

STATE OF MICHIGAN
COURT OF APPEALS

TALISHA WINSTON,

Plaintiff-Appellant,

v

WAYNE STATE UNIVERSITY,

Defendant-Appellee.

UNPUBLISHED
February 26, 2009

No. 283282
Wayne Circuit Court
LC No. 06-604810-CD

Before: Donofrio, P.J., and K. F. Kelly and Beckering, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting defendant's motion for summary disposition in this suit brought pursuant to the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq.* We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When considering claims under the WPA, courts apply the burden-shifting analysis used in retaliatory discharge claims under the Civil Rights Act, MCL 37.2101 *et seq.*, and set forth in *Hazle v Ford Motor Co*, 464 Mich 456, 463-465; 628 NW2d 515 (2001). *Taylor v Modern Eng'g*, 252 Mich App 655, 659; 653 NW2d 625 (2002). If the plaintiff successfully proves a prima facie case under the WPA, the burden shifts to the defendant to articulate a legitimate business reason for the adverse employment action. *Id.* If the defendant produces evidence establishing the existence of a legitimate reason for the discharge, "at that point, in order to survive a motion for summary disposition, the plaintiff must demonstrate that the evidence in the case, when construed in the plaintiff's favor, is 'sufficient to permit a reasonable trier of fact to conclude that discrimination was a motivating factor for the adverse action taken by the employer toward the plaintiff.'" *Hazle, supra* at 465, quoting *Lyle v Malady (On Rehearing)*, 458 Mich 153, 176; 579 NW2d 906 (1998). As *Hazle* explains:

The inquiry at this final stage of the [burden-shifting] framework is exactly the same as the ultimate factual inquiry made by the jury: whether consideration of a protected characteristic was a motivating factor, namely, whether it made a difference in the contested employment decision. The only difference is that, for purposes of a motion for summary disposition or directed verdict, a plaintiff need only create a question of material fact upon which

reasonable minds could differ regarding whether discrimination was a motivating factor in the employer's decision. [*Id* at 466, internal citation omitted.]

In this case, as in *Taylor, supra*, the determination that plaintiff made a prima facie case is unnecessary in light of her failure to present sufficient evidence that defendant's stated reasons for firing her were pretextual. Defendant informed plaintiff her employment was terminated "due to insubordination and unsatisfactory work performance." Plaintiff's insubordinate attitude was glaringly apparent starting in December 2004 when she advised her supervisor of the details of his "disturbing behavior." While the record evidence shows that she could have held a reasonable belief that wrongdoing, including embezzlement, was taking place in the school, there is no evidence of a causal link between her alleged reports of that and her termination several months later. Moreover, defendant showed that it had legitimate reasons for asking her to stop investigating: the embezzlement had been reported to police and they were conducting their own investigation. While this does not refute plaintiff's assertion that she had a reasonable belief that wrongdoing was occurring and being covered up, it does permit defendant to satisfy the next step in the analysis: that it had a legitimate reason for terminating her.

Similarly, defendant refutes that plaintiff's reporting her supervisor's "fudging the books" was based on her own misunderstanding of what he was doing. Again, even if plaintiff held a reasonable belief that the supervisor was covering something up, defendant's evidence showing that he was not supports its claim that plaintiff was not fired for reporting wrongdoing but for refusing to accept that nothing illegal was occurring and continuing to spread rumors and false statements among the faculty. Plaintiff presents no evidence countering these facts. Accordingly, the trial court correctly granted summary disposition in favor of defendants.

Affirmed.

/s/ Pat M. Donofrio
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering