STATE OF MICHIGAN

COURT OF APPEALS

NICHOLE LANETTE BRADFORD,

Plaintiff-Appellant,

v

MGH FAMILY HEALTH CENTER, d/b/a MUSKEGON FAMILY CARE, d/b/a BRIDGES TO WELLNESS, SHEILA BRIDGES, EMMITT A. DAVIS, LINDA MALONE, JEFFREY MELTON, LUM MANDY, SUE MCCARTHY, and BARBARA HERD,

Defendants-Appellees.

UNPUBLISHED
January 12, 2016

No. 325312
Muskegon Circuit Court
LC No. 14-049383-CZ

Before: BOONSTRA, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's December 15, 2014 opinion and order granting defendants summary disposition pursuant to MCR 2.116(C)(7) and (C)(10) regarding plaintiff's action under the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq*. The trial court ruled that the undisputed facts showed that plaintiff had not filed her action within "90 days after the occurrence of the alleged violation of" the WPA. MCL 15.361(1). Specifically, the trial court ruled that defendants' failure to renew plaintiff's fixed-term contract was not actionable under MCL 15.362. *Wurtz v Beecher Metro Dist*, 495 Mich 242, 244; 848 NW2d 121 (2014). Any other possible accrual dates for plaintiff's WPA action occurred more than 90 days before plaintiff filed her complaint on February 19, 2014. We affirm.

I. STANDARDS OF REVIEW

Defendants brought their motion for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact), and MCR 2.116(C)(7) (immunity granted by law). This Court reviews de novo the trial court's grant or denial of summary disposition. *Dextrom v Wexford Co*, 287 Mich App 406, 416; 789 NW2d 211 (2010). When considering a motion under MCR 2.116(C)(10), the court must view the proffered evidence in the light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). A trial court properly grants the motion when the proffered evidence fails to establish any genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *West v*

Gen Motors Corp, 469 Mich 177, 183; 665 NW2d 468 (2003). "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." *Id*.

A party may be granted summary disposition under MCR 2.116(C)(7) when the undisputed material facts establish that the plaintiff's claim is barred by the pertinent statute of limitations. *Kincaid v Cardwell*, 300 Mich App 513, 522; 834 NW2d 122 (2013). When addressing such a motion, the trial court must accept as true the allegations of the complaint unless contradicted by the parties' documentary submissions. *Patterson v Kleiman*, 447 Mich 429, 434 n 6; 526 NW2d 879 (1994). Thus, although not required to do so, a party moving for summary disposition under MCR 2.116(C)(7) may support the motion with affidavits, depositions, admissions, or other admissible documentary evidence, which the reviewing court must consider. *Maiden*, 461 Mich at 119; MCR 2.116(G)(5). If no material facts are disputed, whether a plaintiff's claim is barred by the pertinent statute of limitations is a question of law for the court to determine. *Kincaid*, 300 Mich App at 523; *Dextrom*, 287 Mich App at 429.

This Court also reviews de novo as a question of law whether evidence establishes a prima facie case under the WPA. *Roulston v Tendercare (Mich), Inc*, 239 Mich App 270, 278; 608 NW2d 525 (2000). Furthermore, the interpretation of clear contractual language is an issue of law reviewed de novo on appeal. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003).

II. DISCUSSION

The trial court correctly ruled that the undisputed facts showed plaintiff did not file her action within "90 days after the occurrence of the alleged violation of" the WPA. MCL 15.361(1). Plaintiff's effort to distinguish *Wurtz*, 495 Mich 242 is unavailing; therefore, the trial court correctly ruled that defendants' failure to renew plaintiff's fixed-term contract was not a "discharge" actionable under MCL 15.362. The only other timeframe during which defendants could have committed prohibited acts of discharge, threats, or discrimination against plaintiff because of her protected activity occurred on or before October 14, 2014, when defendants notified plaintiff that she should no longer report to work and that her contract would not be renewed. Because these acts occurred more than 90 days before plaintiff filed her complaint on February 19, 2014, the trial court properly granted defendants summary disposition.

"The WPA provides a remedy for an employee who suffers retaliation for reporting or planning to report a suspected violation of a law, regulation, or rule to a public body." *Anzaldua v Neogen Corp*, 292 Mich App 626, 630; 808 NW2d 804 (2011). Specifically, the WPA 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. [MCL 15.362 (emphasis added).]

This statutory language sets forth three elements that a plaintiff must establish to create a prima facie case for relief under the WPA:

> (1) The employee was engaged in one of the protected activities listed in [MCL 15.362].
>
> (2) [T]he employee was discharged, threatened, or otherwise discriminated against regarding his or her compensation, terms, conditions, location, or privileges of employment.
>
> (3) A causal connection exists between the employee's protected activity and the employer's act of discharging, threatening, or otherwise discriminating against the employee. [*Wurtz*, 495 Mich at 251-252 (citations and footnotes omitted); see also *Anzaldua*, 292 Mich App at 630-631.]

An action for relief under the WPA must be promptly filed "within 90 days after the occurrence of the alleged violation of this act." MCL 15.361(1). Under the plain language of the statute, an action under for violation of the WPA accrues when the retaliatory or discriminatory acts occur. *Joliet v Pitoniak*, 475 Mich 30, 32, 40-41; 715 NW2d 60 (2006). This is consistent with the general rule regarding statutes of limitations that a "claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results." MCL 600.5827; see *Joliet*, 475 Mich at 36, 41. When an employee alleges in an action that because of engaging in protected activity an employer discharged, threatened, or otherwise discriminated against the employee, but the alleged acts of discrimination occurred outside 90 days preceding the filing of the complaint, the trial court properly dismisses the complaint on a motion for summary disposition under MCR 2.116(C)(7). *Anzaldua*, 292 Mich App at 636.

In this case, it is undisputed that plaintiff engaged in protected activity and that her employer suspended her from employment with full pay and benefits on October 10, 2013. It is also undisputed that plaintiff's employer notified plaintiff on October 14, 2013 that her contract, expiring on December 1, 2013, would not be renewed. Plaintiff argues that not renewing her contract was a "discharge" that the WPA prohibits so that she timely filed her complaint on February 19, 2014. Plaintiff's argument fails because there is also no dispute that plaintiff was employed under a written, fixed-term contract of employment that expired on December 1, 2013. While the employment contract contained a clause that permitted it to "be renewed for additional periods by written agreement of the parties," it was not. Our Supreme Court in *Wurtz* held "that the WPA, by its express language, has no application in the hiring context. Thus, the WPA does not apply when an employer declines to renew a contract employee's contract." *Wurtz*, 495 Mich at 249. The failure to renew a fixed-term employment contract is simply not among the specific acts the WPA prohibits. *Id*. at 251 n 14. While the WPA does protect an employee *while* working under a fixed-term contract from employer retaliation because of engaging in protected activity, "the WPA does not apply to decisions regarding contract renewal." *Id*. at 256. Plaintiff's efforts to distinguish *Wurtz* fail.

First, plaintiff argues that she was discharged on December 1, 2013 because that was the date her salary and benefits ended and, under her theory of the case, her economic damages began. But this fact does not distinguish her case from that of *Wurtz* or any other case where a fixed-term employment contract is not renewed. Moreover, her cause of action accrues when the alleged acts of discrimination occur, not when damages may result. *Joliet*, 475 Mich at 36, 41; MCL 15.361(1). In this case, plaintiff was suspended on October 10, 2013, and defendants decided and notified plaintiff her contract would not be renewed on October 14, 2013. These acts occurred more than 90 days before plaintiff filed her complaint.

Next, plaintiff argues that this case is distinguished from *Wurtz* because in *Wurtz* the fixed-term contract did not contain a provision regarding its renewal, but in this case, plaintiff's contract contained a provision providing that the agreement "*may be renewed* for additional periods by written agreement of the parties." (Emphasis added). The *Wurtz* Court made the following observation in a footnote: "Wurtz's contract did not contain any renewal clause imposing some obligation or duty on the employer to act. Thus, we need not address the effect that such a clause would have on our analysis." *Wurtz*, 495 Mich at 258 n 32. Nothing in the plain language of the renewal clause in plaintiff's contract imposes an "obligation or duty on [defendants] to act." *Id*.; *Burkhardt v Bailey*, 260 Mich App 636, 656-657; 680 NW2d 453 (2004) (an unambiguous contract must be enforced according to its plain terms, not on the basis of a party's perceived reasonable expectations). That the parties for numerous years had annually mutually agreed to renew plaintiff's contract for an additional fixed one-year term does not alter the terms of the contract itself. *Id*. This is particularly true in this case because the contract contained an integration clause that renders irrelevant the parties' past decisions to renew prior contracts.[1] *Northern Warehousing, Inc v Dept of Ed*, 475 Mich 859; 714 NW2d 287 (2006); *Ditzik v Schaffer Lumber Co*, 139 Mich App 81, 88-89; 360 NW2d 81 (1984) (A binding agreement with an integration clause supersedes inconsistent terms of prior agreements and previous negotiations; the parties "prior course of performance cannot alter the clear and unambiguous language of [a] contract").

Third, plaintiff argues that the holding of *Wurtz* does not apply to her case because she was an at-will employee. Plaintiff's effort to distinguish *Wurtz* on this basis also fails. The *Wurtz* Court noted that its "holding also has no bearing on at-will employees." *Wurtz*, 495 Mich at 256. The Court explained that although "an at-will employee cannot maintain any expectation of future employment, the employment continues indefinitely absent any action from the employer." *Id*., citing *McNeil v Charlevoix Co*, 484 Mich 69, 86; 772 NW2d 18 (2009). Thus, in contrast to a fixed-term contract employee, "an at-will employee does not need to reapply for the job for the employment to continue beyond a certain date. Once hired, an at-will employee will not later find himself or herself in the same position as a new applicant." *Wurtz*, 495 Mich

[1] Paragraph 12 of the contract provides: "This Agreement contains the complete and exclusive understanding of the parties with respect to PA's employment with MFC. This Agreement supersedes all other agreements between the parties with respect to the subject matter. Furthermore, all policy statement[s], manuals or documents issued by MFC shall be interpreted in a manner consistent with this Agreement."

at 256. The Court concluded that "[a] current at-will employee therefore stands squarely within the WPA's protections." *Id*. at 256-257.

In citing *McNeil*, it is apparent that the *Wurtz* Court was referring to common-law, at-will employment. In *McNeil*, the Court stated in the absence of a contract to the contrary or a specific statutory right or protection, employment for an indefinite term may generally be terminated by the employer or the employee "at any time, for any or no reason whatsoever." *McNeil*, 484 Mich at 79, 86; see also *Suchodolski v Michigan Consol Gas Co*, 412 Mich 692, 695-696; 316 NW2d 710 (1982) ("In general, in the absence of a contractual basis for holding otherwise, either party to an employment contract for an indefinite term may terminate it at any time for any, or no, reason."). In the absence of anything to the contrary, employment is presumed to be at-will, meaning that employment is subject to termination "at any time and for any—or no—reason, unless that termination was contrary to public policy." *Kimmelman v Heather Downs Mgt Ltd*, 278 Mich App 569, 572-573; 753 NW2d 265 (2008).

Plaintiff's contract did possess one aspect of at-will employment—it was subject to termination by either party without cause, but only on 60-days' written notice. But contrary to the at-will employment the *Wurtz* Court discussed which would continue "indefinitely absent any action from the employer," *Wurtz*, 495 Mich at 256, plaintiff's contract was for a fixed period of time, one year, and had a fixed expiration date, December 1, 2013. So, while plaintiff's contract possessed one aspect of at-will employment, this aspect applied only while plaintiff remained employed during the term of the contract. This conclusion, however, does not exempt plaintiff from the *Wurtz* holding regarding fixed-term employment contracts. It only means, as the *Wurtz* Court held, that during plaintiff's service under the terms of her employment contract, the WPA applies. "[T]he WPA does protect employees working under fixed-term contracts from prohibited employer actions taken with respect to an employee's service under such a contract." *Id*.

Finally, plaintiff argues that defendants' "threats" against plaintiff and her suspension are also actionable under the WPA. While this may be true, as the trial court recognized, these actions occurred well outside the 90-day period of time preceding the filing of plaintiff's complaint. Consequently, the trial court properly granted defendants' motion for summary disposition under MCR 2.116(C)(7) and MCR 2.116(C)(10). *Wurtz*, 495 Mich at 249, 259; *Anzaldua*, 292 Mich App at 636.

We affirm. Defendants as prevailing parties may tax costs pursuant to MCR 7.219.

/s/ Mark T. Boonstra
/s/ David H. Sawyer
/s/ Jane E. Markey