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SIXTH DIVISION  
December 16, 2011

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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|                               |   |                    |
|-------------------------------|---|--------------------|
| JILL STENSON,                 | ) | Appeal from the    |
|                               | ) | Circuit Court of   |
| Plaintiff-Appellant,          | ) | Cook County.       |
| v.                            | ) |                    |
|                               | ) | No. 07 L 14190     |
| ALDEN-LAKELAND REHABILITATION | ) | and HEALTH )       |
| CARE CENTER, INC.,            | ) |                    |
|                               | ) |                    |
| Defendants-Appellees          | ) |                    |
|                               | ) |                    |
| (The Alden Group, Ltd.,       | ) | The Honorable      |
|                               | ) | Allen S. Goldberg, |
| Defendant.)                   | ) | Judge Presiding.   |

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Robert E. Gordon and Justice Garcia concurred in the judgment.

**ORDER**

¶ 1 *HELD:* Summary judgment was proper where there was no genuine issue of material fact that plaintiff was terminated for valid, nonpretextual reasons and not in retaliation for protected conduct.

¶ 2 Plaintiff, Jill Stenson, appeals from the trial court's order granting summary judgment in favor of defendant, Alden-Lakeland Rehabilitation and Health Care Center, Inc. (Alden-Lakeland). Plaintiff contends the trial court erred in granting summary judgment where there was a genuine issue of material fact as to whether she was subject to retaliatory discharge. Plaintiff further contends the trial court erred in striking her affidavit as contradictory to her deposition testimony. Based on the following, we affirm.

¶ 3 FACTS

¶ 4 Plaintiff worked for Alden-Lakeland as its admissions coordinator from November 2006 until October 27, 2007. Plaintiff was terminated on October 27, 2007, for a violation of defendant's work rule 36, *i.e.*, for "failure to follow any work standard or any policy or procedure for resident care established by the facility." Prior to her termination, plaintiff was repeatedly disciplined and received counseling for failing to follow defendant's standards and procedures. It was plaintiff's duty to complete all paperwork necessary for the admission and transfer of residents. On October 18, 2007, plaintiff was suspended pending an investigation into a resident's claim that she misappropriated or mishandled the resident's funds. Lynette Torres, the recently-appointed acting administrator, initiated the suspension and conducted the subsequent investigation. The allegations of misappropriation were unsubstantiated; however, during the investigation, Torres learned of plaintiff's repeated procedural errors and that resident checks had been improperly held in plaintiff's desk drawer. In addition, during the investigation period, another resident complained that plaintiff "stole his check." Plaintiff was subsequently terminated and advised of the reasons for her termination in writing.

¶ 5 Plaintiff maintains she was fired in retaliation for "whistleblowing" where she reported misconduct committed by a former administrator, Alexandra Sardi. Plaintiff was told by Felicia Ortega, the office manager, that Sardi was stealing medication and providing it to someone in the corporate office. Plaintiff reported the misconduct to her coworker and aunt, Julieta Behbin, who was the regional admissions director. Behbin, however, had already reported Sardi's misconduct to Behbin's boss, the regional manager, after having learned of it from Nurse Dawn Hernandez. The regional manager proceeded to notify his boss and the operations manager. Behbin did not again report the misconduct after speaking to plaintiff. The matter was investigated and Sardi and the individual in the corporate office were ultimately fired. Plaintiff, Ortega, and Hernandez were interviewed as part of the investigation. Neither Ortega nor Hernandez were terminated and Behbin did not suffer any adverse consequences after reporting Sardi's misconduct. Torres was not part of the Sardi investigation and was unaware of its details.

¶ 6 On December 20, 2007, plaintiff filed a lawsuit for retaliatory discharge. Following the taking of depositions, on July 28, 2009, defendant filed a motion for summary judgment. Plaintiff filed a response and a memorandum in opposition to defendant's motion to dismiss. In support, plaintiff filed an affidavit averring that she followed defendant's work protocol in relation to residents' funds and that she was not provided reasoning for her termination. Defendant then filed a motion to strike portions of plaintiff's affidavit. On October 9, 2009, the trial court issued a memorandum and opinion granting defendant's motion to strike plaintiff's affidavit and granting summary judgment. Plaintiff filed a motion to reconsider, which the trial

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court denied in a written order on June 22, 2010.

¶ 7

## DECISION

¶ 8

### I. Summary Judgment

¶ 9 Plaintiff contends the trial court erred in granting summary judgment where she presented facts that arguably entitled her to judgment.

¶ 10 Summary judgment is proper where “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West 2004). The pleadings, depositions, admissions, and any affidavits must be construed strictly against the movant. *Wallace*, 389 Ill. App. 3d at 1085. “[W]hile a plaintiff need not prove her entire cause during summary judgment, she must present some evidentiary facts to support the elements of her cause of action. If a plaintiff fails to establish even one element of the cause of action, summary judgment in favor of defendant is wholly proper.” *Id.* We review a trial court’s decision granting summary judgment *de novo*. *Id.*

¶ 11 Retaliatory discharge is a tort claim recognized as a public policy exception to the rule that “at will” employment can be terminated at any time for any or no reason at all. *Marin v. American Meat Packing Co.*, 204 Ill. App. 3d 302, 306-07, 562 N.E.2d 282 (1990). Public policy seeks to protect employees covered by the Worker’s Compensation Act (Act) (820 ILCS 305/4(h) (West 2004)), that are fired for filing a claim under the Act. *Id.* at 307. A claim for retaliatory discharge requires the plaintiff to prove: (1) she was an employee of the defendant before the injury; (2) she exercised a right granted by the Act; and (3) her discharge was causally

related to the filing of a claim under the Act. *Clemons v. Mechanical Devices Co.*, 184 Ill. 2d 328, 335-36, 704 N.E.2d 403 (1998). Causality will not be proven if the reason for the discharge is valid and nonpretextual, where pretext is “ ‘a purpose or motive alleged or an appearance assumed in order to cloak the real intention or state of affairs.’ ” *Marin*, 204 Ill. App. 3d at 307, quoting *Wayne v. Exxon Coal USA, Inc.*, 157 Ill. App. 3d 514, 518, 510 N.E.2d 468 (1987).

¶ 12 Our review of the pleadings, depositions, admissions, and affidavits, viewed in a light most favorable to plaintiff, demonstrates that she cannot prove a causal connection between reporting Sardi’s misconduct and her termination. The record demonstrates that plaintiff had a conversation with Behbin about Sardi; however, Behbin had already learned of Sardi’s misconduct and reported it to her boss. Despite her assumption, plaintiff was not the catalyst that ultimately led to Sardi’s termination. Moreover, plaintiff was interviewed in connection with the Sardi investigation, but so were Ortega and Hernandez. Neither Ortega, Hernandez, nor Behbin were suspended or dismissed. Furthermore, the impetus for plaintiff’s suspension and investigation was the resident report that she was misappropriating resident funds in violation of defendant’s work policies and procedures. Torres was appointed to the position of acting administrator just one month prior to plaintiff’s suspension and ultimate dismissal. Torres had nothing to do with the Sardi investigation. The investigation into plaintiff’s performance history revealed that she consistently failed to comply with defendant’s policies and procedures despite attempts at counseling and discipline. Therefore, although not required to provide a reason for the termination of plaintiff’s at-will employment (*Clemons*, 184 Ill. 2d at 336), defendant did explain that plaintiff was terminated for violating work rule 36 by failing to comply with

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defendant's policies and procedures. Defendant's explanation for plaintiff's discharge was valid and nonpretextual. Consequently, plaintiff cannot demonstrate she was discharged in retaliation for protected conduct. We, therefore, conclude summary judgment was proper.

¶ 13 II. Affidavit

¶ 14 We need not address whether plaintiff's affidavit was properly struck where we affirm the trial court's decision granting summary judgment on other grounds.

¶ 15 CONCLUSION

¶ 16 The trial court properly granted summary judgment where there was no genuine issue of material fact.

¶ 17 Affirmed.