

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

MICHAEL DEMIL, an individual,
Plaintiff/Counter-Defendant,

vs.

Case No. 2012-889-CK

RMD HOLDINGS, LTD, a Michigan corporation
and ROBERT E. DEMIL, an individual,

Defendants/Counter-Plaintiffs.

OPINION AND ORDER

Plaintiff has filed a motion for reconsideration of the Court's May 4, 2015 Opinion and Order granting Defendants summary disposition of Plaintiff's Michigan Whistleblower's Protection Act ("WPA") claim.

In the interests of judicial economy the factual and procedural statements set forth in the Court's August 11, 2014 Opinion and Order are herein incorporated.

I. Standard of Review

Motions for reconsideration must be filed within 21 days of the challenged decision. MCR 2.119(F)(1). The moving party must demonstrate a palpable error by which the Court and the parties have been misled and show that a different disposition of the motion must result from correction of the error. MCR 2.119(F)(3). A motion for reconsideration which merely presents the same issue ruled upon by the Court, either expressly or by reasonable implication, will not be granted. *Id.* The purpose of MCR 2.119(F)(3) is to allow a trial court to immediately correct any obvious mistakes it may have made in ruling on a motion, which would otherwise be subject to correction on

appeal but at a much greater expense to the parties. *Bers v Bers*, 161 Mich App 457, 462; 411 NW2d 732 (1987). The grant or denial of a motion for reconsideration is a matter within the discretion of the trial court. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

II. Arguments and Analysis

In his motion, Plaintiff contends that the Court erred in considering evidence presented during evidentiary hearings held in this case in addition to the evidence presented in connection with Defendants' motion for summary disposition of Plaintiff's WPA claim and Plaintiff's response to that motion. While Plaintiff is correct that his WPA claims were not at the center of the evidentiary hearings at issue, Plaintiff's acts of insubordination were addressed. Although Plaintiff complains that he was not given an opportunity to be heard, he was able to, and in fact did, file a response to Defendants' motion, and a hearing on the motion was held on April 6, 2015. Moreover, a Court must consider all affidavits, pleadings, depositions, admissions, and documentary evidence in the action when deciding a motion under MCR 2.116(C)(10). MCR 2.116(G)(5). While Plaintiff may be unhappy that the Court did not restrict its review of record in deciding Defendants' motion to the motion and response, the Court is convinced that utilizing the entire record before it in deciding the motion was proper.

Plaintiff also asserts that he established a prima facie claim under the WPA. In order for plaintiff's claim to survive the motion for summary disposition, plaintiff must "demonstrate that the evidence in the case ... is 'sufficient to permit a reasonable trier of fact to conclude that [plaintiff's protected activity] was a motivating factor in the adverse action taken by the employer....' " *Hazle v Ford Motor Co.*, 464 Mich 456, 465, 628

NW2d 515 (2001), quoting *Lytle v Malady (On Rehearing)*, 458 Mich 153, 176, 579 NW2d 906 (1998). In this case, the Court has previously held that Plaintiff engaged in a protected activity by reporting an alleged assault to the police. See January 9, 2013 Opinion and Order, at p. 10. However, that does not end the analysis and permit Plaintiff a right to survive summary disposition. Rather, Plaintiff must also demonstrate that the evidence to permit a reasonable trier of fact to conclude that his protected activity was a motivating factor in the adverse action taken by the employer, which in this case was his termination. *Hazle*, 404 Mich at 465. For the reasons set forth in the May 4, 2015 Opinion and Order, the Court is convinced that Plaintiff has failed to satisfy this burden. A motion for reconsideration which merely presents the same issue ruled upon by the Court, either expressly or by reasonable implication, will not be granted. MCR 2.119(F)(3). While Plaintiff does not agree with the Court's determination, the Court declines to revisit the exact same issues presented in connection with the original motion.

III. Conclusion

For the reasons discussed above, Plaintiff's motion for reconsideration of the Court's May 4, 2015 Opinion and Order is DENIED.

Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

Date: AUG 25 2015

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge