COURT OF APPEALS
DECISION
DATED AND RELEASED

JANUARY 14, 1997

No. 96-1227-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

SUSAN M. TENNYSON,

Plaintiff-Appellant,

v.

SCHOOL DISTRICT OF THE MENOMONIE AREA,

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Dunn County: THOMAS H. BARLAND, Judge. *Reversed and cause remanded.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Susan Tennyson appeals a judgment dismissing her complaint alleging a constructive unlawful discharge on grounds the complaint failed to state a claim.[1] Tennyson's employment contract with the School District of the Menomonie Area contained a provision that she could not be discharged without cause. She alleged that unaddressed "hostile and

[1] This is an expedited appeal under RULE 809.17, STATS.

intimidating" conditions caused her to resign and constituted a constructive discharge without cause. We conclude that when the reasonable inferences arising from the allegations of the complaint are drawn in favor of Tennyson, the complaint states a claim. We therefore reverse and remand for further proceedings.

STANDARD OF REVIEW

Whether a complaint states a claim is a question of law we review de novo. ***Heinritz v. Lawrence Univ.***, 194 Wis.2d 606, 610, 535 N.W.2d 81, 83 (Ct. App. 1995). Where a motion to dismiss for failing to state a claim is brought under § 802.06(2)(f), STATS., the facts as pled must be taken as admitted, and we must draw any reasonable inferences in favor of the party against whom the motion is brought. ***Id***. The pleadings must be liberally construed, and a complaint will be dismissed only if the plaintiff cannot recover under any circumstances. ***Id.*** at 611, 535 N.W.2d at 83.

ALLEGATIONS OF THE AMENDED COMPLAINT

Tennyson's complaint alleges that she had an employment contract with the school district providing that she was not to be discharged "without cause." She alleges that her supervisor, Al May, created an intolerable work atmosphere to the point where she had to take and was given medical leave from September 9, 1994, through January 31, 1995. These alleged conditions first arose "in the summer of 1994," when she and May had a disagreement concerning a job related decision, and May "lost his temper [and] became verbally abusive ...." Thereafter, she claims, May "took every opportunity to make plaintiff's work life miserable; he frequently lost his temper and verbally abused Plaintiff in a loud and threatening manner whether others were present or not ...." He made "demeaning comments regarding Plaintiff's mannerisms, manner of dress [and] generally created an intimidating and hostile work environment."

After leave was granted, Tennyson met with the superintendent of schools, Dave Smette, to discuss May's behavior. According to Tennyson, Smette repeatedly "warned" her that she should be careful not to make any false

statements or slander the administration and told her that she must confront May herself regarding his behavior. Smette told her that May "would do anything to win if challenged." In subsequent meetings with Smette, Tennyson alleges she requested the district to investigate and sought assurances that May's conduct would be monitored upon her return, but the district had failed to do so by January 31, 1995. She alleged that she resigned "[a]s a result of the intimidating and hostile work environment created by Al May, the District's indifference to the situation, and the fear of returning to the same intimidating and hostile work environment ...."

The trial court concluded:

> My view is that for there to be constructive discharge she must show that upon her return to work she was subjected to [the] same or similar intolerable work conditions that would cause her to leave work to avoid a recurrence of the medical problems that bothered her as a result of the stress when she was employed or was working. And I conclude that the complaint fails to state a claim for relief because it stops short of alleging that she returned to work or attempted to return to work. She tendered her resignation when she concluded that the school district did not meet her requests to investigate or provide an assurance that her supervisor's behavior would be monitored, and I think ... in my judgment [there is a] logical gap that's missing to show that the work atmosphere would be the same or that she made the attempt and found it to be the same.

For the following reasons, we conclude that when all reasonable inferences from the facts alleged are drawn favorably to Tennyson, the complaint infers a constructive discharge. First, there is a reasonable inference that the alleged abusive working conditions continued over a sufficient period of time. The abuse started "in the summer of 1994," occurred "frequently" and continued until her medical leave in early September. In addition, a reasonable inference may be drawn favorable to Tennyson that the district either did not believe her or did not take her problem seriously. This inference may be drawn

from the allegations that the superintendent "repeatedly warned" Tennyson that she should not make false statements, that she would have to confront May herself despite the district's belief that May "would do anything to win," and the district's failure, following her requests, either to investigate or to assure her that it would monitor the situation upon her return to work. Thus, Tennyson's conclusive allegation that the district demonstrated an "indifference to the situation" and that the conduct was likely to continue are reasonably supported by the preceding inferences.

The district also challenges the concept of a "constructive discharge" in context of an ordinary employment contract with a "for cause" provision. It relies upon Tennyson's concession that there is no Wisconsin precedent for such a doctrine.

We conclude that an employer may constructively discharge a person where working conditions are so intolerable that a reasonable person is compelled to resign to avoid recurrence. While it is true that the case cited by Tennyson and many other constructive discharge cases we have located arise out of claims based upon statutory employment rights, we see no reason why the doctrine should not apply to a common law contract claim of unlawful discharge. If an employee is able to establish the necessary proof of sufficient continuing misconduct in the workplace that is likely to continue unabated, resignation may be deemed to be a discharge.

By the Court.—Judgment reversed and cause remanded.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.