STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL STANLEY,

Plaintiff-Appellee,

v

PACKER CORPORATION d/b/a SUPERIOR PONTIAC-CADILLAC,

Defendant-Appellant.

UNPUBLISHED
March 22, 2002

No. 226921
Genesee Circuit Court
LC No. 96-048812-CL

Before: Cavanagh, P.J., and Neff and B. B. MacKenzie*, JJ.

PER CURIAM.

Defendant appeals as of right, the trial court's entry of judgment following a jury verdict awarding plaintiff $27,000 on his claim of retaliatory discharge in violation of the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq.* We affirm.

I

Plaintiff was hired by defendant automobile dealership in 1994 as a service advisor.[1] His job was to meet with service customers, write up their service orders, and evaluate their cars for other service and maintenance. Pursuant to an oral agreement, plaintiff was paid a base salary of $1,000 a month and various commissions on the service work he sold. The commission schedule was somewhat complicated. Plaintiff was paid a commission on the repair work, a commission on maintenance work or "k packages" (manufacturer's recommended service check-ups), and a bonus based on his average repair order hours. However, plaintiff was not paid his commission on a repair order until it was "closed," i.e., when the repairs were completed and the order was finalized in accounting.

Shortly after he was hired, plaintiff calculated that his monthly commission checks were less than the amount he had earned. He spoke with his supervisor numerous times and others at the dealership, but could not fully resolve his concerns. In early 1995, a partial resolution

[1] At the outset, we note that the facts are based on the record on appeal, which does not include the exhibits admitted in the lower court.

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

resulted in additional commission payment of $780. However, according to plaintiff, he received no statement of his commissions with his check, and therefore could not reconcile the shortages. Plaintiff continued to press his supervisors regarding his commission shortages, but without satisfaction. According to plaintiff, he believed defendant's wage payment shortages to be illegal, and a few weeks before he was fired, he contacted the City of Flint regarding the problem. Plaintiff testified that someone at the city suggested he contact an attorney. On the advice of an attorney, plaintiff forwarded a written memo requesting a statement of his commission earnings. According to plaintiff, when he again received no response, he informed his supervisors that he planned to contact public officials and take legal action regarding the wage shortages. Plaintiff was fired less than two hours later. Plaintiff then filed an action against defendant under the WPA, claiming that he was fired in retaliation for reporting suspected violations of the law. The trial court denied defendant's motion for a directed verdict.

II

Defendant contends that the trial court erred in denying its motion for directed verdict. We review de novo a trial court's decision regarding a motion for directed verdict. *Roulston v Tendercare (Michigan), Inc*, 239 Mich App 270, 278; 608 NW2d 525 (2000). Viewing all the evidence presented prior to the motion, this Court must determine whether a factual question existed, thereby precluding a directed verdict. *Id*. We view the evidence in the light most favorable to the nonmoving party, granting every reasonable inference and resolving any conflict in the evidence in the nonmoving party's favor. *Id*.

III

The WPA was enacted in 1981 and encourages employees to assist in law enforcement by protecting those employees who engage in whistleblowing activities. *Dolan v Continental Airlines*, 454 Mich 373, 378; 563 NW2d 23 (1997). The act seeks to protect the integrity of the law by removing barriers to employee reports of violations of the law and to protect the public by protecting employees who report such violations. *Terzano v Wayne Co*, 216 Mich App 522, 530; 549 NW2d 606 (1996); *Tyrna v Adamo, Inc*, 159 Mich App 592, 599-600; 407 NW2d 47 (1987).

Section 2 of the WPA provides in part:

> An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee … 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.]

To establish a prima facie case under the WPA, a plaintiff must show: (1) he was engaged in protected activity as defined by the act, (2) the defendant discharged him, 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); *Henry v Detroit*, 234 Mich App 405, 409; 594 NW2d 107 (1999).

A

Defendant first argues that the trial court erred in denying its motion for directed verdict because plaintiff's case was based on the reporting of a common law breach of contract, which is not a protected activity under the WPA. Plaintiff contends that he was engaged in a protected activity, as defined by the act, because the reporting of defendant's nonpayment of wages earned implicated Michigan's wages and fringe benefits act (wage act), MCL 408.471 *et seq*. We conclude that the evidence raised a triable issue of fact regarding whether plaintiff engaged in a protected activity. *Roulston, supra* at 282.

Protected activity under the act consists of (1) reporting to a public body a violation of a law, regulation, or rule; (2) being about to report such a violation to a public body; or (3) being asked by a public body to participate in an investigation. *Chandler, supra* at 399; *Roulston, supra* at 279. Where a plaintiff relies upon the theory that he was about to report a violation of law, the plaintiff must prove that element by clear and convincing evidence. MCL 15.363(4).

Plaintiff presented evidence of actions consistent with the purposes of the act. The language of the act requires that there be a "violation or a suspected violation" of law. MCL 15.362. Plaintiff testified that he believed defendant's actions regarding the payment of wages were illegal. According to plaintiff, he was continually short commission payments, and defendant provided no commission sheets with the checks, which was partly why plaintiff "figured it was illegal." Plaintiff testified that anyone on commission usually receives a commission sheet; that is just the way it is done. He had been around car dealerships a long time, and the way defendant was making payments just did not seem legal to plaintiff.

Plaintiff testified that his concerns were never resolved, although at one point, defendant acknowledged a shortage and made an additional payment to plaintiff. Plaintiff stated that he contacted the City of Flint and spoke with someone, a wage board official, to see what he could do about the suspected violation of the law. Further, the day he was fired, he had informed his supervisors that he "was going to a government official because [he] believed something was being done illegally" pertaining to defendant's payment of wages. This evidence supports a reasonable inference that plaintiff was engaged in a protected activity because he suspected that the nonpayment of commissions due an employee was a violation of the wage act.

The WPA typically involves laws connected to the employment setting, but it is not statutorily limited to particular laws and regulations. *Tyrna, supra* at 599; see also *Dudewicz v Norris-Schmid, Inc*, 443 Mich 68, 75; 503 NW2d 645 (1993) (reporting co-employee's violation of Criminal Code not different from traditional notions of whistleblowing). It encourages reporting to all agencies responsible for enforcement. Viewing the evidence and all reasonable inferences in the light most favorable to plaintiff, we find no error in the trial court's denial of a directed verdict on the basis that the suspected violation of law involved only a breach of contract. In this case, the suspected violation related to illegal labor practices, traditionally an area addressed by the WPA. *Id*.; *Terzano, supra* at 531. Moreover, remedial statutes such as the WPA are to be liberally construed in favor of the persons intended to be benefited. *Shallal v Catholic Social Services of Wayne Co,* 455 Mich 604, 611; 566 NW2d 571 (1997).

B

Defendant next argues that it was entitled to a directed verdict because plaintiff failed to establish a prima facie case under the WPA. Again, defendant argues that plaintiff failed to establish that he was engaged in a protected activity because he did not reference an actual law that was suspected of violation. As discussed above, we find no error in the trial court's conclusion that plaintiff raised a triable issue whether he was engaged in a protected activity with respect to the wage act. In particular, plaintiff testified that he had been around car dealerships a long time and that defendant's practice of paying commissions did not coincide with that of other dealerships or with other companies that paid commissions. A triable question of fact existed regarding whether plaintiff suspected that defendant's payment practices were illegal.

Defendant also argues that plaintiff's claims failed to meet the public motivation requirement necessary to establish causation, *Shallal*, *sup*ra at 621. We disagree. This was not a case where plaintiff threatened to report a violation of the law to prevent his own pending discharge, as in *Shallal*. *Id*. at 622 (the plaintiff used her own situation to extort the defendant not to fire her). In *Shallal*, the Court found that the plaintiff failed to establish that her discharge was causally related to her threatened report because the decision to discharge her was made before she threatened to report her supervisor, and she knew that she was to be fired. *Id*. The Court rejected the plaintiff's attempt to use the WPA as a shield against being fired. *Id*. Such circumstances are not present in this case.

Plaintiff's complaints related generally to defendant's system of commission payment. It was undisputed that defendant's system of payment was consistent every month. Plaintiff testified that he was not the only employee affected, that "everybody complained about it," and he "figured it out." Viewing the nature of plaintiff's complaint and the surrounding circumstances, plaintiff's actions vindicated not only his own interests, but also those of other employees, as well as, potentially, the public's interest in enforcement of the wage act.

Plaintiff testified that he was discharged less than two hours after he threatened to contact government officials. Further, after the confrontation with his supervisors, they walked directly to the comptroller's office, and then came to fire him. The evidence raised a jury question whether the protected activity in which plaintiff engaged was causally connected to his discharge. *Terzano*, *supra* at 533. Plaintiff established a prima facie case under the WPA. The trial court did not err in denying defendant's motion for a directed verdict.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Janet T. Neff
/s/ Barbara B. MacKenzie