

STATE OF MICHIGAN
COURT OF APPEALS

BOGDAN RADU,

Plaintiff-Appellee,

v

LEAR CORPORATION,

Defendant-Appellant.

UNPUBLISHED

June 15, 2006

No. 264672

Wayne Circuit Court

LC No. 04-431067-CD

Before: Kelly, P.J., and Markey and Meter, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted the trial court's denial of its motion for summary disposition of plaintiff's claim under the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq.* We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts and Procedural History

Plaintiff worked as a Senior Engineer in defendant's Dearborn facility. In June 2004, defendant made a decision to reduce its workforce due to business conditions. On July 6, 2004, plaintiff and his supervisor, Mark Heinze, met with Jeffrey Freiburger, defendant's Director of Human Resources, and plaintiff was informed that his employment was terminated. Freiburger gave plaintiff a letter stating that plaintiff's employment was terminated effective July 6, 2004, and a life insurance conversion form which indicated that plaintiff's termination date was July 7, 2004.¹ Plaintiff inquired about the availability of positions in Asia, and was told that no positions were available. Plaintiff cleaned out his office and left defendant's Dearborn premises. He left behind his employee badge and his laptop computer.

¹ Freiburger indicated that the termination of employment date on the insurance form was inaccurate, and should have been July 6, 2004.

Plaintiff went to defendant's Southfield facility to sign patent documents he had in his possession. No notary public was available in the Southfield facility, so plaintiff went to defendant's Troy office to sign the documents.²

On July 7, 2004, plaintiff went to defendant's Plymouth office and encountered Carl Suiter, defendant's Vice President of Human Resources for defendant's Asia Pacific Division. Plaintiff inquired about the availability of jobs in Asia; Suiter told plaintiff that no such jobs were available.³

On October 5, 2004, plaintiff filed suit in circuit court alleging age discrimination contrary to the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq.*, national origin discrimination in violation of the ELCRA,⁴ retaliatory termination in violation of the WPA (contending that his termination followed upon his act of complaining about defendant's "illegal" patent process), and retaliatory termination in violation of the Sarbanes-Oxley Act of 2002, 18 USC 1514 *et seq.* Defendant removed the action to federal court in November 2004. The federal court retained jurisdiction of the Sarbanes-Oxley claim, and remanded the state claims to circuit court.⁵

Defendant moved for summary disposition of plaintiff's WPA claim pursuant to MCR 2.116(C)(7), arguing that the claim was barred by the statute of limitations because it was not filed within 90 days of the alleged violation of the WPA, i.e., plaintiff's termination. MCL 15.363(1). Plaintiff argued that he was terminated on July 7, 2004 or later; therefore, his WPA claim was timely filed. The trial court denied defendant's motion, finding that plaintiff's WPA claim accrued on July 7, 2004, which was plaintiff's first day of unemployment.

II. Analysis

Defendant argues that the trial court erred in denying its motion for summary disposition. We agree and remand this matter for entry of an order granting summary disposition of that claim in favor of defendant. We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). The issue whether a claim was filed within the applicable limitations period is a

² In 2001, plaintiff signed an Employee Confidential Information and Intellectual Property Agreement that required him to assist defendant in the patent application process during the course of his employment and for three years thereafter.

³ Plaintiff stated that he attempted to meet with Suiter on July 6, 2004, but that Suiter could not meet with him at that time, and instead scheduled a meeting for July 7, 2004. Suiter asserted that he had no contact with plaintiff on July 6, 2004, that he did not schedule a meeting with plaintiff for July 7, 2004, and that his meeting with plaintiff on July 7, 2004, occurred unexpectedly.

⁴ Plaintiff was born and educated in Romania.

⁵ Plaintiff filed an administrative complaint contesting his termination. The federal court dismissed plaintiff's Sarbanes-Oxley claim, finding that plaintiff was terminated on July 6, 2004, and that he failed to file his complaint in a timely manner.

question of law that is reviewed de novo on appeal. *Jacobson v Parda Federal Credit Union*, 457 Mich 318, 324; 577 NW2d 881 (1998).

The period for filing a claim of unlawful retaliatory discharge under the WPA is 90 days. MCL 15.363(1). In Michigan, a “claim of retaliatory discharge accrues on the date the plaintiff is discharged.” *Parker v Cadillac Gage Textron, Inc*, 214 Mich App 288, 290; 542 NW2d 365 (1995).⁶ Plaintiff was notified on July 6, 2004, that his employment was terminated, and received written notification of his termination on that date. Immediately thereafter, plaintiff packed his office, told other persons his employment had ended, and left defendant’s premises. Plaintiff signed patent applications after he left defendant’s Dearborn facility; however, the agreement plaintiff signed in 2001 required him to assist defendant in the patent application process for three years after his employment ended.

Plaintiff appeared at defendant’s Plymouth office on July 7, 2004, of his own accord. No evidence showed that defendant requested or required that plaintiff do so, and no evidence showed that plaintiff performed any work for defendant on that date. Similarly, the fact that plaintiff received an insurance form indicating that his termination date was July 7, 2004, is irrelevant in light of the fact that plaintiff performed no work for defendant after July 6, 2004. *Id.*

The evidence demonstrated that plaintiff was terminated on July 6, 2004. Thus, the 90-day period for filing a WPA claim started on July 7, 2004, and ended on October 4, 2004. MCR 1.108(1). Contrary to plaintiff’s assertion, July 7, 2004, was day one of the 90-day period, and not day “zero.” *Dunlap v Sheffield*, 442 Mich 195, 200 n 5; 500 NW2d 739 (1993). Therefore, plaintiff’s complaint, filed on October 5, 2004, was untimely. MCL 15.363(1).

Reversed and remanded for entry of summary disposition in favor of defendant on plaintiff’s WPA claim. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Jane E. Markey
/s/ Patrick M. Meter

⁶ In *Collins v Comerica Bank*, 468 Mich 628, 633; 664 NW2d 713 (2003), our Supreme Court held that if no decision as to an employee’s status has been made as of the last day worked, the claim does not accrue until the date the employee is notified of his or her discharge. In this case, it is undisputed that plaintiff was notified of his discharge on July 6, 2004.