

STATE OF MICHIGAN
COURT OF APPEALS

CHERYL DEBANO-GRIFFIN,

Plaintiff-Appellee,

V

LAKE COUNTY and LAKE COUNTY BOARD
OF COMMISSIONERS,

Defendants-Appellants.

UNPUBLISHED

August 25, 2011

No. 282921

Lake Circuit Court

LC No. 05-006469-CZ

ON REMAND

Before: MURRAY, P.J., and HOEKSTRA and STEPHENS, JJ.

STEPHENS, J. (*DISSENTING*).

I respectfully disagree with the majority's holding. Because I conclude that the plaintiff in this matter presented the type of evidence required by *West v Gen Motors Corp*, 469 Mich 177, 185; 665 NW2d 468 (2003), I would affirm.

As the majority correctly states, the WPA requires more than a sequential link in the chain of events between the protected activity and the employment action. A plaintiff must "demonstrate that the adverse employment action was in some manner influenced by the protected activity." *West v Gen Motors Corp*, 469 Mich 177, 185; 665 NW2d 468 (2003). To do so, a plaintiff must show more than merely a temporal connection between events: "[A] temporal relationship, standing alone, does not demonstrate a causal connection between the protected activity and any adverse employment action. Something more than a temporal connection between protected conduct and an adverse employment action is required to show causation where discrimination-based retaliation is claimed." *Id.* at 186.

In holding that the plaintiff failed to demonstrate more than a temporal connection, the *West* Court stated that "[t]o prevail, plaintiff had to show that his employer took adverse employment action *because* of plaintiff's protected activity, but plaintiff has merely shown that his employer disciplined him *after* the protected activity occurred." *West*, 469 Mich at 185. In holding that plaintiff failed to make such a showing, the Court observed that "[t]he evidence does not show that either of the supervisors, whom plaintiff allegedly informed about the call to the police, viewed the call as a matter of any consequence. Nor was either supervisor involved in the decision to discharge plaintiff." *Id.* The Court's reference to those facts demonstrates that in determining whether a plaintiff has demonstrated more than a mere temporal connection, this

Court should look to whether a matter of consequence was involved and whether the individuals who decided to terminate the plaintiff were affected by that plaintiff's protected activity.

I find that the present matter is distinguishable from the facts in *West* and that summary disposition would have been improper. Contrary to the plaintiff in *West*, plaintiff did not merely offer evidence showing that she was terminated after she engaged in protected activity. Rather, plaintiff showed that the Board of Commissioners made a budgetary decision with which she vocally disagreed. At the time of that disagreement, there was evidence indicating that plaintiff's position would receive funding in the next fiscal year. Following the disagreement, the Board of Commissioners altered their budget to eliminate plaintiff's position. The plaintiff in *West* failed to show that his activity related to a matter of consequence or that the individuals connected with his protected activity had any involvement with his eventual termination. *West*, 469 Mich at 185. In contrast, plaintiff's protected activity related to a subject actively being debated and the elimination of her position was initiated by the body she confronted. While *West* clearly demonstrates that a mere temporal connection is insufficient, plaintiff has demonstrated a temporal connection and surrounding circumstances that would permit a rational juror to conclude that plaintiff's protected activity caused defendant to eliminate the funding for plaintiff's position.

Because I conclude that plaintiff established a prima facie case, I would permit an opportunity to present a valid reason for their action. If defendants could present a valid explanation, plaintiff would have to demonstrate that the offered reason was mere pretext. Defendants contend that plaintiff was eliminated not because of her protected activity, but because of a budget crisis. However, plaintiff, through the County's Independent Auditor's Report, has adequately demonstrated that the financial situation was not as dire as defendants assert. It is not beyond reason to conclude that defendants' explanation of its decision was mere pretext. Additionally, I note that defendants' assertion that the separation of powers prevents this Court from examining the budgetary decisions of a legislative body is unpersuasive. In examining properly admitted evidence regarding defendants' budget, this Court would not be attempting to make legislative decisions properly reserved for defendants. Rather, this Court would be merely exercising its constitutionally granted powers in determining the propriety of the lower court's action.

/s/ Cynthia Diane Stephens