

Summary of SC93132, *John Templemire v. W & M Welding Inc.*

Appeal from the Pettis County circuit court, Judge Robert L. Koffman

Argued and submitted September 11, 2013; opinion issued April 15, 2014, and modified on the Court's own motion May 27, 2014

Attorneys: Templemire was represented by Bryan T. White and Gene P. Graham Jr. of White, Allinder, Graham, Buckley & Carr LLC in Independence, (816) 373-9080; and W&M was represented by James T. Buckley of Buckley & Buckley in Sedalia, (660) 826-7373.

Several organizations filed briefs as friends of the Court: The St. Louis and Kansas City chapters of the National Employment Lawyers Association were represented by Gregory A. Rich of Dobson, Goldberg, Berns & Rich LLP in St. Louis, (314) 621-8363, and Marie L. Gockel of Bratcher Gockel & Kingston LC in Kansas City, (816) 221-1614. The Missouri Association of Trial Attorneys was represented by Bradford B. Lear and Todd C. Werts of Lear Werts LLP in Columbia, (573) 875-1991. The Missouri Chamber of Commerce and Industry was represented by Edwin H. Smith, Richard M. AuBuchon and Michael A. Moorefield of Polsinelli PC in Jefferson City, (573) 636-8135. The Missouri Organization of Defense Lawyers was represented by Gary J. Willnauer, Peggy A. Wilson and Michael J. Kelly of Morrow Willnauer Klosterman Church LLC in Kansas City, (816) 382-1382.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man who sued his former employer, alleging he was discharged in retaliation for filing a workers' compensation claim, appeals the judgment against him, alleging the trial court used a jury instruction with the wrong standard. In a 5-2 decision written by Judge George W. Draper III, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case. The "exclusive causation" standard is unsupported by the plain language of the applicable statute and the case law on which the two decisions articulating such a standard relied. To the extent these two decisions and their progeny require a plaintiff to demonstrate his exercise of workers' compensation rights was the exclusive cause of his discharge or discrimination, they no longer should be followed. In causes of action filed under the statute prohibiting retaliation for filing a workers' compensation claim, the "contributing factor" standard should be used. Because the man demonstrated he suffered prejudice from the submission of the "exclusive cause" language in the verdict director used to instruct the jury, he is entitled to a new trial with submission of a verdict director instructing the jury it must determine whether the man's filing of a workers' compensation claim was a "contributing factor" to his discharge.

Judge Zel M. Fischer dissents. He would not overrule the two prior decisions but would affirm the trial court's judgment, which dutifully followed this Court's precedent in those two cases. Adherence to precedent is most important when that precedent concerns settled questions of statutory interpretation because the legislature is presumed to rely on this Court's prior decisions interpreting statutes. Other than 16 years and the changing membership of this Court, nothing has changed that can explain why there is a legal need to change the standard of causation required by the statute at issue here.

Facts: John Templemire was working as a painter and general laborer for W&M Welding Inc. when, in January 2006, a beam fell from a forklift and crushed his left foot. He filed a workers' compensation claim for which he received benefits. He ultimately was cleared to return to work with certain restrictions. Restrictions implemented by his physician in September 2006 restricted Templemire in part from standing longer than one hour without a 15-minute break. As a result, W&M's owner placed Templemire on light duty, assigning him to be a tool room assistant. In November 2006, while Templemire remained on light duty, the owner received a request from a customer to have a railing washed and painted for pick up later that afternoon. Templemire's supervisor informed him that he would need to wash the railing but that it was not ready and assigned Templemire to other tasks, which he completed. Once the railing arrived, Templemire stopped to rest his foot on his way to wash the railing. During the break, the owner confronted Templemire about the unwashed railing and discharged him effective immediately. Templemire contacted his workers' compensation insurance adjuster, who contacted the owner. The adjuster's notes indicated the owner "went on a [tirade] about [Templemire] 'milking' his injury." Templemire sued W & M, alleging he was discharged in retaliation for filing a workers' compensation claim. During the trial's jury instruction conference, Templemire argued the applicable Missouri-approved verdict-directing instruction misstated the law by requiring that, for Templemire to prevail, the jury must find Templemire's filing of a workers' compensation claim was the "exclusive" factor in W&M's decision to terminate him. He offered an alternative instruction stating that, for him to prevail, the jury had to find the filing of a workers' compensation claim was a "contributing" factor to W&M's decision to discharge him. The court refused Templemire's instruction, giving the jury the "exclusive" factor instruction. The jury returned a verdict in W & M's favor. Templemire appeals.

REVERSED AND REMANDED.

Court en banc holds: (1) The "exclusive causation" standard is unsupported by the plain language of section 287.780, RSMo, and the case law relied on in this Court's 1984 decision in *Hansome v. Northwestern Cooperate Co.* and 1998 decision in *Crabtree v. Bugby*. To the extent *Hansome*, *Crabtree* and their progeny require a plaintiff to demonstrate his exercise of workers' compensation rights was the exclusive cause of his discharge or discrimination, they no longer should be followed.

(a) Generally, an employer can discharge an at-will employee for any reason. Section 287.780, RSMo – a statutory exception to the at-will employment doctrine – was enacted in 1925 as part of the original workers' compensation law in Missouri. It provides that no employer shall discharge any employee for exercising his rights to workers' compensation, and it was amended in 1973 to provide that any employee who is so discharged can bring a civil suit for damages against his employer. In *Hansome*, this Court for the first time set forth the elements a plaintiff must demonstrate to make a submissible case for a claim brought pursuant to section 287.780, including "an exclusive causal connection between plaintiff's actions and defendant's actions." This Court reaffirmed that holding in *Crabtree* when it held that the jury should have been instructed that it had to find the exclusive cause of the plaintiff's discharge was the filing of her workers' compensation claim. *Hansome* and its progeny remained unquestioned until this

Court's 2010 decision in *Fleshner v. Pepose Vision Institute PC*, explicitly recognizing for the first time the public policy exception to the at-will employment doctrine and noting, "Nowhere in the workers' compensation laws does 'exclusive causal' or 'exclusive causation' language appear."

(b) In light of the current legal landscape and given the legislature's expansive enactment of a number of statutes protecting Missouri's citizens from workplace discrimination, reexamination of the accuracy of the exclusive causation standard articulated in *Hansome* and *Crabtree* is warranted. Adherence to *stare decisis* (a doctrine by which courts stand by the precedent of issues previously decided) is ill-advised when one carefully examines this Court's creation, of its own accord, of the exclusive causation standard articulated in *Hansome*. The holding in *Hansome*, as that case's dissent aptly described, is "an aberration" in which the "exclusive" language "appears to be plucked out of thin air" with no support in case law or statutory interpretation. As such, the holdings in *Hansome* and *Crabtree* are clearly erroneous, and *stare decisis* should not be applied to prevent their repudiation. That the legislature did not correct this Court's misstatement of the causation standard when it substantially revised workers' compensation laws in 2005 is not tacit approval of the statutory interpretation. Only now is this Court examining the plain meaning of the statute to determine the causation standard the legislature intended. The plain language of section 287.780 prohibits an employer from discharging or "in any way" discriminating against an employee for exercising his workers' compensation rights. This Court's imposition of the exclusive causation standard ran afoul of this statutory imperative.

(2) Taking into account the statutory language and this Court's prior holdings in cases involving other kinds of employment discrimination, the "contributing factor" standard should apply to causes of action arising pursuant to section 287.780. The legislature's use of the phrase "in any way" is consistent with this Court's analysis of the "contributory factor" language articulated in *Fleshner* and two prior cases that arose under the state's human rights act. Application of the "contributory factor" standard fulfills the purpose of the statute, which is to prohibit employers from discharging or discriminating in any way against an employee for exercising his rights under chapter 287 and aligns workers' compensation discrimination with other Missouri employment discrimination laws. At the time section 287.780 was amended to include a private cause of action, it was one of only a few statutes that limited the at-will employment doctrine. Since that time, the legislature has carved out additional statutory exceptions to the at-will employment doctrine, with the human rights act being one of the most significant.

(3) Templemire demonstrated he suffered prejudice from the submission of the "exclusive cause" language as opposed to "contributing factor" language in the verdict director used to instruct the jury. He presented substantial evidence of W&M's discrimination against him due to his filing of a workers' compensation claim that a reasonable trier of fact could determine directly caused or contributed to cause his discharge. By instructing the jury it had to determine Templemire was discharged exclusively in retaliation for filing a workers' compensation claim, any evidence of Templemire's purported insubordination – even in the face of substantial and direct evidence of discrimination – negated his claim. The statute does not dictate such a standard, and the law will not tolerate even a portion of an employer's motivation to be discriminatory when discharging an

employee. Accordingly, Templemire is entitled to a new trial with submission of a verdict director that instructs the jury it must determine whether his filing of a workers' compensation claim was a "contributing factor" to his discharge.

Dissenting opinion by Judge Fischer: The author would not overrule *Hansome v. Northwest Cooperage Co.* and *Crabtree v. Bugby* but would affirm the trial court's judgment, which dutifully followed this Court's precedent in those two cases. The principal opinion gives short shrift to the doctrine of *stare decisis*. The principal opinion also fails to recognize that adherence to precedent is most important when that precedent concerns settled questions of statutory interpretation because the legislature is presumed to rely on this Court's prior decisions interpreting statutes. Cases interpreting statutes carry the legislature's approval when it does not take action to overrule them, and the legislature ratifies them by allowing them to stand while enacting particular legislation about the same subject. To overrule a legislative ratification of this Court's prior statutory interpretations is to encroach on the legislature's function. Although this Court has adopted the contributing factor causation standard for retaliation claims under the human rights act, the holdings in *Hansome* and *Crabtree* were interpretations of a different Missouri statute. Section 287.780 permits an employee to bring a civil action against his employer for discharging the employee in retaliation for seeking workers' compensation benefits. In *Hansome*, this Court held that, for a workers' compensation retaliation claim pursuant to this statute, the employee must prove that his action in seeking workers' compensation benefits was the "exclusive cause" of termination. This Court reaffirmed that interpretation of the statute 14 years later in *Crabtree*, noting then that "this Court should not lightly disturb its own precedent. Mere disagreement by the current Court with the statutory analysis of a predecessor Court is not a satisfactory basis for violating the doctrine of *stare decisis*, at least in the absence of a recurring injustice or absurd results." The principal opinion adopts a new interpretation of section 287.780 based on arguments this Court already has considered and rejected twice. Other than 16 years and the changing membership of this Court, nothing has changed that can explain why there is a legal need to change the standard of causation required by section 287.780.