inc*, unpublished opinion per curiam of the Court of Appeals, decided August 6, 1996 (Docket No. 178294); 200 Mich App 305; 503 NW2d 766 (1993).

[2] We treat plaintiff's civil conspiracy argument as merely an effort to hold the individual defendants liable under the WPA. Plaintiff's complaint is, in substance, a one-count complaint filed under the WPA. The WPA provides exclusive relief to a plaintiff reporting her employer's illegal activity. See, e.g., *Dudewicz v Norris Scmid, Inc*, 443 Mich 68, 78-80; 503 NW2d 645 (1993), which held that a plaintiff could not sustain a public policy claim against her employer because the WPA was the exclusive remedy for the alleged wrong.

[3] Plaintiff's cursory reference to the hearsay rules is irrelevant because it fails to address MCL 421.11(b)(1); MSA 17.511(b)(1), which provides for confidentiality of information obtained in MESC hearings.