This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0747

Lori Dowling Hanson,
Appellant,

vs.

State of Minnesota Department of Natural Resources,
Respondent.

Filed April 19, 2021
Affirmed; motion granted
Johnson, Judge

Ramsey County District Court
File No. 62-CV-19-1037

Marshall H. Tanick, Teresa J. Ayling, Meyer Njus Tanick, P.A., Minneapolis, Minnesota (for appellant)

Keith Ellison, Attorney General, Jason Marisam, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Bjorkman, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Lori Dowling Hanson was employed by the Minnesota Department of Natural Resources (DNR) until her employment was involuntarily terminated. Hanson sued the DNR and asserted claims arising under the Whistleblower Act and the Maltreatment of Minors Act. The district court granted the DNR's motion for summary judgment. We

conclude that the district court properly granted the motion with respect to Hanson's whistleblower claim because Hanson did not introduce evidence that the DNR's asserted non-retaliatory reasons for her termination were a pretext for a retaliatory motive. We also conclude that the district court properly granted the motion with respect to Hanson's claim under the Maltreatment of Minors Act because the DNR is protected from such a claim by the doctrine of sovereign immunity. Therefore, we affirm.

FACTS

Hanson was employed by the DNR from May 2011 to September 2017 as the regional director of the northeastern region of the state. Her responsibilities included serving on the DNR's senior-management team; supervising regional managers; and serving as a liaison between the DNR and county and local governments, the state legislature, Indian tribes, and the federal government. She reported to the deputy commissioner of the DNR.

Before the circumstances that led to her termination, Hanson had some conflicts with other DNR personnel. Hanson's last supervisor stated in an affidavit that Hanson had an "antagonistic" relationship with her prior supervisor, which stemmed from Hanson's "unfounded belief" that the prior supervisor was trying to "derail her career." The supervisor also stated that Hanson had accused her administrative assistant of "spying" on her, an accusation that was not substantiated by an internal investigation. In addition, the supervisor stated that Hanson "unnecessarily created divisions between staff members" and that he and the commissioner had discussed with her their concern about "interpersonal

conflicts" and "unprofessional behavior" and warned her that repeated conduct of that type might result in the termination of her employment.

The circumstances that led to Hanson's termination occurred in August 2017, while Hanson was attending a multi-day, work-related conference at the Fortune Bay Casino and Conference Centre on a section of the Bois Forte Indian Reservation. During the first night of her hotel stay, on August 14, 2017, Hanson heard a baby crying in the hotel room next to hers and also heard what she described as "loud noises," "a man threatening the baby," "a man yelling at the baby" telling it to "shut up," and bodies being "thrown against the wall." Hanson previously had read a website that caused her to believe that Minnesota-based Indian tribes were not sufficiently responsive to reports of sex trafficking.[1] With that article in mind, Hanson reported the noise to hotel security and went to sleep.

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[1] We note that the website, a print-out of which is in the district-court record, does not state that any particular Minnesota-based Indian tribe has neglected to investigate a report of sex-trafficking. The website identifies only one Native American woman by name; she is a Minnesota resident who was kidnapped while visiting another state. The website makes a general statement that five Native American women from Minnesota have been killed or have gone missing, but there is no information concerning where those incidents occurred or the law-enforcement agencies with responsibility for investigating them.

Two other documents relating to the issue are the subject of a motion to strike. Hanson reproduced two newspaper articles in her addendum, neither of which was made part of the summary-judgment record. In fact, both articles were published after the district court filed its order granting the DNR's motion for summary judgment. The DNR moved to strike the articles from Hanson's addendum. The appellate record is limited to "documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any." Minn. R. Civ. App. P. 110.01. Because the articles were not filed in the district court, we grant the DNR's motion to strike the newspaper articles from Hanson's addendum.

During the second night of Hanson's hotel stay, on August 15, 2017, the baby in the hotel room next door cried again. At 8:30 p.m., Hanson called the front desk to report that the baby was crying again. A surveillance video-recording shows that, at 8:42 p.m., Hanson leaned into the hallway briefly while unclothed. The surveillance video-recording also shows that, at 8:46 p.m., Hanson walked into the hallway (while clothed) and talked to two men who were knocking on the door of the room with the baby. At 8:49 p.m., Hanson walked to the front desk to speak to a hotel employee about the baby.

At 8:58 p.m., a hotel-security person called 911 and stated that a crying baby may have been left alone in a hotel room and requested an officer of the United States Bureau of Indian Affairs (BIA). The 911 operator dispatched a BIA officer. At approximately 9:00 p.m., Hanson briefly interacted in the hallway with the occupants in the neighboring room. At 9:02 p.m., Hanson returned to her room and called the St. Louis County Administrator. At 9:20 p.m., she called 911 and stated that she believed that there was a prostitution ring operating in the next-door hotel room, that a baby might be suffocating, that the hotel had offered to call BIA officers, and that she wanted a St. Louis County deputy sheriff to come to the hotel and give her "safe escort" out of the casino.

At approximately 9:30 p.m., while she was on the 911 call using her DNR cell phone, Hanson received a phone call from a St. Louis County undersheriff on her personal cell phone. At 9:50 p.m., a BIA officer and a Breitung Township police officer arrived at the door to her hotel room. Hanson told the officers that she believed that child neglect was occurring in the neighboring hotel room, and she requested a St. Louis County deputy sheriff. Hanson later testified in a deposition that she requested a county deputy sheriff

because hotel-security staff and the law-enforcement officers at the hotel had asked her to take a breathalyzer test, which "alarmed" her and made her feel that she "had gotten over [her] head." The BIA officer and the Breitung Township officer offered to escort Hanson out of the hotel, but she refused, even after they informed her that the nearest St. Louis County deputy was nearly an hour away in Ely.

The officers knocked on the door of the next-door room and were permitted to enter. They noted that the hotel room was "clean and orderly," that there were four or five children in the room, and that two infants were sleeping. A woman informed the officers that the youngest infant was crying a lot because she was teething. The woman also said that Hanson had pounded on her door and threatened to call the police, which caused the woman to call hotel security.

The officers again knocked on Hanson's door and asked her to pack up her belongings and leave the hotel. At 9:59 p.m., Hanson called the DNR's chief law-enforcement officer and left a voice-mail message asking him to send a conservation officer to the hotel to assist her. At 10:01 p.m., Hanson again called the DNR's chief law-enforcement officer but ended the call in a hurry, stating that someone was going to "throw her out." Hanson ended the conversation with the officers in the hallway when she "slammed" her hotel-room door, and she refused to leave the hotel. The BIA officer contacted a St. Louis County sergeant and asked him to come to the hotel to help resolve the situation. Both officers reported that, throughout the encounter in the hallway, Hanson repeatedly made references to her high-level position with the DNR and did a lot of "name-dropping," which the officers perceived to be "unprofessional."

At 10:04 p.m., a St. Louis County sergeant arrived at the hotel and went to Hanson's room. He knocked on the door, identified himself, and said that the hotel management wanted her to leave the hotel. Hanson eventually opened the door and let him in at 10:12 p.m. A DNR conservation officer arrived 20 minutes later and helped the St. Louis County sergeant escort Hanson to her vehicle in the parking lot. As Hanson was leaving the hotel, the Breitung Township officer, who had earlier smelled alcohol on Hanson's breath, asked the DNR officer to request that Hanson take a preliminary breath test, but no test was given.

The next day, the BIA officer contacted Hanson's supervisor, the deputy commissioner, to inform him of what had occurred at the hotel. Hanson had not yet informed the deputy commissioner of the incident. The deputy commissioner informed the DNR commissioner, who placed Hanson on administrative leave and requested an internal investigation. After receiving and reviewing the investigative report, and after consulting with the deputy commissioner and the director of human resources, the commissioner decided to terminate Hanson's employment. On September 25, 2017, the commissioner sent Hansen a letter to "confirm the end of [her] unclassified appointment as Regional Director," effective immediately. In a deposition during the discovery phase of this action, the commissioner testified that Hanson's conduct had a negative effect on the DNR's relationships with Indian tribes and with the BIA.

In February 2019, Hanson commenced this action against the DNR. She alleged that the DNR had unlawfully terminated her employment for retaliatory reasons in violation of the Whistleblower Act and the Maltreatment of Minors Act. In November

2019, the DNR moved for summary judgment. In March 2020, the district court granted the motion with respect to both claims. Hanson appeals.

DECISION

Hanson argues that the district court erred by granting the DNR's motion for summary judgment with respect to both of her claims. A district court "shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). This court applies a *de novo* standard of review to the district court's legal conclusions on summary judgment and views the evidence in the light most favorable to the party against whom summary judgment was granted. *Commerce Bank v. West Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015).

I. Whistleblower Act

Under the Whistleblower Act, "An employer shall not discharge . . . an employee . . . because . . . the employee . . . in good faith, reports a violation [or] suspected violation . . . of any federal or state law or common law or rule adopted pursuant to law . . . to any governmental body or law enforcement official." Minn. Stat. § 181.932, subd. 1(1) (2020). Minnesota courts typically apply the three-part *McDonnell Douglas* analysis when considering a whistleblower claim. *Cokley v. City of Otsego*, 623 N.W.2d 625, 630 (Minn. App. 2001), *review denied* (Minn. May 15, 2001). Under that analysis, the employee first has the burden of establishing a *prima facie* case. *Hoover v. Norwest Private Mortg.*

Banking, 632 N.W.2d 534, 542 (Minn. 2001). If the plaintiff establishes a *prima facie* case, "the burden of production shifts to the employer to show some legitimate, nondiscriminatory reason for the discharge." *Hubbard v. United Press Int'l Inc.*, 330 N.W.2d 428, 445 (Minn. 1983). If the defendant satisfies the burden of production at the second step, "the presumption of discrimination disappears and the plaintiff has the burden of establishing that the employer's proffered reason is a pretext for discrimination." *Hoover*, 632 N.W.2d at 542 (citing *Hasnudeen v. Onan Corp.*, 552 N.W.2d 555, 557 (Minn. 1996)). "[A]t all times the employment discrimination plaintiff retains the burden of establishing that the defendant's conduct was based on unlawful discrimination." *Id.* at 546.

In this case, the district court rejected Hanson's whistleblower claim at both the first and third steps of the *McDonnell Douglas* analysis. The district court first determined that Hanson did not establish a *prima facie* case because she did not submit evidence to satisfy the third element, that there was a causal connection between her report of suspected child abuse and her discharge. The district court also reasoned that Hanson did not submit evidence that is sufficient to prove that the DNR's asserted reasons for the termination are a pretext for a retaliatory motive.

A.

Hanson first contends that the district court erred by applying the *McDonnell Douglas* analysis on the ground that she submitted direct evidence of a retaliatory motive. Hanson asserts that there is direct evidence that her report of suspected child abuse precipitated her termination. In response, the DNR contends that Hanson's evidence is not

direct evidence of retaliation because the DNR was motivated by her inappropriate conduct, not by the mere fact that she made a report of suspected child abuse.

In general, "direct evidence" means evidence that "'proves a fact without inference or presumption.'" *Friend v. Gopher Co.*, 771 N.W.2d 33, 38 (Minn. App. 2009) (quoting *Black's Law Dictionary* 636 (9th ed. 2009)). In the context of an employment-discrimination case, direct evidence means "evidence of conduct or statements by the employer's decisionmakers sufficient to permit a fact-finder to infer that the discriminatory attitude was more likely than not a motivating factor in the employer's adverse employment decision." *Taylor v. LSI Corp. of Am.*, 781 N.W.2d 912, 917 (Minn. App. 2010), *aff'd,* 796 N.W.2d 153 (Minn. 2011). Direct evidence of retaliation exists if there is evidence that a decision-maker possessed an unlawful animus that motivated an adverse employment action, such as if an employer announced that it will not hire women. *See Sigurdson v. Isanti Cnty.*, 386 N.W.2d 715, 721 (Minn. 1986). Direct evidence of an unlawful motive may allow a plaintiff to prove her claim directly, without satisfying the three-step burden-shifting *McDonnell Douglas* analysis. *See Friend*, 771 N.W.2d at 38-40.

Hanson did not submit direct evidence of retaliation because her evidence does not show that the termination decision was motivated by a retaliatory animus based solely on her report of suspected child abuse. Hanson's evidence does not show that the commissioner (or any other person at the DNR with input into the termination decision) expressed a desire to suppress reports of unlawful activity in general or suspected child abuse in particular. Furthermore, Hanson's evidence does not show that the commissioner expressed a retaliatory motive for Hanson's termination. The DNR submitted evidence

that the termination decision was motivated by concerns about Hanson's unprofessional conduct at the hotel and the fact that, in making her report, she attempted to circumvent the proper law-enforcement authorities on the Bois Forte Indian Reservation, thereby threatening the DNR's relationships with a tribal government and with the BIA, an outcome that would be directly contrary to one of her job responsibilities. That evidence is not direct evidence of a retaliatory motive because it does not prove retaliation without the benefit of an inference. *See Friend*, 771 N.W.2d at 38. Hanson's evidence is merely circumstantial evidence because it would require a fact-finder to infer that the commissioner or another person retaliated against Hanson because she had made a report of suspected child abuse.

Thus, the district court did not err by applying the *McDonnell Douglas* burden-shifting analysis.

B.

Hanson also contends that the district court erred by determining that she did not establish a *prima facie* case under the Whistleblower Act.

In a whistleblower case, a *prima facie* case of retaliatory discharge "requires the employee to demonstrate [1] statutorily protected conduct by the employee, [2] an adverse employment action by the employer, and [3] a causal connection between the two." *Gee v. Minnesota State Colls. & Univs.*, 700 N.W.2d 548, 555 (Minn. App. 2005). The district court determined that Hanson did not satisfy the third requirement of a *prima facie* case because she did not produce evidence of a causal connection between her report and her termination.

The burden of production associated with the *prima facie* case is a relatively low burden, which has been described as "not onerous." *Dietrich v. Canadian Pacific Ltd.*, 536 N.W.2d 319, 323 (Minn. 1995). The causal connection required by the third element of a *prima facie* case may be established merely by "showing that the employer has actual or imputed knowledge of the protected activity and the adverse employment action follows closely in time." *Hubbard*, 330 N.W.2d at 445; *see also Hoover*, 632 N.W.2d at 549; *Moore v. City of New Brighton,* 932 N.W.2d 317, 328-29 (Minn. App. 2019), *review denied* (Minn. Oct. 15, 2019); *Potter v. Ernst & Young, LLP*, 622 N.W.2d 141, 145-46 (Minn. App. 2001). The third element of the *prima facie* case does not require proof that an unlawful reason actually motivated the termination decision; that is the issue at the third step of the *McDonnell Douglas* burden-shifting analysis, at which a court must determine whether the plaintiff has evidence that is sufficient to prove that "the defendant's conduct was based on unlawful discrimination." *Hoover*, 632 N.W.2d at 546.

Thus, Hanson has established a *prima facie* case of a whistleblower claim.

C.

Hanson contends further that the district court erred by reasoning that she did not submit evidence that is sufficient to create a genuine issue of material fact as to whether the DNR's non-retaliatory reasons for the termination are a pretext and that the termination actually was motivated by retaliation. In response, the DNR contends that Hanson did not submit any evidence in support of her contention that the DNR's non-retaliatory reasons are pretextual.

The supreme court has thoroughly described the plaintiff's burden at the third step of the *McDonnell Douglas* analysis:

> [I]n order to avoid summary judgment under the *McDonnell Douglas* third step, the employment discrimination plaintiff must put forth sufficient evidence for the trier of fact to infer that the employer's proffered legitimate nondiscriminatory reason is not only pretext but that it is pretext for discrimination. In some cases, sufficient evidence may consist of only the plaintiff's prima facie case plus evidence that the employer's proffered reason for its action is untrue. In other cases, more may be required. However, at all times the employment discrimination plaintiff retains the burden of establishing that the defendant's conduct was based on unlawful discrimination.

Hoover, 632 N.W.2d at 546.

The DNR's asserted non-retaliatory reasons for the termination decision are contained in the commissioner's deposition testimony. In its responsive brief, the DNR summarizes the non-retaliatory reasons as follows: Hanson's "involvement of subordinate DNR employees in a non-work-related incident, her refusal to cooperate with the BIA officer, her insistence on involving county law enforcement outside of their jurisdiction, the fact that she was asked to leave the hotel and refused to do so, her misuse of her State position and high-level connections, and her failure to report the incident to the DNR." The DNR argues further that the commissioner "concluded that this unprofessional conduct impaired Hanson's ability to professionally represent the DNR with the Bois Forte Band, as well as other local governmental entities and tribal authorities" and that "Hanson's unprofessional behavior was unacceptable for a person in a high-level, appointed position and was damaging and an embarrassment to both the DNR and the Governor."

On appeal, Hanson does not directly challenge the DNR's asserted non-retaliatory reasons by asserting that they are false. Rather, she asserts that she is required to prove only that retaliation was either a substantial causative factor or a motivating factor in the termination decision, and she contends that there is a factual dispute as to whether there was a mixed motive for her termination. But the DNR submitted evidence that its termination decision was based *solely* on Hanson's misconduct during the incident at the hotel and *not at all* based on the mere fact that she made a report of suspected child abuse. To prove pretext, Hanson must, at the least, prove that the DNR's evidence of non-retaliatory reasons is untrue. *See Hoover*, 632 N.W.2d at 546. Hanson does not identify any evidence in the record that casts doubt on or contradicts the DNR's evidence of non-retaliatory reasons. In the absence of such evidence, Hanson has not shown that there is a genuine issue of material fact that requires a trial.

Thus, the district court properly concluded that Hanson did not introduce evidence that is sufficient to prove that the DNR's non-retaliatory reasons for her termination are a pretext for a retaliatory motive. Therefore, the district court did not err by granting the DNR's summary-judgment motion with respect to Hanson's whistleblower claim.

II. Maltreatment of Minors Act

In August 2017, the Maltreatment of Minors Act "protect[ed] children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse." Minn. Stat. § 626.556, subd. 1(a) (2016) (current version at Minn. Stat. § 260E.06(a) (2020)). Under that version of the act, certain persons were required to make a report if the person knew or had reason to believe that a child was "being neglected or physically or sexually

abused . . . or [had] been neglected or physically or sexually abused within the preceding three years." *Id.*, subd. 3(a). A person who made a report required by the act was protected from retaliation in employment by the following provision: "An employer of any person required to make reports [by the statute] shall not retaliate against the person for reporting in good faith abuse or neglect pursuant to this section, or against a child with respect to whom a report is made, because of the report." *Id.*, subd. 4a(a).

In this case, Hanson contends that she was required to make a report of suspected child abuse and that the DNR retaliated against her for making that report. In its summary-judgment motion, the DNR argued that it was entitled to sovereign immunity, that Hanson was not a mandated reporter as defined by the statute because she was not engaged in the "profession" of child care or in law enforcement, and that a report of a crying baby was not a report of "abuse" or "neglect" as defined in the statute. The district court granted the DNR's motion on the ground that Hanson was not a mandatory reporter under the act.

On appeal, Hanson contends that she was a mandatory reporter under the act. In response, the DNR makes four arguments: Hanson was not a mandatory reporter, the DNR has sovereign immunity from claims arising under the act, Hanson's report did not actually involve child abuse or neglect, and Hanson cannot prove a causal connection between her report and her termination.

We begin by considering the DNR's sovereign-immunity argument because the doctrine of sovereign immunity "precludes litigation against the state unless the state has consented to suit." *Nichols v. State*, 858 N.W.2d 773, 775 (Minn. 2015) (citing *Nieting v. Blondell*, 235 N.W.2d 597, 599 (Minn. 1975)). "The doctrine of sovereign immunity . . .

developed from the principle that 'the King can do no wrong.'" *Id.* at 775 (quoting *Nieting*, 235 N.W.2d at 599). The doctrine precludes litigation against the state unless the state has waived its sovereign immunity with respect to a particular claim by consenting to such a suit. *Id.*

To determine whether the state has waived its sovereign immunity with respect to a particular statute, it is appropriate to use the following analytical framework: "The state is not bound by the passage of a law [1] unless named therein, or [2] unless the words of the act are so plain, clear, and unmistakable as to leave no doubt as to the intention of the legislature." Minn. Stat. § 645.27 (2020); *see also Nichols*, 858 N.W.2d at 776 (inserting brackets). "In other words, sovereign immunity is waived only if the statute demonstrates the Legislature's express intent to allow suit against the State." *Nichols*, 858 N.W.2d at 776. We apply a *de novo* standard of review to the question whether the state has waived its sovereign immunity. *See id.* at 775.

The key question is whether the state has waived its sovereign immunity by prohibiting retaliation by "[a]n employer of any person required to make reports." *See* Minn. Stat. § 626.556, subd. 4a(a). In *Nichols*, the supreme court held that similarly broad language in two statutes—"'any person, partnership, company, corporation, association, or organization of any kind, doing business in this state'" and "'[a]ny person, firm, association, or corporation'"—did *not* reflect a waiver of sovereign immunity. 858 N.W.2d at 776-77 (quoting Minn. Stat. §§ 181.64 & .65). The plaintiff in *Nichols* conceded that the first part of the analytical framework was not satisfied because the statute did not expressly name the state. *Id.* at 776. The supreme court concluded that the second part of

the analytical framework was not satisfied because "the Legislature did not demonstrate a plain, clear, and unmistakable intent to waive sovereign immunity for claims brought under" the statutes. *Id.* at 779.

In this case, the act did not expressly name the state as one of the employers that was subject to the non-retaliation provision in the 2016 version of section 626.556, subdivision 4a(a). Accordingly, the first part of the analytical framework is not satisfied. *See id.* at 776. The remaining question is whether the second part of the analytical framework is satisfied, *i.e.*, whether "the words of the act are so plain, clear, and unmistakable as to leave no doubt as to the intention of the legislature." Minn. Stat. § 645.27. They are not. The noun phrase in the statute—"[a]n employer of any person required to make reports"—is no more plain, clear, or unmistakable than the noun phrases in the statutes in *Nichols*. Hanson does not present any persuasive argument to the contrary. In her reply brief, she contends that sovereign immunity has been waived because various state employees are deemed mandatory reporters. That fact alone does not establish that the legislature has plainly, clearly, and unmistakably waived the state's sovereign immunity from retaliation claims under the act by state employees who are mandatory reporters. We conclude that the legislature has not done so.

Thus, the DNR is protected by the doctrine of sovereign immunity from Hanson's claim arising under the 2016 version of section 626.556, subdivision 4a(a). Therefore, the district court did not err by granting the DNR's summary-judgment motion with respect to Hanson's claim under the Maltreatment of Minors Act.

Affirmed; motion granted.