STATE OF MICHIGAN

COURT OF APPEALS

JULIE GELDHOF, Plaintiff/Counter-Defendant-Appellant,	UNPUBLISHED November 22, 2011
v	No. 299671 Macomb Circuit Court
TOWNSHIP OF BRUCE, Defendant/Counter-Plaintiff-Appellee.	LC No. 2009-000931-CZ

Before: K. F. KELLY, P.J., and METER and GLEICHER, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. Defendant terminated plaintiff's employment in January 2009. Plaintiff subsequently filed a complaint against defendant, alleging that her termination violated the Whistleblower Protection Act (WPA), MCL 15.361 *et seq*. We affirm.

I. FACTS AND PROCEDURAL HISTORY

Defendant employed plaintiff as an at-will employee until January 28, 2009. Plaintiff had been employed by defendant in various capacities since 1973 and had been defendant's Assessor since 2006. In 2005, when plaintiff was a Deputy Assessor, defendant began a reassessment of township property using a new Geographic Information System (GIS) that allowed assessors to view aerial photographs of properties in order to locate buildings and additions that were not on the tax assessment roll. GIS located a pole barn, owned by an employee of defendant, that was not on the tax roll. After plaintiff approached the owner and informed her that the pole barn would be placed on the tax rolls, the owner spoke with defendant's Chief Assessing Officer Gary Schocke. Schocke instructed plaintiff to place the value of any newly discovered structures on the assessment rolls only, and not on the tax rolls, so that an owner's property taxes would not go up until the property was later sold or transferred.

Plaintiff objected to Schocke's procedure, but Schocke overruled plaintiff's objections and imposed his procedure on her. Plaintiff complained to defendant's Clerk Carol Reguis about the procedure, but Reguis told plaintiff to abide by Schocke's rules. Plaintiff certified assessment rolls under Schocke's procedure from 2005 to 2007.

Schocke decided not to seek reelection in 2008. In August 2008, James Tignanelli won the Republican Party primary election for Bruce Township Supervisor. Plaintiff requested a meeting with Tignanelli in August. Plaintiff informed Tignanelli that the assessment practices under Schocke violated state rules. Tignanelli took office as defendant's Supervisor and Chief Assessing Officer on November 20, 2008.

After taking office, Tignanelli consulted with a variety of people to determine the severity of the violations; these individuals included level-four assessor Patrick Ryder and Michigan Townships Association attorney Evelyn David. Tignanelli told Ryder that plaintiff had "[l]eft some items off the taxable value to allow it to catch up when it was uncapped" and that "she knew what she had done was break the law." Ryder informed Tignanelli that plaintiff's "certification would be in jeopardy . . . ." Tignanelli informed David that plaintiff had entered incorrect taxable values, and David responded that she "might suggest that the board consider [plaintiff's] termination" and that plaintiff's certification was at risk.

Tignanelli met with Township Attorney Christine Anderson, Township Treasurer Debbie Obrecht, and plaintiff on January 15, 2009, to discuss plaintiff's assessing practices under Schocke. Tignanelli asked plaintiff to resign; plaintiff refused because she wanted to take the matter to defendant's board. Tignanelli subsequently requested that plaintiff attend a special meeting of defendant's board on January 28 to answer charges, including the charge that plaintiff had certified an assessment roll she knew to be false "in violation of . . . Michigan Statutory law . . . ." Tignanelli denied plaintiff's request to have the meeting postponed.

At the January 28 meeting, defendant raised a motion to consider the charges against plaintiff. At plaintiff's request, the charges were discussed in a closed session pursuant to the Michigan Open Meetings Act.[1] When the open session resumed, defendant voted 3-2 to terminate plaintiff's employment on the basis that she had "certifi[ed] . . . an assessment roll she knew to be inaccurate." Plaintiff filed suit against defendant, alleging that her termination violated the WPA. Defendant moved for summary disposition under MCR 2.116(C)(10), and the trial court granted defendant's motion.

II. STANDARD OF REVIEW

This Court reviews de novo a trial court's determination that no genuine issue of material fact exists and its decision to grant a motion for summary disposition under MCR 2.116(C)(10). *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998). In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, affidavits, depositions, admissions, and any other evidence and grants the benefit of any reasonable doubt to the party opposing the motion. *Id*. "This Court is liberal in finding genuine issues of material fact." *Jimkoski v Shupe*, 282 Mich App 1, 5; 763 NW2d 1 (2008).

[1] The Open Meetings Act allows public bodies to meet in closed sessions to "hear complaints or charges brought against . . . [an] employee . . . if the named person requests a closed hearing." MCL 15.268(a). Plaintiff requested a closed meeting, and the transcript of this closed session has not been made available to this Court.

III. ANALYSIS

Plaintiff argues that the trial court erred in granting defendant's motion because plaintiff established genuine issues of material fact regarding whether defendant violated the WPA when it terminated plaintiff's employment. A plaintiff has the initial burden to establish a claim under the WPA. *Hopkins v City of Midland*, 158 Mich App 361, 378; 404 NW2d 744 (1987). In order to establish a WPA claim, a plaintiff must show that (1) she was engaged in a protected activity, (2) she was discharged, and (3) a causal connection existed between the protected activity and the discharge. *West v General Motors*, 469 Mich 177, 183-184; 665 NW2d 468 (2003).[2]

A. PLAINTIFF WAS ENGAGED IN PROTECTED ACTIVITY

Plaintiff argues that the trial court erred when it found that plaintiff's reports of Schocke's mandate were not protected activity under the WPA. We agree.

The WPA states that "[a]n employer shall not discharge . . . an employee . . . because the employee . . . reports . . . verbally or in writing, a violation or a suspected violation of a law or regulation or rule . . . to a public body . . . ." MCL 15.362. If an employee reports a suspected violation of the law to a public body, she has engaged in protected activity. *Brown v Mayor of Detroit*, 478 Mich 589, 594; 734 NW2d 514 (2007). The WPA defines "public body" as including "a municipal corporation, or a board . . . *or any member or employee thereof*." MCL 15.361(d)(iii) (emphasis added).

Plaintiff argues that she reported Schocke's mandate twice—first to Reguis in 2005, and second to Tignanelli in 2008. The trial court erroneously concluded that plaintiff's activity was not protected by the WPA because she only reported the suspected violation of the law to her own employer. A plaintiff can engage in protected activity even if she only reports a violation to her own supervisor. See, generally, *Brown*, 478 Mich at 591. An employee of a public body does not need to report a violation of the law to an outside agency or a higher authority in order to receive protection under the WPA. *Id*.

The trial court correctly found that plaintiff's report to Tignanelli in August 2008 was not protected activity. Tignanelli was not sworn into office until November 20, 2008, and therefore at the time of plaintiff's report he was not defendant's agent or employee. Tignanelli also was not a member or employee of any other municipal corporation or board. Therefore, Tignanelli was not a "public body" when plaintiff reported Schocke's mandate to him.

However, plaintiff also contends that she reported Schocke's mandate to Reguis shortly after Schocke delivered his mandate in 2005. At that time, Reguis was defendant's Clerk and a member of defendant's board. Defendant argues that plaintiff admits that she did not report Schocke's mandate to any member of defendant's board because, when plaintiff was asked at deposition if she ever reported to a township official that Schocke violated a law, rule, or regulation, she responded "no" to each question. While the contradiction calls into question the

[2] The "discharge" element is uncontested.

credibility of plaintiff's statement that she spoke with Reguis about Schocke's mandate, this Court views the evidence in the light most favorable to the nonmoving party. If plaintiff did report Schocke's suspected violation of the law to Reguis, plaintiff was reporting to a public body. MCL 15.361(d)(iii).

Aside from the "reporting to a public body" issue, the trial court erroneously concluded that plaintiff did not report a suspected violation of the law, reasoning in part that plaintiff did not establish that Schocke's mandate regarding assessment practices violated a rule promulgated pursuant to law.[3] For a plaintiff to engage in protected activity, she must report "a violation or a suspected violation of a law or regulation or rule . . . ." MCL 15.362. When plaintiff reported, to Reguis, Schocke's mandate that she was not to enter the proper taxable values on the tax rolls, plaintiff was engaged in protected activity because she was reporting Schocke's suspected violation of laws related to tax assessment practices. MCL 41.61 states that "[t]he supervisor of each township is the chief assessor of the township . . . ." MCL 211.42 states that "[t]he supervisor shall prepare a tax roll . . . ." MCL 211.27a prescribes the procedure for assessing property, and requires that "property . . . be assessed at 50% of its true cash value" and that the taxable value of property be "[t]he property's taxable value in the immediately preceding year . . . plus all additions." MCL 211.116 makes it a misdemeanor for "any supervisor or other assessing officer . . . [to] willfully assess any property at more or less than what he believes to be its true cash value . . . ."

Plaintiff presented evidence that Schocke's mandate violated MCL 211.116. Plaintiff obtained a letter from Schocke that reads, in part:

> . . . I made the decision to override [plaintiff's] plan to correct both the assessed and taxable value . . . . While [plaintiff] advised me that to do this was contrary to the standard assessing practices prescribed by the S.T.C. [State Tax Commission], I decided to over rule [sic] her advice and judgment and chose to unilaterally impose my decision on her.

Plaintiff also supported her claim with the testimony of Macomb County Equalization Director Steven Mellen, who testified at deposition:

> *Q.* Assume that Gary Schocke, when he was a supervisor, instructed his assessors if they came across some structure and there were no permits pulled, they were to put it on the assessed value but not the taxable value, would you find that type of instruction unusual?
>
> *A.* Yes. That's an easy one, yes.

[3] The Michigan Tax Assessor's Manual is not promulgated as a rule and does not have the force of law. *Danse Corp v City of Madison Heights*, 466 Mich 175, 181; 644 NW 2d 721 (2002). However, plaintiff did not merely argue that defendant did not follow the tax manual; plaintiff also argued that Schocke's mandate violated established laws, including MCL 211.116.

Q. What should have his instruction been, if you know?

A. His instruction should have been just do the assessing the way it should be done, just plain and simple, do it the way it's supposed to be done.

A reasonable juror could find that plaintiff reported to Reguis a violation of law, and thereby engaged in a protected activity under the WPA.

The trial court also discussed plaintiff's violations of the law in detail in its analysis, and determined that the evidence established that it was plaintiff who had violated the law and plaintiff was only reporting her own illegal activity.[4] However, plaintiff's violations of the law do not affect whether her report to Reguis was protected activity. When plaintiff spoke with Reguis, she complained about Schocke's mandate and was told to abide by it. It would be improper to characterize plaintiff's complaint about Schocke's mandate as an instance of plaintiff merely reporting her own violations of the law.

When viewed in the light most favorable to plaintiff, plaintiff has provided evidence that she reported a suspected violation of the law to a public body. Plaintiff has shown that a genuine issue of material fact exists regarding whether plaintiff engaged in protected activity under the WPA.

B. PLAINTIFF HAS NOT ESTABLISHED A CAUSAL CONNECTION BETWEEN HER PROTECTED ACTIVITY AND TERMINATION

Plaintiff contends that she presented circumstantial evidence that creates a genuine issue of material fact regarding whether her discharge was casually connected to her report. Plaintiff contends that the circumstances surrounding her discharge, when taken as a whole, establish that defendant was motivated to terminate her employment because she reported Schocke's mandate. We disagree.

A plaintiff may establish a causal connection through circumstantial evidence if a juror could "reasonably infer from the evidence that the employer's actions were motivated by retaliation." *Shaw v City of Ecorse*, 283 Mich App 1, 15; 770 NW2d 31 (2009). Speculation and mere conjecture are not appropriate bases for circumstantial proof of causation—the plaintiff must provide proof that facilitates reasonable inferences. *Id*. This Court in *Shaw* found that a plaintiff's proofs could facilitate reasonable inferences of causation where a plaintiff engaged in protected activity by testifying against his employer at a trial, and, after the jury returned a verdict against the employer, the plaintiff was told by a supervisor that he was "in trouble,"

[4] While this Court has extended the WPA to include reporting the illegal activity of coworkers as well as employers, *Dudewicz v Norris Schmid Inc*, 443 Mich 68, 80; 503 NW2d 645 (1993), overruled in part on other grounds by *Brown v Mayor of Detroit*, 478 Mich 589; 734 Mich 517 (2007), this Court has not extended the WPA to cover an employee's report of her own illegal activity.

departmental charges were filed against him within three days, and the disciplinary action against him was "unprecedented." *Id*. at 15-16.

Plaintiff's case is unlike *Shaw* because plaintiff cannot demonstrate that her report to Reguis in 2005 was temporally related to her termination in January 2009, plaintiff admitted in her deposition that she had never heard anyone state or imply they wanted to fire her because of her report, and plaintiff has not argued that the charges against her were unprecedented. Instead, plaintiff cites several circumstances that plaintiff argues provide proof that her termination was in part motivated by her protected activity, including (1) a disagreement between plaintiff and Tignanelli concerning his taxes, (2) Mellen's recommendation that Tignanelli not discharge plaintiff, (3) emails between Tignanelli and others that are indicative of his "rage" and show that he was "infuriated," (4) Tignanelli's denial of plaintiff's request to reschedule the January 28 meeting, and (5) defendant's subsequent vote against reducing employee retirement benefits for Schocke and Reguis.

Even when viewed in the light most favorable to plaintiff, plaintiff has failed to demonstrate that these circumstances would allow a reasonable juror to infer that defendant terminated plaintiff because she reported Schocke's mandate. First, plaintiff has not provided any evidence to indicate that the disagreement between Tignanelli and plaintiff regarding Tignanelli's taxes was related to plaintiff's report of Schocke's mandate. Second, Mellen's statement only indicated that he did not think discharging plaintiff before March was wise, and Mellen was unaware of the reasons Tignanelli was seeking plaintiff's termination. Third, the emails Tignanelli exchanged with others concerning plaintiff's discharge may indicate that Tignanelli was angry, but her report of Schocke's mandate is not referenced anywhere in the emails. To the contrary, plaintiff is referred to as "an employee who admitted to breaking the law," "someone who had admitted . . . intentionally providing false information on our tax rolls," and "someone who has admitted to breaking the law and shorting our Township of precious tax dollars." Tignanelli's anger appears to be directly related to plaintiff's admission that she violated the law. It is not enough for plaintiff to show that Tignanelli was angry—plaintiff is required to show that her report of Schocke's mandate was "at least a motivating factor" in her termination. *Shaw*, 283 Mich App at 14. Fourth and fifth, defendant's decisions not to reschedule the January 28 meeting and not to reduce retirement benefits may be unfair, but plaintiff has not explained how these circumstances provide evidence that plaintiff's termination was motivated by her protected activity.

Unlike in *Shaw*, plaintiff's bases for circumstantial proof are speculative and invite conjecture. Even when these circumstances are taken as a whole and viewed in the light most favorable to plaintiff, plaintiff has not satisfied her burden of showing that a juror could reasonably infer that defendant's decision to terminate plaintiff was even partially motivated by her protected activity.

Further, even if plaintiff had provided enough circumstantial evidence to create a genuine issue of material fact, we agree with the trial court's conclusion that defendant articulated legitimate business reasons for plaintiff's termination and she has not shown that defendant's reasons were merely pretextual. Once a plaintiff has proven that protected activity was a motivating factor in the employer's decision to terminate her, the burden then shifts to the employer. *Eckstein v Kuhn*, 160 Mich App 240, 246; 408 NW2d 131 (1987). If the employer

states a legitimate reason for an employee's termination, the burden shifts back to the employee to demonstrate that the employer's reason was merely a pretext for her dismissal. *Id*. Defendant's stated reasons for dismissal included that plaintiff admitted to having broken the law and that Tignanelli could not trust the quality of plaintiff's work after she admitted that she certified a roll she knew to be inaccurate. Defendant articulated legitimate business reasons for plaintiff's termination, but plaintiff failed to present evidence that would allow a reasonable juror to conclude that these reasons were merely a pretext for her dismissal.

IV. CONCLUSION

We conclude that while plaintiff has demonstrated that genuine issues of material fact exist regarding whether plaintiff was engaged in protected activity, plaintiff has not met her burden of establishing that a genuine issue of material fact exists concerning the element of causation. We note that this Court can affirm the trial court's decision when it reaches the correct result for the wrong reason. *Adams v West Ottawa Pub Schools*, 277 Mich App 461, 466; 746 NW2d 113 (2008). Even though the trial court erroneously concluded that plaintiff was not engaged in protected activity, the trial court reached the correct result in this case.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Patrick M. Meter
/s/ Elizabeth L. Gleicher