# STATE OF MICHIGAN

# COURT OF APPEALS

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| TODD F. FUHR,<br><br>Plaintiff-Appellant, | UNPUBLISHED<br>April 16, 2013 |
| v | No. 309877<br>Kent Circuit Court |
| TRINITY HEALTH CORP and TRINITY HEALTH-MICHIGAN, d/b/a SAINT MARY'S HEALTH CARE,<br><br>Defendants-Appellees. | LC No. 10-011075-CD |

Before: STEPHENS, P.J., and HOEKSTRA and RONAYNE KRAUSE, JJ.

HOEKSTRA, J. (*dissenting*).

Because I conclude that plaintiff's self-serving deposition testimony is blatantly contradicted by the record so that no reasonable jury could believe it, I would affirm the trial court's grant of summary disposition in favor of defendants. Accordingly, I respectfully dissent from the portion of the majority's opinion reversing the trial court's grant of summary disposition.

In *Scott v Harris*, 550 US 372, 380; 127 S Ct 1769; 167 L Ed 2d 686 (2007), the United States Supreme Court, considering summary disposition under FR Civ P 56(c), which is parallel to MCR 2.116(C)(10), held that "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary disposition." Under those circumstances, a "genuine" issue of material fact does not exist. *Id.*

I would find that in this case plaintiff failed to demonstrate a genuine issue of material fact because the only direct evidence of discrimination was plaintiff's self-serving deposition testimony that Garrett told him he was being terminated because of his call to the U.S. Attorney. This evidence does not create a genuine issue of material fact because it is blatantly contradicted by the record so that no reasonable jury could believe it. The record demonstrates that Amy Moored was approached about her interest in plaintiff's position and informed that plaintiff would be "let go soon" during the first week of April 2010. Moreover, an email dated April 8, 2010 from the hospital's CEO to the hospital's vice president stated that plaintiff "is on the way out," and that Moored would take over plaintiff's job, and the hospital's vice president submitted an affidavit stating that the decision to terminate plaintiff was made during the first week of

April 2010. Plaintiff did not contact the U.S. Attorney until April 15, 2010. Plaintiff was terminated on May 10, 2010, and following the termination meeting, plaintiff sent an email stating that he was not given a reason for his termination. Plaintiff did not claim he was fired for contacting the U.S. Attorney until he was deposed.

Under these circumstances, I would conclude that no reasonable jury could believe plaintiff's testimony, and I would affirm the trial court's grant of summary disposition in favor of defendants.

/s/ Joel P. Hoekstra