

STATE OF MICHIGAN
COURT OF APPEALS

AARON L. WAJER,

Plaintiff-Appellant,

v

OUTDOOR ADVENTURES, INC., GREG KING,
HEATHER FOCO, and RON PENIX,

Defendants-Appellees,

and

SPENDER & ROBB,

Defendant.

UNPUBLISHED

January 25, 2011

No. 294985

Genesee Circuit Court

LC No. 09-090633-CL

Before: METER, P.J., and M. J. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition under MCR 2.116(C)(8) and (10) on the basis that plaintiff's action, alleging a violation of the Whistleblower Protection Act (WPA), MCL 15.361 *et seq.*, was not filed within the 90-day limitations period set forth in MCL 15.363(1). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

We review de novo a trial court's decision regarding a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Plaintiff's complaint alleged that he was terminated from his employment on October 24, 2008, in violation of the WPA. Section 3(1) of the WPA, MCL 15.363(1), provides that "[a] person who alleges a violation of this act may bring a civil action for appropriate injunctive relief, or actual damages, or both within 90 days after the occurrence of the alleged violation of this act." Plaintiff filed his complaint on February 17, 2009, which was more than 90 days after he was terminated.

Plaintiff relies on the continuing violations doctrine to argue that his complaint was timely filed. However, the Supreme Court repudiated that doctrine in *Garg v Macomb Co Community Mental Health Servs*, 472 Mich 263, 290; 696 NW2d 646 (2005), amended 473

Mich 1205 (2005). Although the *Garg* Court did not expressly overrule *Phinney v Perlmutter*, 222 Mich App 513, 546; 564 NW2d 532 (1997), in which this Court applied the doctrine to a WPA claim, the *Garg* Court made the general statement that “the doctrine has no continued place in the jurisprudence of this state.” *Garg*, 472 Mich at 290. Moreover, the *Phinney* Court relied on *Sumner v Goodyear Tire & Rubber Co*, 427 Mich 505; 398 NW2d 368 (1986), and the *Garg* Court expressly overruled *Sumner*. *Garg*, 472 Mich at 290. Therefore, the continuing violations doctrine was inapplicable in the instant case, and the trial court did not err in granting defendants’ motion for summary disposition.¹

Affirmed.

/s/ Patrick M. Meter
/s/ Michael J. Kelly
/s/ Amy Ronayne Krause

¹ Even assuming, for purposes of argument, that the continuing violations doctrine is viable under the WPA, there would be no basis for applying the doctrine in this case. “[T]he mere existence of a continuing violation is insufficient if none of the relevant conduct occurred within the limitation period.” *Phinney*, 222 Mich App at 548. Plaintiff does not identify any retaliatory action that took place within the 90-day period preceding the filing of his complaint. Indeed, plaintiff set forth in his complaint alleged retaliatory actions but did not specify that they fell within the applicable 90-day period.