STATE OF MICHIGAN

COURT OF APPEALS

CHRIS GOODRICH,

Plaintiff-Appellant,

v

HOME DEPOT, HOME DEPOT, INC., and/or HOME DEPOT USA, INC., RICHARD TINDALL, MIKE KINZELL, a/k/a MIKE KINSAL, JULIA PETERS, and LINDSEY MAGLEY, a/k/a LINDSAY MAGLEY,

Defendants-Appellees.

UNPUBLISHED
January 22, 2009

No. 281652
Genesee Circuit Court
LC No. 06-083994-CL

Before: Servitto, P.J., and Owens and Kelly, JJ.

PER CURIAM.

In this wrongful termination case, plaintiff appeals as of right from the trial court's orders granting summary disposition for defendants. We affirm.

I. Facts

Defendant Home Depot hired plaintiff as a part-time sales associate in April 2001. By November 2002, plaintiff had been promoted to a department supervisor position. As part of his supervisor training, plaintiff was made aware of Home Depot's Mutual Attraction Policy (MAP). The MAP provides, in relevant part, the following:

> Associates in a direct reporting relationship may not become romantically involved under any circumstances. Violation will result in termination of the manager/supervisor and may also result in disciplinary action against the associate. . . . If there is the potential for romantic involvement, the manager/supervisor must bring the issue to his/her manager's attention **prior to any involvement** to determine whether a transfer of one or the other is appropriate. [Emphasis in original.]

After becoming a supervisor, plaintiff became close friends with an employee he supervised, Shandra Thomas. On one occasion in early April 2006, plaintiff went to Shandra's house to watch a movie and Shandra and plaintiff kissed. Plaintiff admits that he did not report the romantic relationship to any of his supervisors prior to the incident. Shandra's husband, Ben

Thomas, found out about this incident and started coming into the store looking for plaintiff. As a result, rumors started to circulate and both the store manager, Richard Tindall, and assistant store manager, Richard Gute, learned of the romantic relationship between plaintiff and Shandra. Promptly thereafter, Gute confronted plaintiff regarding these rumors and memorialized the discussion he had with plaintiff in a letter. Concerned that Gute had not followed proper procedure, Tindall then sought incident witness statements from both Shandra and plaintiff. In this statement, plaintiff admitted that he and Shandra kissed. On the same day that Tindall collected these statements, plaintiff also told Tindall that he had filed a complaint with the sheriff's department, that he intended to get a personal protection order (PPO) against Ben, and that he was going to court the following Monday.

Plaintiff went into work the following week and was discharged. At this point, Tindall inquired about the PPO and plaintiff indicated that he had not gotten it. According to Tindall, he terminated plaintiff because plaintiff violated the MAP when he became romantically involved with Shandra without first disclosing the relationship to his supervisor. However, plaintiff testified in his deposition that when Tindall terminated him, Tindall said: "Because of the events that have happened outside of the store, it's going to lead to us either you [sic] being terminated or quitting, or resigning."

Plaintiff then instituted this lawsuit, alleging that he was terminated in violation of the Whistleblower's Protection Act (WPA) and the § 8 of the Bullard-Plawecki employee right to know act (ERKA). The parties cross-motioned for summary disposition, defendants under MCR 2.116(C)(10) and plaintiff under MCR 2.116(I)(2). The trial court granted defendants summary disposition on the WPA claim because plaintiff had not engaged in a protected activity. Subsequently, the trial court, on defendants' motion for reconsideration, also granted defendants summary disposition on the ERKA claim. This appeal followed.

II. Standards of Review

This Court reviews a trial court's determination regarding a motion for summary disposition under MCR 2.116(C)(10) de novo. *Ernsting v Ave Maria College*, 274 Mich App 506, 509; 736 NW2d 57 (2007). In conducting such a review, we must view all the evidence in the light most favorable to the nonmoving party. *Id.* Summary disposition is proper if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

Further, this Court reviews matters of statutory interpretation de novo. Our primary goal in interpreting the meaning of a statute is to discern and give effect to the Legislature's intent. *People v Williams*, 268 Mich App 416, 425; 707 NW2d 624 (2005). If a statute's language is plain and unambiguous, the Legislature's intent is clear and this Court must enforce the provision as written. *Id.* In such instances, judicial construction is neither necessary nor permitted. *McManamon v Redford Charter Twp*, 256 Mich App 603, 610; 671 NW2d 56 (2003).

III. WPA

Plaintiff first argues that the trial court erred by finding that he did not engage in a protected activity under the WPA. Assuming, without deciding, that plaintiff was engaged in a protected activity, plaintiff's claim nonetheless fails because he has not provided prima facie evidence of causation.

Under the WPA, an employer may not discharge, or otherwise discriminate against, an employee who reports or is about to report an illegal activity, or suspected illegal activity, to a public body. MCL 15.362[1]; *Shallal v Catholic Social Services of Wayne Co*, 455 Mich 604, 610; 566 NW2d 571 (1997). "To establish a prima facie case under the WPA, plaintiff must show that (1) []he was engaged in a protected activity as set forth in the act, (2) defendant discharged h[im], and (3) a causal connection existed between the protected activity and the discharge." *Ernsting, supra* at 511.

A plaintiff may establish this causal connection through either direct evidence or indirect and circumstantial evidence. Direct evidence is that which, if believed, requires the conclusion that the plaintiff's engagement in the protected activity was at least a motivating factor in the employer's actions. *Sniecinski v Blue Cross & Blue Shield*, 469 Mich 124, 132-133; 666 NW2d 186 (2003). Conversely, a plaintiff can establish causation using circumstantial proof, but the "circumstantial proof must facilitate reasonable inferences of causation, not mere speculation." *Skinner v Square D Co*, 445 Mich 153, 164; 516 NW2d 475 (1994). Speculation or mere conjecture "is simply an explanation consistent with known facts or conditions, but not deducible from them as a reasonable inference." *Id.* (citation omitted). In other words, the proofs offered will be sufficient to create a triable issue of fact if the jury can reasonably infer from the evidence that the employer's decision was motivated by retaliation. See *Taylor v Modern Engineering, Inc*, 252 Mich App 655, 661; 653 NW2d 625 (2002)

In the present matter, plaintiff contends that he was terminated because he filed the complaint based on a statement Tindall made when he fired plaintiff. Tindall stated, "[b]ecause of the events that have happened outside of the store, it's going to lead to . . . either you being

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[1] MCL 15.362 provides:

> 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.

terminated or quitting, or resigning." Plaintiff asserts that this is direct evidence of a causal connection. We disagree. Plaintiff's conclusion that he was fired because he engaged in protected activity cannot reasonably be inferred from Tindall's statement. The statement's reference to the "events" leading to plaintiff's termination is simply too amorphous to allow for such an inference. The statement, standing alone, does not require the conclusion that the protected activity was a motivating factor for plaintiff's termination, *Sniecinski*, *supra* at 132-133, and it is equally as plausible that the statement meant that plaintiff was terminated because he violated the MAP. *Skinner*, *supra* at 164. Thus, plaintiff's belief that he was terminated due to the protected activity is mere conjecture and is too speculative to even constitute circumstantial evidence of causation creating a triable issue of fact for the jury. *Id.*; *Taylor*, *supra* at 661. Summary disposition for defendants was not improper.

III. ERKA

Plaintiff next claims that defendants violated § 8 of the ERKA because Tindall sought a written statement from plaintiff without first obtaining plaintiff's written authorization. We disagree. Section 8 of the ERKA governs an employer's collection and retention of information concerning an employee's non-employment activities. That provision provides:

> An employer shall not gather or keep a record of an employee's associations, political activities, publications, or communications of *nonemployment activities*, except if the information is submitted in writing by or authorized to be kept or gathered, in writing, by the employee to the employer. This prohibition on records shall not apply to the activities that occur on the employer's premises or during the employee's working hours with that employer that interfere with the performance of the employee's duties or duties of other employees. [MCL 423.508 (emphasis added).]

Accordingly, the requirements of § 8 are only triggered if the information the employer seeks includes information concerning the employee's "nonemployment activities." *Id.*

The ERKA does not define either "nonemployment activities" or employment. If a statute does not define a term, we will interpret it in accord with the Legislature's intent and the term's common and approved usage, considering the text and subject matter in which it is used. *USAA Ins Co v Houston Gen Ins Co*, 220 Mich App 386; 559 NW2d 98 (1996); *People v Lanzo Construction Co*, 272 Mich App 470, 474; 726 NW2d 746 (2006). In the absence of a statutory definition, we may also consult dictionary definitions. MCL 8.3a; *People v Gould*, 225 Mich App 79, 84; 570 NW2d 140 (1997). The ERKA does define the terms "employee" and "employer." "'Employee' means a person currently employed or formerly employed by an employer," MCL 423.501(2)(a), while "'[e]mployer' means an individual . . . or commercial entity, which has 4 or more employees and includes an agent of the employer," MCL 423.501(2)(b). The Random House Webster's College Dictionary (1997) defines "employment" as "the state of being employed[;] work; occupation." Thus, when read in context of the statute, employment activities means of or related to the employee's work or occupation and, conversely, non-employment activities are not of or related to the employee's work or occupation. Of course, in coming to this conclusion, we are mindful that what constitutes a non-employment activity will not always be clear-cut and, thus, is best to be decided on a case-by-case basis.

In our view, plaintiff wrongly presumes that § 8 of the ERKA applies to the instant matter. Plaintiff submitted a witness incident report to his employer, which indicated that he went to his co-worker Shandra's house where plaintiff and Shandra kissed. Although this incident did not occur during working hours, it was of or relating to plaintiff's employment because the interaction violated Home Depot's policy. Because the witness incident statement did not involve non-employment activities, § 8 of the ERKA does not apply. While the trial court granted defendants summary disposition on plaintiff's ERKA claim on other grounds, we will not reverse if the right result was reached, albeit for the wrong reason. *Coates v Bastian Brothers, Inc*, 276 Mich App 498, 508-509; 741 NW2d 539 (2007). Summary disposition for defendants was appropriate.

Affirmed.

/s/ Deborah A. Servitto
/s/ Donald S. Owens
/s/ Kirsten Frank Kelly