Docket No. 93029
Supreme Court of Michigan

Dudewicz v. Norris Schmid, Inc.

443 Mich. 68 (Mich. 1993) · 503 N.W.2d 645
Decided Jul 27, 1993

Docket No. 93029.

Argued March 31, 1993 (Calendar No. 3 April).

69 Decided July 27, 1993. *69

Jensen, Smith Gilbert, P.C. (by *Peter C. Jensen*),
70 for the plaintiff. *70 *Smith, Bovill, Fisher, Meyer Borchard, P.C.* (by *Robert A. Jarema*), for the defendant.

Amicus Curiae:

Mark Brewer (*Paul Denenfeld*, of counsel), for ACLU Fund of Michigan.

BRICKLEY, J.

The issue before us is whether the Whistleblowers' Protection Act (WPA)[1] prohibits an employer from discharging an employee who files a criminal complaint against a fellow employee for an assault that arose out of a dispute over the handling of the employer's business, during business hours, and at the site of employment. We are also asked to decide whether the public policy exception to the employment at will doctrine applies to the facts of this case. In a case of first impression for this Court, we find that the WPA applies and prohibits discharge under these facts. We also find that the WPA preempts any public policy claim arising out of the same facts. While summary disposition for the defendant on the public policy claim was proper, the trial court improperly granted a directed verdict for the defendant on the WPA claim. Therefore, the judgment for the directed verdict is reversed, and the case is remanded for trial of the WPA claim.

[1] MCL 15.361 *et seq.;* MSA 17.428(1) *et seq.*

I

Plaintiff, Michael L. Dudewicz, worked as a parts manager for an automobile dealership, Norris Schmid, Inc., defendant. On the morning of November 4, 1987, Dudewicz attempted to obtain warranty service for a customer who, as a wholesale buyer, did a lot of business with Norris
71 *71 Schmid. To get better service for the customer, Dudewicz enlisted the aid of one of the dealership's owners, Samuel Norris. Together, the two men sought the assistance of the service manager, Dick Boehm, who agreed to do the work for the customer under warranty.

After Norris left the service area, Dudewicz alleged that the service manager reached over the service counter and grabbed Dudewicz by the collar and tried to pull him across the counter. Dudewicz alleged that Boehm told him never to bring the owner into the service area again. During the course of this fracas, Dudewicz alleged that the service manager tore buttons off his shirt, broke a gold chain from around his neck, and left fingerprints on his neck. That same day, Dudewicz told Norris Schmid's new car sales manager about the incident and also filed criminal charges with the Midland County Prosecutor, alleging assault and battery.

Dudewicz testified that upon entering work the morning of December 1, 1987, he was called to Norris' office and told to drop the criminal charges against the service manager or be fired. He was

also told to leave the dealership. Dudewicz left the premises because he believed he had been fired; he also believed he could regain his job if he agreed to drop the criminal charges. Dudewicz then contacted an attorney who counseled him to return to work. When Dudewicz did return to the dealership on December 3, 1987, Norris told him the dealership considered him to have quit and that he had to leave the premises. Dudewicz argued that he had not quit, but had, in fact, been fired. Further, Dudewicz refused to leave unless provided with a letter of termination. Norris refused to comply with this request and called the
72 police to escort Dudewicz from the premises. *72

Subsequently, Dudewicz filed a two-count complaint, alleging that his termination violated Michigan's Whistleblowers' Protection Act as well as public policy. Following discovery, Norris Schmid sought and received summary disposition under MCR 2.116(C)(8), on the ground that the public policy argument failed to state a claim upon which relief could be granted.[2] Then, after hearing proofs on the remaining count, Norris Schmid sought and received a directed verdict, under MCR 2.515, on the ground that Dudewicz failed to show that it had violated the Whistleblowers' Protection Act. The trial court denied a motion to reconsider this verdict.

[2] A conversation between the trial court and counsel for Dudewicz indicated that the attorney believed the trial judge dismissed the public policy count on the ground that the WPA provided an exclusive remedy. The attorney asked the judge to reconsider his decision, but the judge refused to do so, at least until after hearing Dudewicz' proofs. Once the proofs had been offered and the trial judge had granted a directed verdict for Norris Schmid, the judge informed the parties that he had dismissed the public policy claim, not because the WPA provided an exclusive remedy but, because the claim was not applicable to the case.

Dudewicz appealed as of right in the Court of Appeals, which reversed. 192 Mich. App. 247; 480 N.W.2d 612 (1991). The Court first addressed the public policy claim and found that Dudewicz had alleged an implied cause of action for retaliatory discharge because "`the reason for a discharge was the employee's exercise of a right conferred by a well-established legislative enactment.'" *Id.* at 251, quoting *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich. 692, 696; 316 N.W.2d 710 (1982). On the basis of federal precedent, *Pratt v Brown Machine Co*, 855 F.2d 1225 (CA 6, 1988), the Court was satisfied that the ability to file a criminal complaint as the victim of a crime was a right conferred by a "well-established legislative enactment." Therefore,
73 Norris Schmid's discharge violated *73 a public policy that encouraged victims of crime to file complaints. Otherwise, the Court believed, "[t]o allow the discharge of an at-will employee because of a choice to file a criminal complaint against a fellow employee would force a choice between justice and livelihood. It is the public policy of this state to protect its citizens from such an onerous choice." 192 Mich. App. 253.

The Court also noted that, as Norris Schmid argued, Dudewicz might have had to choose the WPA as his exclusive remedy over his public policy claim. Because, however, the trial court "expressly stated that it had not granted the motion for summary disposition on the basis that the [WPA] provides the exclusive remedy," the Court ruled that "consideration of the applicability of the public policy exception to the facts of this case [was] still proper. . . ." 192 Mich. App. 253.

Next the Court considered Dudewicz' claim that his discharge was in violation of the WPA because he was fired for filing a criminal complaint, alleging that he had been assaulted and battered by a fellow employee. In ruling that the WPA prohibited such conduct, the Court expressly rejected an earlier Court of Appeals holding, *Dickson v Oakland Univ*, 171 Mich. App. 68; 429 N.W.2d 640 (1988), that required, as an element of

the applicability of the WPA, that the person accused of breaking the law be the employer. The Court found that the language of the act itself and the accompanying legislative analysis contained no such limitation and, in fact, indicated that violations by fellow employees, as well as by employers, were to be considered within the scope of the WPA. The Court therefore concluded that the trial judge erred in granting both a directed verdict and summary disposition for Norris
74 Schmid. *74

II

In deciding whether the trial court erred in directing a verdict for the defendant, we must first decide whether the WPA was intended to protect employees who are fired for reporting violations of the law by fellow employees. Norris Schmid contends that the WPA protects only those employees who are fired for reporting their employers' violations of law. There is, however, no such limitation in either the express language of the WPA or the analysis of the House Bill that spawned the WPA.

Section 2 of the WPA provides in full:

> An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action. [MCL 15.362; MSA 17.428(2).][3]

3 As stated, the report, or the attempted report, must be made to a "[p]ublic body." This concept encompasses many entities, including "[a] law enforcement agency or any member or employee of a law enforcement agency." MCL 15.361(d)(v); MSA 17.428(1)(d)(v). There is no dispute that the Midland County Prosecutor is a "public body" for purposes of the WPA.

A plain reading of this provision reveals that protection is not limited to employee reports of violations by employers. On its face, the provision only seems to apply to the discharge of an
75 employee *75 who "reports . . . a violation or a suspected violation of a law. . . ." *Id.*

Moreover, the legislative analysis of the WPA supports the conclusion that its provisions protect employees who report violations of law by either their employers or fellow employees. The analysis recognizes the problem the WPA was designed to alleviate as the inability to combat corruption or criminally irresponsible behavior in the conduct of government or large businesses. House Legislative Analysis, HB 5088, 5089 (February 5, 1981). The analysis goes on to say that "[t]he people best placed to observe and report violations are the employees of government and business, but employees are naturally reluctant to inform on an employer *or a colleague.*" *Id.* (emphasis added). It appears that, at the time the bill was considered, the Legislature intended the protection to apply to employee reports of any and all violations of law by either employers or fellow employees.

In any event, we find that the activity at issue here, reporting a fellow employee's violation of the state's Criminal Code because of a dispute over the handling of company business, is not so different from traditional notions of whistleblowing. Typically, the activity involves the violation of laws more closely connected with the employment setting, such as Health Code and safety violations, *Tyrna v Adamo, Inc*, 159 Mich. App. 592; 407 N.W.2d 47 (1987), or illegal labor practices, *Hopkins v Midland*, 158 Mich. App.

361; 404 N.W.2d 744 (1987), but there is no limitation in the statute to these types of activities. Moreover, the illegal activity is typically engaged in by an "employee," even if that employee also happens to own the company. See *Tyrna, supra.* On the basis of these observations, we are satisfied that the events and individuals involved in this
76 case are consistent with those *76 activities and individuals contemplated by the WPA.

In deciding that the WPA did not apply to the facts of this case, the trial judge relied upon a relatively recent Court of Appeals decision, *Dickson v Oakland Univ, supra.* The trial judge believed himself to be bound by the *Dickson* Court's ruling that the WPA applied only to employees fired for reporting violations of law by their employers. We agree with the Court of Appeals, that there is no such limitation on the applicability of the WPA.

The plaintiff in *Dickson* worked as a police officer for the defendant's department of public safety. 171 Mich. App. 69. Before his dismissal, the plaintiff alleged that he was repeatedly criticized for enforcing the law against university students. *Id.* After he was allegedly assaulted by one student, the plaintiff requested that the defendant seek an arrest warrant against that student. *Id.* The defendant refused, and the plaintiff was subsequently discharged. *Id.* at 69-70. The trial court and Court of Appeals rejected the plaintiff's WPA claim, however, because the plaintiff only reported the wrongdoing of students to the defendant. *Id.* at 71. Nothing in the plaintiff's complaint alleged that the defendant-employer violated any law or that the plaintiff was fired for reporting the defendant's violation of law to a higher authority. *Id.*

In support for limiting the WPA to reports of violations of law by employers, the *Dickson* Court quoted, inter alia, the same portion of the legislative analysis as quoted above. See 171 Mich. App. 70 -71. However, as stated above, nothing in either the WPA itself or its legislative analysis limits protection only to those employees who report violations of law by their employer. On the contrary, the explicit language of the analysis
77 and the *77 broad scope of the statute strongly suggest that the WPA was intended to protect employees who report violations by either employers or fellow employees. Indeed, such an interpretation is also supported by the rule of statutory construction that remedial statutes, such as the WPA, are to be liberally construed in favor of the persons intended to be benefited. See *Bierbusse v Farmers Ins Group*, 84 Mich. App. 34, 37; 269 N.W.2d 297 (1978); *Holmes v Haughton Elevator Co*, 75 Mich. App. 198, 200; 255 N.W.2d 6 (1977), aff'd 404 Mich. 36; 272 N.W.2d 550 (1978). Simply stated, the *Dickson* Court erred in limiting the applicability of the WPA to employee reports of violations of law by employers.[4]

> [4] In any event, *Dickson* is clearly distinguishable on its facts. Forgetting for a moment who broke the law, the plaintiff in *Dickson* reported the violation only to his employer, not to a public body within the meaning of the WPA. On *these* facts, the panel correctly found that the WPA was inapplicable. While its ruling was correct, the panel made an unfortunate comment in dicta stating that the purpose of the WPA was to protect only those employees who reported violations of law by their employers. It is this comment that is erroneous.

Admittedly, a strictly literal interpretation of the statute without an analysis of legislative intent arguably could lead to an interpretation that would bar discharge of an employee for reporting a crime by anyone under any circumstances. See *Tyrna*, 159 Mich. App. 599 (the Court ruled that the WPA "provides a remedy to *an* employee terminated for reporting to *any* public body a violation of *any* law or regulation of this state, a political subdivision, or the United States") (emphasis added). However, this is not the case and these are not the facts to test the outer limits of this rather broad statute. In concluding that it was intended to bar a discharge

of an employee for reporting a crime by a fellow employee under the circumstances of this case does not begin to test those limits. In saying that, 78 we note that not only was *78 this a crime alleged to have been committed by a fellow employee, but the alleged crime arose out of a work incident at the work site. It is, therefore, very much within the employer-employee setting.

Accordingly, we find that the trial court erred in granting a directed verdict on this issue.

III

The Court of Appeals reversed the trial court's grant of summary disposition on the public policy claim because the trial court did not dismiss the claim on the basis of the fact that the WPA provided an exclusive remedy. While acknowledging the fact that the WPA was probably exclusive, the Court found that, because the trial court did not discuss this issue, it could not do so either. The Court erred in its rationale, however. Because the parties preserved the issue of public policy preemption and because the trial court failed to deal with the issue,[5] the Court of Appeals was not precluded from dealing with the question whether the public policy claim was preempted by the WPA claim. The Court of Appeals, should have considered this issue and should have found that any public policy claim was preempted by the application of the WPA.

> [5] As noted in n 2, the trial court dismissed the public policy claim as inapplicable and, therefore, did not discuss the exclusivity of the WPA.

As a general rule, the remedies provided by statute for violation of a right having no common-law counterpart are exclusive, not cumulative. *Pompey v General Motors Corp*, 385 Mich. 537, 552-553; 189 N.W.2d 243 (1971). At common law, there was no right to be free from being fired for reporting an employer's violation of the law. 79 *Covell v Spengler*, 141 Mich. App. 76, 83; *79 366 N.W.2d 76 (1985). The remedies provided by the WPA, therefore, are exclusive and not cumulative. *Shuttleworth v Riverside Hosp*, 191 Mich. App. 25, 27; 477 N.W.2d 453 (1991).

In *Suchodolski v Michigan Consolidated Gas Co, supra*, this Court recognized that there was an exception to the general rule that either party to an employment at will contract could terminate the agreement at any time for any or no reason. The exception is based on the principle that "some grounds for discharging an employee are so contrary to public policy as to be actionable." *Id.* at 695. We also found that these restrictions on an employer's ability to terminate an employment at will agreement are most often found in explicit legislation. *Id.* The WPA is such legislation. *Id.* [6]

> [6] Also noted were the Civil Rights Act, MCL 37.2701; MSA 3.548(701), the Handicappers' Civil Rights Act, MCL 37.1602; MSA 3.550(602), and the Occupational Safety and Health Act, MCL 408.1065; MSA 17.50(65).

The existence of the specific prohibition against retaliatory discharge in the WPA is determinative of the viability of a public policy claim. In those cases in which Michigan courts have sustained a public policy claim, the statutes involved did not specifically proscribe retaliatory discharge. Where the statutes involved did proscribe such discharges, however, Michigan courts have consistently denied a public policy claim. Compare *Trombetta v Detroit, T I R Co*, 81 Mich. App. 489; 265 N.W.2d 385 (1978) (the public policy claim was sustained where the defendant was discharged for refusing to manipulate and adjust pollution control reports), and *Sventko v Kroger Co*, 69 Mich. App. 644; 245 N.W.2d 151 (1976) (the claim was sustained where the defendant was discharged for filing a lawful workers' compensation claim), with *Covell v* 80 *Spengler, supra* (the public policy claim *80 was denied where the defendant also was sued under the WPA and the statute proscribed discharge in retaliation for the employee's complaints to the

labor board concerning overtime pay), and *Ohlsen v DST Industries, Inc*, 111 Mich. App. 580; 314 N.W.2d 699 (1981) (the claim was denied where the employee also sued under MIOSHA provisions that prohibited discharge in retaliation for the employee's exercise of statutory rights). A public policy claim is sustainable, then, only where there also is not an applicable statutory prohibition against discharge in retaliation for the conduct at issue. As a result, because the WPA provides relief to Dudewicz for reporting his fellow employee's illegal activity, his public policy claim is not sustainable.

IV. CONCLUSION

For the reasons set forth above, the trial court erred in granting Norris Schmid's motion for a directed verdict. The WPA applies to an employee who reports a violation of a law arising out of a dispute over the handling of company business and occurring during business hours, regardless of whether the criminal actor is the employer or a fellow employee. Accordingly, the trial court's judgment on the directed verdict was erroneous. The trial court properly granted summary disposition with regard to the public policy claim, however, because the WPA preempts that claim.

The judgment of the Court of Appeals is affirmed with respect to the WPA claim, and reversed with respect to the public policy claim. The case is remanded for trial of the WPA claim.

CAVANAGH, C.J., and LEVIN, RILEY, GRIFFIN, and MALLETT, JJ., concurred with BRICKLEY, J.

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BOYLE, J.

I respectfully dissent from my colleagues' conclusion that the Whistleblowers' Protection Act (WPA)[1] prohibits discharge under these facts. In my view, the plaintiff was not engaging in protected activity as defined by the WPA. However, because plaintiff has alleged that his employment was conditioned on his agreement to refuse to prosecute criminal activity of which he had knowledge, he has stated a claim for which relief may be granted for wrongful discharge in violation of public policy. I would affirm the decision of the Court of Appeals and remand this case to the trial court for further proceedings.

[1] MCL 15.361 *et seq.;* MSA 17.428(1) *et seq.*

I

A prima facie case of retaliation under the Whistleblowers' Protection Act requires a showing that the plaintiff was engaged in protected activity as defined by the act. The act provides in relevant part: "An employer shall not discharge . . . an employee . . . because the employee . . . reports . . . a violation . . . of a law or regulation or rule . . . to a public body. . . ."[2]

[2] MCL 15.362; MSA 17.428(2).

The act expressly protects employees who report violations of law, but it is less than clear regarding both the identity of the lawbreaker and the circumstances under which the violation of law must occur. The statute does not state who the employee must suspect as having violated the law, nor does it expressly describe the setting in which the violation must have occurred or the relationship the illegal conduct must bear to the conduct of business. In short, the statute is
82 ambiguous. *82

A

It is axiomatic that if the language of a statute is unambiguous, this Court must read and apply it as written. Where the statute is ambiguous, "the object of the statute [and] the harm which it is designed to remedy" are relevant indications of intent. *In re Forfeiture of $5,264*, 432 Mich. 242, 248; 439 N.W.2d 246 (1989).

Applying these principles, I agree with the majority's conclusion that restricting the protection afforded by the WPA only to reports of employer

violations of law would be contrary not only to the intent of the Legislature, but also to the language of the statute. The plain language of the act provides that an "Employer includes an agent of an employer. . . ."[3] An agent of an employer very well may be a co-worker of the employee who is reporting a violation. Furthermore, as the majority notes, the legislative analyses support this interpretation. The analyses recognize that "employees are naturally reluctant to inform on an employer *or a colleague.*"[4]

[3] MCL 15.361(b); MSA 17.428(1)(b).

[4] House Legislative Analysis, HB 5088, 5089, First Analysis, April 17, 1980; Second Analysis, February 5, 1981.

B

I disagree with the majority's conclusion that the WPA applies to protect the activity in this case. That conclusion imparts an expansive interpretation to the statute that is not supported by the statutory purpose or the context in which the statute was enacted. As amicus curiae, ACLU Fund of Michigan, points out, Michigan was the first state to grant statutory protection to employees who reported an employer's illegal activity. The act was, in part, the Legislature's response to an incident of accidental chemical
83 contamination of *83 livestock feed.[5] Employees of the chemical company that had mistakenly substituted poisonous fire retardant for nutritional supplements "were warned not to volunteer information about the . . . accident to investigators or else they would be fired."[6]

[5] Barcia, *Update on Michigan's Whistleblowers' Protection Act*, 1988 Det Col L R 1, 1-2. Senator James A. Barcia introduced and sponsored the bill that became the Whistleblowers' Protection Act. *Id.* at 2.

[6] *Id.* at 2.

I agree with amicus curiae and the majority that the act is designed both to encourage employees to assist in law enforcement and to protect those employees who engage in whistleblowing activities. However, this observation fails to take account of a significant focus of the statute noted in the bill analyses. A whistleblowing employee alerts the public to the employer's, or a co-worker's, "corruption or criminally irresponsible behavior *in the conduct of government or large businesses* . . . ."[7] I conclude that the ambit of the WPA protects activity involving a report by an employee of an employer's or co-worker's illegal business practices or other violations of law, regulation, or rule that occur as a result of the conduct of business. In other words, where the conduct of business itself violates a law, statute, or regulation, an employee's report of that illegal conduct is protected activity.

[7] House Legislative Analyses, n 4 *supra.* (Emphasis added.)

In the instant case, the criminal act committed by the plaintiff's co-worker did not involve corrupt or illegal business practices of the employer or co-worker, or result from the conduct of the employer's business, and is therefore not within the umbrella of activity protected under the WPA. Because the plaintiff was not engaged in activity protected under the WPA, I would reverse the
84 decision of the *84 Court of Appeals. The trial court correctly granted defendant's motion for directed verdict.

II

I would further hold that plaintiff's activity is protected as a matter of the fundamental public policy of this state as expressed in its Penal Code. Therefore, I would affirm the decision of the Court of Appeals on this question and remand this case for trial.

Where an employment relationship is at will, either party to the relationship "may terminate it at any time for any, or no, reason." *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich. 692,

695; 316 N.W.2d 710 (1982). However, where the employee is discharged on grounds that "are so contrary to public policy," the discharge may be actionable, even though the employment relationship allowed termination for no reason at all. *Id.*

While "the Court has acted with circumspection in carrying out public policy exceptions to the `at will' doctrine[,]" *Clifford v Cactus Drilling Corp, 419* Mich 356, 367; 353 N.W.2d 469 (1984) (WILLIAMS, C.J., dissenting),[8] grounds for discharge that are contrary to public policy have been found in statutes that expressly prohibit discharge of employees who exercise rights or observe duties created by statute, or implied from legislative expressions of policy or an employee's exercise of a right conferred by a well-established legislative enactment. *Suchodolski*, 412 Mich. 695-696.

> [8] The federal courts have also been reluctant to infer a cause of action where Congress has not expressly created one. See 19 Wright, Miller Cooper, Federal Practice Procedure, § 4514, p 241.

The plaintiff in an action for wrongful discharge in violation of public policy must show that the "plaintiff engaged in protected activity. The
85 activity's *85 protection may stem either from a constitutional or statutorily granted right or from an obligation favored by statutory policy." *Clifford*, 419 Mich. 368 (WILLIAMS, C.J., dissenting), citing Schlei Grossman, Employment Discrimination Law, ch 15, p 534 (Washington, D.C.: Bureau of National Affairs, 1983).

Courts addressing similar questions have inferred claims for wrongful discharge from "`sufficient legislative expression' of a policy that prohibits an employer from conditioning employment upon the employee's agreement to conceal or stifle an investigation into a crime." *Pratt v Brown Machine Co*, 855 F.2d 1225, 1237 (CA 6, 1988). Thus, where an employee informed law enforcement officials that one of his co-workers may have violated the criminal code, agreed to assist in the investigation and trial, and was later fired for his role in the investigation, the employee had made out a claim of retaliatory discharge in violation of public policy. In *Palmateer v Int'l Harvester Co*, 85 Ill.2d 124, 132; 421 N.E.2d 876 (1981), the Illinois Supreme Court noted:

> There is no public policy more basic, nothing more implicit in the concept of ordered liberty . . . than the enforcement of a State's criminal code. . . . There is no public policy more important or more fundamental than the one favoring the effective protection of the lives and property of citizens. . . .
>
> No specific constitutional or statutory provision requires a citizen to take an active part in the ferreting out and prosecution of crime, but public policy nevertheless favors citizen crime-fighters. "Public policy favors the exposure of crime, and the cooperation of citizens possessing knowledge thereof is essential to effective implementation of that policy. Persons acting in good faith who have probable cause to believe crimes have been
86 committed *86 should not be deterred from reporting them by . . . fear. . . ." [Quoting *Joiner v Benton Community Bank*, 82 Ill.2d 40, 44; 411 N.E.2d 229 (1980).]

The public policy favoring encouraging citizens' cooperation in the prosecution of crime obtains even more forcefully when a citizen is deterred from cooperation with the police solely because the consequence will be loss of gainful employment.

The Legislature has declared that assault and battery is a crime.[9] Victims of crime are encouraged to report crime and, if the report is timely made, may be compensated for out-of-pocket losses for personal injuries incurred as a result of the crime.[10] Finally, the compounding statute, MCL 750.540e; MSA 28.808(5), even if

not applicable where the underlying activity is a misdemeanor, is additional and further evidence for finding sufficient legislative expression of a policy prohibiting an employer from conditioning employment on an employee's refusal to prosecute a crime.

[9] MCL 750.81; MSA 28.276.

[10] MCL 18.351 *et seq.;* MSA 3.372(1) *et seq.*

I would hold that the plaintiff's assertion that he was the victim of an assault by a coemployee and that he was terminated for the reason that he refused to forswear redress in the criminal justice system stated a claim for wrongful discharge in violation of Michigan's public policy.[11] "To allow the discharge of an at-will employee because of a choice to file a criminal complaint against a fellow employee would force a choice between justice and livelihood. It is the public policy of this state to protect its citizens from such an onerous choice." 192 Mich. App. 247, 253; 480 N.W.2d 612 (1991). *87

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[11] I, of course, do not suggest that an employer has no remedy against a disruptive employee, or that an employer does not have a good-faith defense to a claim filed in this recognized cause of action.

III

In sum, the plaintiff did not engage in activity protected under the WPA when he filed a criminal complaint against a co-worker. The WPA was enacted to protect employees who report corrupt or illegal business practices or violations of law by an employer or co-worker that result from the conduct of the employer's business. The employer's demand that the employee withdraw the criminal complaint against his co-worker or be fired was an alleged violation of a clearly established public policy of this state.[12]

[12] Given the conclusions that the plaintiff has stated a claim for wrongful discharge under the public policy exception to the employment at will doctrine, and that the defendant's motion for directed verdict was correctly granted on the basis of the Whistleblowers' Protection Act because plaintiff was not engaged in protected activity under the WPA, it is unnecessary to decide whether the WPA provides plaintiff's exclusive remedy.

Thus, I would affirm the decision of the Court of Appeals regarding the public policy claim, and reverse the decision of the Court of Appeals with respect to the Whistleblowers' Protection Act claim.

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