STATE OF MICHIGAN

COURT OF APPEALS

CARRIE LYNN COLEMAN, JASON STUART WITHERSPOON, MEREDITH JEAN WAYBRANT, and BETH ELLEN BROWNING, Plaintiffs-Appellees,	UNPUBLISHED January 15, 2009
v	No. 280230 Kalamazoo Circuit Court
CLUB OF KALAMAZOO, INC., RIVERSIDE, KAREN RAE BAKER, and CANDICE BRAUSCH, Defendants-Appellants.	LC No. 04-000665-CZ

Before: Zahra, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's orders denying their motion for a directed verdict and awarding attorney fees to plaintiffs. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs worked in defendants' health club, which was being remodeled but was still open to members. Plaintiffs' various duties included greeting members, maintaining the cleanliness and proper presentation of the facility, performing customer service duties, maintaining the equipment and pool, giving tours, and describing the club's remodeling plans to members.

Defendants claim that the trial court erred when it failed to grant defendants' motion for a directed verdict at the close of proofs during the jury trial. First, defendants argue that two of the plaintiffs, Meredith Waybrant and Jason Witherspoon, are not entitled to protection under the Michigan Whistleblowers' Protection Act (MWPA), MCL 15.361 *et seq.*, because they did not make any calls or complaints to the Michigan Occupational Safety and Health Administration (MIOSHA) regarding defendants' request that plaintiffs install insulation in various areas of the health club. Defendants assert that only plaintiffs Carrie Coleman and Beth Browning called MIOSHA regarding defendants' request to install the insulation, and these calls were not made on behalf of Waybrant and Witherspoon within the meaning of the MWPA. Defendants further assert there was no causal connection between Waybrant's and Witherspoon's discharges from employment and the phone calls that were made to MIOSHA. We disagree. We review de novo a trial court's denial of a motion for directed verdict. *Sniecinski v Blue Cross & Blue Shield of*

Michigan, 469 Mich 124, 131; 666 NW2d 186 (2003). In so doing, we review all evidence and all legitimate inferences in the light most favorable to the nonmoving party. *Id.* Only if the evidence, when viewed in this light, fails to establish a claim as a matter of law should a motion for a directed verdict be granted. *Id.*

MCL 15.362 states,

> 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, or a person acting on behalf of 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, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

The MWPA is a remedial statute that is to be liberally construed in favor of the persons it is intended to benefit. *Shallal v Catholic Social Services of Wayne Co*, 455 Mich 604, 611; 566 NW2d 571 (1997). A plaintiff must establish the following three elements to make a prima facie case under the MWPA: "(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). "A person is engaged in 'protected activity' under the [MWPA] where the person (1) reports a violation or suspected violation of a law or regulation to a public body, (2) is about to report such a violation to a public body, or (3) is asked by a public body to participate in an investigation." *Trepanier v Nat'l Amusements, Inc*, 250 Mich App 578, 583; 649 NW2d 754 (2002).

Defendants claim that Waybrant and Witherspoon did not engage in any protected activity and that the statutory language of the MWPA shows that a person must specifically seek out an employee's permission to act on his or her behalf in order for that employee to receive protection under the MWPA. However, we conclude that the plain language of the MWPA does not impose such requirements.

> The cardinal rule of all statutory construction is to identify and give effect to the intent of the Legislature. The first step in discerning intent is to examine the language of the statute in question. We read the language according to its ordinary and generally accepted meaning. Judicial construction is authorized only where it lends itself to more than one interpretation. [*Shallal*, *supra* at 611 (internal citations omitted).]

The clear and unambiguous statutory language of the MWPA prohibits an employer from making an adverse employment action against an employee because that employee, or a person "acting on behalf of" that employee, reports a wrongdoing. The statutory language does not state that the person acting on behalf of the employee must get that employee's permission or authorization before making the report on that employee's behalf. If the Legislature had intended that someone acting on behalf of an employee must receive that employee's consent

before reporting a wrongdoing in order for that employee to receive protection under the MWPA, it would have written this requirement into the statute. Given that the MWPA is to be liberally construed in favor of the persons it is intended to benefit, it should not be interpreted in a way that creates a limitation that is not apparent in the unambiguous language of the statute.

During the final staff meeting, Coleman admitted to defendants that she had called MIOSHA for the benefit of everyone. Also, Browning testified that she decided to call MIOSHA after a general discussion with plaintiffs about how they could obtain the information necessary to make certain they were safe. Thus, Coleman and Browning called MIOSHA on behalf of themselves and their coworkers, as evidenced by their concerns for the safety of everyone asked to install the insulation. Moreover, Waybrant and Witherspoon took part in the protected activity even though they did not directly dial MIOSHA and speak to someone. Waybrant shared with Browning and Coleman her concerns that she was not given the proper protective gear for installing the insulation, knowing that they also had concerns regarding safety and were planning to call MIOSHA. Waybrant also believed that she took part in the complaints made to MIOSHA. Witherspoon discussed his concerns regarding the insulation during a meeting with the other plaintiffs and believed that they collectively decided to call MIOSHA.

Further, there is a causal connection between the protected activities and the adverse employment actions taken against all plaintiffs, including Waybrant and Witherspoon. At some point both Waybrant and Witherspoon told defendants about their concerns regarding installing the insulation. After defendants learned that both Browning and Coleman had called MIOSHA, they stopped giving all plaintiffs the option of acquiring the necessary protective gear and installing the insulation. Instead, they forced plaintiffs to take a reduction in their hourly wages in order to pay someone else to do it. Soon thereafter, defendants discharged each of the plaintiffs. Although defendants claim that plaintiffs were discharged because the club was having monetary problems and they wanted to focus on construction rather than new memberships, defendants hired new employees immediately and posted a sign the same week announcing that the club was signing up new members. Also, defendants had recently trained plaintiffs to use new software for the club and had given plaintiffs the codes for the club's new security system. Defendants did not indicate to plaintiffs that they would be discharged from their positions until after Browning and Coleman made the phone calls to MIOSHA. Thus, there was a causal connection between the phone calls that Browning and Coleman made to MIOSHA and plaintiffs' reduction in pay and subsequent discharges.

Next, defendants claim that a directed verdict was warranted because plaintiffs' phone calls to MIOSHA did not qualify as "reports of a violation or a suspected violation" of a law or a regulation of a public body within the meaning of the MWPA. Instead, they claim that plaintiffs were motivated by bad faith rather than by a desire to protect the public's interest. We disagree.

Defendants allege that neither Coleman nor Browning lodged a formal complaint or sent anything in writing to MIOSHA, but they called MIOSHA only to ask questions regarding whether defendants could ask them to install the insulation and to determine what protective equipment was needed for this task. Yet Coleman and Browning both called MIOSHA with complaints as well as questions. During Coleman's conversation with the MIOSHA representative, she asked questions regarding safety and whether she was required to install the insulation, but Coleman also reported to the representative that she believed that the insulation was hazardous material, that she did not think she had been given proper instructions for

installing insulation appropriately, that she was "in a predicament," that she had gone to her supervisor and asked her to provide more safety guidance than mere advice to wear a long sleeve shirt when installing the insulation, that defendants stored the insulation in the club's waiting area, and that club members had commented that the insulation was hazardous material and had asked why it was in the waiting area. When Browning called MIOSHA, she described the situation to the representative, reported to him that her supervisor stated that the only requisite protective gear for installing insulation was a long sleeve shirt, and told the representative that she believed that this advice was wrong. Thus, both Coleman and Browning reported a violation or suspected violation of the rules and regulations governing the proper installation of a hazardous material, namely, fiberglass insulation. They did not call MIOSHA simply to ask questions.

Moreover, there is no indication that plaintiffs acted in bad faith. Coleman warned defendants that she could pose a risk to the club by installing the insulation without knowing how to do so properly and without having any rules or guidelines to follow. Her conversations with other employees regarding the insulation and its installation demonstrated her concern for their well-being, as well as her own. Her report to the MIOSHA representative that defendants were storing the insulation in the waiting area demonstrated her interest in the well-being of the club's members. Thus, her report to MIOSHA vindicated her interests, the interests of her fellow employees, the interests of the club's members, and the interests of the public in the enforcement of regulations concerning the proper handling of material such as fiberglass insulation. Each plaintiff demonstrated a concern for the safety of his or her fellow employees, as well as concern for his or her own safety, as evidenced by the discussions plaintiffs had with each other regarding defendants' request to install the insulation.

Accordingly, plaintiffs' phone calls and complaints to MIOSHA qualify as "reports of a violation or a suspected violation" of a law or regulation of a public body, within the meaning of the MWPA. Plaintiffs made these reports in good faith, thereby triggering protection under the MWPA.

Finally, defendants argue that Browning is not entitled to protection under the MWPA because she quit and, therefore, was not actually or constructively discharged. We disagree. First, evidence presented to the trial court indicated that Browning was discharged: Browning was asked to leave on the first day she returned to work after giving her two-week notice to quit.

Further, plaintiffs presented evidence indicating that Browning had been constructively discharged. "[A] constructive discharge occurs only where an employer or its agent's conduct is so severe that a reasonable person in the employee's place would feel compelled to resign." *Champion v Nation Wide Security, Inc*, 450 Mich 702, 710; 545 NW2d 596 (1996). "[T]he law does not differentiate between employees who are actually discharged and those who are constructively discharged. In other words, once individuals establish their constructive discharge, they are treated as if their employer had actually fired them." *Id.*

When Browning admitted that she called MIOSHA, she was told that she no longer had the option to install the insulation; instead, she would have to accept a decrease in pay from ten dollars per hour to seven dollars per hour in order for defendants to pay someone else to install the insulation. After hearing this news, Browning gave defendants her two-week notice to quit. We conclude that a reasonable person in Browning's place would feel compelled to resign from

her position when, immediately after admitting to her employer that she engaged in a protected activity under the MWPA, she learned that her pay would be cut by 30 percent.

Finally, the MWPA explicitly protects not only those who are discharged or threatened with discharge, but also those who are otherwise discriminated against regarding their compensation and the terms and conditions of their employment. MCL 15.362. A thirty-percent reduction in pay in retaliation for involvement in a protected activity qualifies as discrimination pursuant to the MWPA. Accordingly, Browning was protected under the MWPA because the evidence supports a finding that she was discharged, constructively discharged, or otherwise discriminated against within the meaning of the MWPA.

Affirmed.

/s/ Brian K. Zahra
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood