STATE OF MICHIGAN

COURT OF APPEALS

STEFANIE WOODRICK, Plaintiff-Appellant,	UNPUBLISHED August 19, 2014
v	No. 316098 Berrien Circuit Court
NILES CHARTER TOWNSHIP, Defendant-Appellee.	LC No. 12-000019-CZ

Before: M. J. KELLY, P.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

In this employment dispute, plaintiff Stefanie Woodrick appeals by right the trial court's opinion and orders dismissing her claim under the Whistleblowers' Protection Act (WPA), see MCL 15.361 *et seq*., and her claim premised on retaliation for reporting a violation of the act regulating the standards of conduct for public employees (Standards of Conduct Act), see MCL 15.341 *et seq*. Because we conclude that the trial court properly granted summary disposition in favor of defendant Niles Charter Township under MCR 2.116(C)(10), we affirm.

I. BASIC FACTS

Woodrick has worked for the Township since 2003. Beginning in June 2009, Woodrick spent half her time working as a building official assistant and the other half as a zoning administrator. She continues to work for the Township in these capacities, but has apparently increased the amount of time that she works on zoning matters.

Woodrick stated that James Ringler came to her in August 2010 and attempted to get her to approve a lot split for a property that he was selling. Although Ringler was a real estate broker, he was also the Township's treasurer and a Township Trustee. Woodrick refused because she felt the proposed split would violate the Land Division Act, MCL 560.101 *et seq.* Woodrick alleged that Ringler screamed at her and placed her in fear for her physical safety.

In October 2010, James Ringler met with Woodrick on behalf of a property owner who wanted to sell his property for use as a repair shop. Woodrick claimed that Ringler, along with the Township's clerk, Marge Durm-Hiatt, threatened and intimidated her in an attempt to get her to approve the use of the property without a special use permit, but she refused.

Woodrick reported these encounters to the Township's supervisor, Jim Kidwell, and he instructed her to document the incidents. Woodrick wrote out a letter describing the incidents and turned it in to Kidwell. The Township's Board considered her complaints in February 2011. The Township's Board hired an outside law firm to conduct an investigation, which was completed in March 2011. The Township's lawyer reported to the Board that the outside firm had found that Ringler and Durm-Hiatt did not violate the Township's policies.

In August 2011, Woodrick sent Kidwell a letter outlining her belief that she was underpaid by comparison to persons holding similar positions in other townships. According, she asked that her salary be increased to more than $40,000, which amounted to an approximately 33% increase in her annual salary, beginning with the 2012 fiscal year.

In October 2011, the Township's Board considered the budget for the next year and did not include Woodrick's requested raise. Instead, it gave a general 1.5% raise to every employee.

In January 2012, Woodrick sued the Township. In her amended complaint, Woodrick alleged that the Township failed to adequately investigate the incidents with Ringler and Durm-Hiatt and either knowingly or unwittingly participated in "a 'cover up' orchestrated by the Ringler and Durm-Hiatt faction." She also alleged that Ringler began to cast "aspersions on her performance" and threatened her continued employment after the investigation. This "retaliatory conduct", she related, has made her work environment "intolerable" to the point that she would have quit were it not for her need for medical insurance.

Woodrick further alleged that the Township and its officials took actions to adversely affect her conditions of employment in retaliation for her report of a violation or suspected violation of law in contravention of the WPA. Specifically, she alleged that the Township deliberately refused to grant her request for a salary increase as punishment for reporting Ringler and Durm-Hiatt's actions to the Township.

Woodrick also alleged a claim premised on public policy. She stated that the Township placed her in "financial and emotional distress" and that she suffered "loss of wages and benefits" as a result of her refusal to violate the land division act by approving Ringler's request for lot splits. Finally, she alleged that the Township's decision to deny her request for a raise violated the Standards of Conduct Act.

In September 2012, the Township asked the trial court to dismiss Woodrick's claims under MCR 2.116(C)(7), (8), and (10). It argued that Woodrick's WPA claim should be dismissed as untimely or, alternatively, because Woodrick would not be able to establish that she was engaged in protected activity, or suffered an adverse employment action, or that any adverse employment action was causally related to any protected activity. The Township maintained that Woodrick's public policy claim must be dismissed because she failed to properly plead such a claim and because she failed to plead in avoidance of governmental immunity. Finally, the Township argued that Woodrick's claim premised on a purported violation of the Standards of Conduct Act must be dismissed as untimely or because the undisputed facts show that the Township's employees did not violate that act.

In November 2012, the trial court held a hearing on the Township's motion. At the hearing, the court stated that there was no evidence that Woodrick suffered an adverse employment action. For that reason, it stated that it would grant the motion as to Woodrick's WPA claim. The court, however, decided to take the remaining claims under advisement. Later that same month, but before the trial court entered its order dismissing her WPA claim, Woodrick moved for reconsideration of the trial court's decision.

The trial court entered separate orders dismissing Woodrick's WPA claim for the reasons stated on the record and denying her motion for reconsideration in December 2012.

In April 2013, the trial court entered an opinion explaining its decision concerning Woodrick's remaining claims. The trial court stated that Woodrick failed to establish that she suffered an adverse employment action as a matter of law and, accordingly, could not establish her claims premised on public policy or a violation of the Standards of Conduct Act. It also stated that Woodrick's public policy claim was indistinguishable from her WPA claim and, therefore, was preempted by the WPA.[1] Consequently, the trial court entered an order that same month dismissing Woodrick's remaining claims.

Woodrick now appeals to this Court.

II. SUMMARY DISPOSITION

A. STANDARDS OF REVIEW

On appeal, Woodrick contends—in relevant part—that the trial court erred when it determined that, as a matter of law, the Township's decision to deny her request for a raise did not constitute an adverse employment action that could support her WPA claim and that it likewise did not constitute the withholding of salary increases in violation of MCL 15.342b(1).[2] This Court reviews de novo a trial court's decision on a motion for summary disposition. *Chen v Wayne State University*, 284 Mich App 172, 200; 771 NW2d 820 (2009). This Court also reviews de novo the proper interpretation and application of statutes such as the WPA and the Standards of Conduct Act. *Brecht v Hendry*, 297 Mich App 732, 736; 825 NW2d 110 (2012).

[1] Woodrick has not challenged the trial court's decision to dismiss her public policy claim.

[2] On appeal, Woodrick has not addressed alternative bases for establishing her WPA claim. We have, for that reason, limited our discussion to whether the trial court erred when it determined that the Township's decision to deny Woodrick's request for a raise was sufficient to establish Woodrick's WPA claim.

B. WPA CLAIM

We shall first address Woodrick's argument that the Township's decision to deny her request for a substantial raise constitutes an adverse employment action that can support a claim under the WPA. The WPA prohibits an employer from retaliating against an employee for reporting a violation or suspected violation of law. See MCL 15.362. Specifically, an employer "shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment . . . ." *Id.*

In interpreting this provision, Michigan courts have long characterized—as did the trial court here—the retaliatory actions that are prohibited under MCL 15.362 as adverse employment actions. See *Wurtz v Beecher Metro District*, 495 Mich 242, 251 n 14; 848 NW2d 121 (2014). And, consistent with that interpretation, Michigan courts typically state that a plaintiff must plead and be able to prove that he or she suffered an adverse employment action in order to establish a WPA claim. See, e.g., *Whitman v City of Burton*, 493 Mich 303, 313; 831 NW2d 223 (2013). However, our Supreme Court recently disavowed the notion that a plaintiff may establish a WPA claim by showing that he or she suffered some abstract "adverse employment action":

> While the term "adverse employment action" may be helpful shorthand for the different ways that an employer could retaliate or discriminate against an employee, this case illustrates how such haphazard, telephone-game jurisprudence can lead courts far afield of the statutory language. That is, despite courts' freewheeling transference of the term from one statute to another, the WPA actually prohibits different "adverse employment actions" than the federal and state antidiscrimination statutes. So we take this opportunity to return to the express language of the WPA when it comes to the necessary showing for a prima facie case under that statute. Put another way, a plaintiff's demonstration of some abstract "adverse employment action" as that term has developed in other lines of caselaw will not be sufficient. Rather, the plaintiff must demonstrate one of the specific adverse employment actions listed in the WPA. [*Wurtz*, 495 Mich at 251 n 14.]

Accordingly, in order to establish her WPA claim, Woodrick had to plead and be able to prove that she was engaged in a protected activity, that she was discharged, threatened, or otherwise discriminated against regarding her compensation, terms, conditions, location, or privileges of employment, and the Township's decision to discharge, threaten, or otherwise discriminate against her was causally linked to her involvement in the protected activity. *Id.* at 251.

In this case, Woodrick argued in response to the Township's motion for summary disposition that there was a causal link between the Township's decision to deny her request for a raise and her engagement in protected activity. Assuming that there is a causal link between the decision and Woodrick's participation in a protected activity, we must nevertheless determine whether Woodrick established a question of fact as to whether the Township's decision to deny her request for a raise constituted—in relevant part—discrimination regarding her compensation. MCL 15.362.

The Legislature used the phrase "otherwise discriminate" to delineate the type of actions that an employer may not take with regard to an employee's "compensation, terms, conditions, location, or privileges of employment" on account of the employee's participation in a protected activity. MCL 15.362. As such, where the employee was not discharged, the employee must prove that the employer discriminated against the employee with regard to one of the enumerated categories. *Wurtz*, 495 Mich at 251 (stating, in relevant part, that the plaintiff must be able to prove that the employer "discriminated against" him or her with respect to "his or her compensation"). Giving the terms their ordinary meaning, see *Wolfe-Haddad Estate v Oakland Co*, 272 Mich App 323, 325; 725 NW2d 80 (2006), the verb "discriminate" refers to the act of making a distinction or distinguishing between classes or categories without regard to merit. See *Random House Webster's College Dictionary* (1997). Because the Legislature intended to protect the class of employees who engaged in protected activity, the term "discriminate" necessarily refers to the employer's acts that treat such employees differently than those who did not engage in protected activity.

In her brief in opposition to the Township's motion for summary disposition, Woodrick suggested that she was being discriminated against by being undercompensated in general. However, it is undisputed that her base compensation was set before the events at issue and, for that reason, cannot serve as the discriminatory act underlying her WPA claim. Moreover, because Woodrick's compensation had already been set prior to the incidents at issue, in order to show that the Township took a discriminatory act against her when it refused to increase her compensation to the level that she desired, Woodrick had to present evidence that the Township treated her request for a change in compensation differently than it did similarly situated employees during the relevant time. That is, Woodrick could not establish her claim by simply presenting evidence that she did not get the raise she requested—she had to demonstrate that the Township took action with regard to her compensation that was different from how it treated similarly situated employees. If Woodrick presented sufficient evidence to establish the requisite discriminatory act, then she would still have to prove the causal relation between the act and her participation in protected conduct. *Wurtz*, 495 Mich at 251.

In its motion for summary disposition, the Township presented evidence that it did not discriminate against Woodrick concerning her request for a raise; rather, it treated her in the same way as every other employee. The Township noted that Woodrick testified at her deposition that she felt she was undercompensated even before the events at issue. Woodrick said she spoke with a Township Trustee, Richard Cooper, about her salary in August 2009:

> Mr. Cooper helped me do my planning and zoning budget and as we went through the budget, we discussed that my salary was lower than even the deputy's at the township. And because he's been supportive of the work that I do and the job that I do, he agreed with me that I should have a salary increase.

Nevertheless, she did not formally request a salary increase for 2010. Rather, she received whatever "minimal" percentage increase that was given to all the employees. Moreover, she explained that this was a normal practice for the Board: "[T]hey take everyone's salary and put them together. They add the percentage of the raise and then they divide that percentage up equally to all the employees."

Woodrick did not formally request a raise until August 2011, which was two years after she stated she first felt that she was undercompensated for her work. Woodrick admitted that her request amounted to a 33% increase in her salary and that, in order to meet the balanced budget requirement, the Township would have to take the funds from some other line item in the budget. Woodrick also agreed that such a substantial raise would be out of the ordinary, but she stated that she felt that it was "justified" in her case.

Although the Township's board did not discuss Woodrick's August 2011 request for a raise, records showed that the board approved a 1.5% increase to every employees' salary for 2012. The Township also presented evidence that other employees submitted requests for extraordinary increases in their salaries on the basis of their belief that they too were undercompensated, as Woodrick did, and the Township nevertheless did not give them the requested raises. Hence, the Township presented evidence which, if left unrebutted, showed that Woodrick was treated exactly the same as every other employee for the Township during the relevant period.

In response to the Township's motion for summary disposition, Woodrick did not present any evidence that her raise was denied despite the fact that the Township approved raises for similarly situated employees—that is, she failed to present evidence that the Township discriminated against her with regard to her request for additional compensation. MCL 15.362. She did cite testimony that the Township's board would typically consider requests for additional compensation on a case-by-case basis and that it did not discuss her request at length, but that evidence does not give rise to an inference that she was treated differently with regard to her compensation from similarly situated employees. Because she failed to rebut the evidence that the Township did not discriminate against her with regard to her request for additional compensation, the trial court did not err when it determined that Woodrick had not established a question of fact on this element of her WPA claim. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 374; 775 NW2d 618 (2009).

The trial court did not err when it determined that the Township's decision to deny Woodrick's request for a raise did not, on the evidence submitted by the parties, amount to an act of discrimination concerning Woodrick's compensation.

C. STANDARDS OF CONDUCT ACT

For similar reasons, Woodrick failed to establish a viable claim under the Standards of Conduct Act. With the Standards of Conduct Act, the Legislature provided a code of ethics for public officers. See MCL 15.342; MCL 15.342a(2). Moreover, the Legislature provided certain protections for public officers or employees who report violations of the ethical code: "A public officer or employee who reports or is about to report a violation" of MCL 15.342 "shall not be subject" to specified sanctions because the officer or employee reported or was about to report the violation. MCL 15.342b(1). In relevant part, an officer or employee who reports a violation of MCL 15.342 cannot be sanctioned by "[w]ithholding of salary increases that are ordinarily forthcoming to the employee." MCL 15.342b(1)(b). An officer or employee who is wrongfully sanctioned for reporting a violation may sue for actual damages. MCL 15.342c(1).

The undisputed evidence in this case shows that Woodrick's request was not a salary increase that would "ordinarily be forthcoming." MCL 15.342b(1)(b). Rather, even Woodrick acknowledged that it was an extraordinary request premised on her belief that she was being undercompensated. Consequently, even if Woodrick could establish that the Township denied her request for a raise in retaliation for reporting a violation of MCL 15.342, there was no evidence that she suffered a sanction prohibited under MCL 15.342b(1).

The trial court, therefore, did not err when it dismissed her claim premised on the Standards of Conduct Act.

III. CONCLUSION

The trial court did not err when it determined that Woodrick failed to establish that the Township's decision to deny her requested for additional compensation did not constitute a discriminatory act under the WPA, or amount to a prohibited sanction under the Standards of Conduct Act. Because Woodrick has not identified any errors warranting relief, we must affirm.

Affirmed.

/s/ Michael J. Kelly
/s/ David H. Sawyer
/s/ Joel P. Hoekstra