In the Missouri Court of Appeals
Eastern District

DIVISION ONE

JIMMY YOUNT,	)	No. ED109503
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of Perry County
vs.	)	
	)	Honorable Benjamin F. Lewis
KELLER MOTORS, INC.,	)	
	)	
Respondent.	)	FILED: December 14, 2021

Introduction

Jimmy Yount ("Yount") appeals from the circuit court's judgment dismissing his petition ("Petition") brought against his former employer, Keller Motors, Inc. ("Keller"), under Section 285.575,[1] also known as the Whistleblower's Protection Act ("WPA"). In his sole point on appeal, Yount argues the circuit court misinterpreted the WPA to find that his allegation of co-employee misconduct did not plead an unlawful act or serious misconduct of the employer to qualify him as a protected person under the WPA. The WPA protects employees who report to the proper authorities an unlawful act of his or her employer or who report serious misconduct of the employer that violates a clear mandate of public policy as articulated in a constitutional provision, statute, or regulation promulgated by statute. Section 285.575.2(4). Yount avers in his Petition that he was wrongfully discharged after reporting to his supervisors that certain of

[1] All Section references are to RSMo (Cum. Supp. 2018), unless otherwise noted.

his coworkers were stealing from Keller. Because the WPA by its express language codified the existing public-policy exception for whistleblower protection under the WPA, which has long recognized individual employee misconduct as a source of employer misconduct, the Petition adequately pleads that Yount is a protected person under the WPA. For that reason, we find the circuit court erred in dismissing Yount's Petition for failure to state a claim under the WPA. We reverse the circuit court's judgment and remand to the circuit court to continue proceedings consistent with this opinion.

Factual and Procedural History

For purposes of this appeal, we take the following facts as pleaded in the Petition as true. Keller employed Yount as a mechanic in its automotive repair shop for approximately four years. Yount observed co-employees stealing company property for personal use. Specifically, Yount observed two of his coworkers taking a rear camera from a vehicle owned by Keller. Yount saw one of the coworkers receive a cash payment for the vehicle part without reporting the payment to his supervisors. Yount reported his observations to his supervisors. Yount's supervisors berated him for reporting his co-employees' actions. Yount refused to follow his supervisors' instructions to ignore the theft and then reported his observations to Keller's owners. One of the owners indicated it was a serious matter and that he would take care of the situation. Yount felt his main supervisor began retaliating against him for having escalated the matter.

After reporting the internal theft, one of Yount's supervisors wrote him up for deficient performance relating to his work on a Chevy vehicle. Approximately one week after reporting on his co-employees, the supervisor terminated Yount's employment. Keller's stated reason for termination was Yount's poor workmanship on the Chevy vehicle and overall unsatisfactory work performance.

Yount filed a Petition in the circuit court against Keller stating a whistleblower claim under the WPA as follows:

> 37. Plaintiff incorporates by reference all previous paragraphs.
> 38. Plaintiff is an employee under [Section] 285.575.
> 39. Defendant is an employer under [Section] 285.575.
> 40. Plaintiff is a protected person under [Section] 285.575.
> 41. Defendant illegally discharged Plaintiff after he reported coworkers stealing company property for personal use and his refusal to remain silent when witnessing such theft.
> 42. Stealing property is a violation of public policy as articulated in Missouri law, and ignoring such stealing would also be a violation of the law.
> 43. Plaintiff's reports and refusal to cover up coworkers' thefts were the motivating factor in his discharge.

Keller moved to dismiss the Petition for failure to state a claim upon which relief could be granted. Keller maintained that Yount was not a protected person under the WPA because Yount alleged only that he was terminated for reporting misconduct of an employee and not employer misconduct. Keller also argued that Yount failed to demonstrate how the reported conduct violated a constitutional provision, statute, or regulation setting forth a clear mandate of public policy as required for protection under the WPA. After briefing and argument, the circuit court granted the motion to dismiss the Petition.[2] The circuit court found that Yount's reporting of his co-employees' misconduct did not make him a "protected person" under the WPA because Yount did not report employer misconduct. The trial court dismissed Yount's Petition for failure to allege facts stating a claim for relief. Yount now appeals.

Point on Appeal

In his sole point on appeal, Yount alleges the circuit court erred in granting Keller's motion to dismiss because it misconstrued Section 285.575 by improperly concluding that co-employee misconduct could not demonstrate serious misconduct of the employer.

[2] Yount moved for leave to file an amended petition with expanded allegations. The circuit court overruled the motion.

Standard of Review

We review the grant of a motion to dismiss de novo without deference to the circuit court's ruling. Jaeger v. Res. for Human Dev., Inc., 605 S.W.3d 586, 589 (Mo. App. W.D. 2020) (internal citation omitted); Hedrick v. Jay Wolfe Imports I, LLC, 404 S.W.3d 454, 456–57 (Mo. App. W.D. 2013) (internal citation omitted). "We view the facts contained in the petition as true and in the light most favorable to the plaintiff." Jaeger, 605 S.W.3d at 589 (internal quotation omitted). We "review[] the petition to see if the facts alleged, given their broadest intendment, meet the elements of a cause of action that is recognized or that might be adopted." Peters v. Wady Indus., Inc., 489 S.W.3d 784, 789 (Mo. banc 2016) (citing State ex rel. Henley v. Bickel, 285 S.W.3d 327, 329 (Mo. banc 2009)). "If the petition contains any facts that, if proven, would entitle the plaintiff to relief, then the petition states a claim." Jaeger, 605 S.W.3d at 589 (internal quotation omitted). Additionally, statutory interpretation is a matter of law that we review de novo. Doe v. St. Louis Cmty. Coll., 526 S.W.3d 329, 335 (Mo. App. E.D. 2017) (internal citation omitted).

Discussion

As an at-will employment state, Missouri employers generally may terminate an employee "for any reason or for no reason." Margiotta v. Christian Hosp. Ne. Nw., 315 S.W.3d 342, 345 (Mo. banc 2010) (internal quotation omitted). The at-will employment doctrine is nonetheless subject to certain limitations. Id. at 346 (internal citation omitted). Prior to the enactment of the WPA, Missouri courts recognized a common-law action for wrongful discharge under a "narrowly drawn" public-policy exception. Jones v. Galaxy 1 Mktg., Inc., 478 S.W.3d 556, 563 (Mo. App. E.D. 2015) (quoting Margiotta, 315 S.W.3d at 346); see also Fleshner v. Pepose Vision Inst., P.C., 304 S.W.3d 81, 91–92 (Mo. banc 2010) (internal citations omitted). To bring a wrongful-discharge action under the public-policy exception, the employee was

required to allege that the employer violated a "clear mandate of public policy [that] must be reflected 'in the letter and purpose of a constitutional, statutory, or regulatory provision or scheme, in the judicial decisions of state and federal courts, in the constant practice of government officials, [or], in certain instances, in professional codes of ethics.'" Jones, 478 S.W.3d at 563 (quoting Delaney v. Signature Health Care Found., 376 S.W.3d 55, 56 (Mo. App. E.D. 2012)); Hedrick, 404 S.W.3d at 458 (citing Fleshner, 304 S.W.3d at 96).

The Missouri legislature codified the common-law whistleblower protections for employees when it enacted the WPA in 2017. Importantly, the WPA provides that "[t]his section is intended to codify the existing common[-]law exceptions to the at-will employment doctrine and to limit their future expansion by the courts. This section, in addition to chapter 213 and chapter 287,[3] shall provide the exclusive remedy for any and all claims of unlawful employment practices." Section 285.575.3; see also Yerra v. Mercy Clinic Springfield Cmtys., 536 S.W.3d 348, 351 n.3 (Mo. App. S.D. 2017).

The WPA makes it "[a]n unlawful employment practice for an employer to discharge an individual defined as a protected person in this section because of that person's status as a protected person." Section 285.575.4. Protected persons, and only protected persons, are entitled to bring a private right of action for damages against the employer for a violation of the WPA. Section 285.575.5. The WPA defines a "protected person" as:

> ***an employee of an employer who has reported to the proper authorities an unlawful act of his or her employer; an employee of an employer who reports to his or her employer serious misconduct of the employer that violates a clear mandate of public policy as articulated in a constitutional provision, statute, or regulation promulgated under statute;*** or an employee of an employer who has refused to carry out a directive issued by his or her employer that if completed would be a violation of the law. An employee of an employer is not a protected person if:

[3] Chapter 213 contains the Missouri Human Rights Act ("MHRA"), and chapter 287 contains the Workers' Compensation Act.

> (a) The employee is a supervisory, managerial, or executive employee or an officer of his or her employer and the unlawful act or serious misconduct reported concerns matters upon which the employee is employed to report or provide professional opinion; or
>
> (b) The proper authority or person to whom the employee makes his or her report is the person whom the employee claims to have committed the unlawful act or violation of a clear mandate of public policy[.]

Section 285.575.2(2) (emphasis added). The WPA defines "employer" as:

> "Employer," an entity that has six or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year. ***"Employer" shall not include*** the state of Missouri or its agencies, instrumentalities, or political subdivisions, including but not limited to any public institution of higher education, a corporation wholly owned by the state of Missouri, ***an individual employed by an employer***, or corporations and associations owned or operated by religious or sectarian organizations[.]

Section 285.575.2(2) (emphasis added).

In the matter before us, the circuit court dismissed Yount's Petition because Yount alleged he was terminated for reporting co-employee theft from the employer. Explaining that "the General Assembly drafted the WPA to protect individuals who 'blow the whistle' on their employers, not individuals who report misconduct by coworkers," the circuit court found that Yount's reported thefts by his coworkers did not make him a "protected person" under the WPA. In so holding, the circuit court, while adhering to the plain meaning of the definition of "employer" found within Section 285.575.2(2), greatly limited the common-law protections enjoyed by employees who reported misconduct of a coworker prior to the enactment of the WPA. Yount disputes the circuit court's reasoning and asserts that his Petition alleging co-employee theft adequately states a claim for reporting an "unlawful act" or "serious misconduct" of his employer under the WPA. The challenge presented to this Court is the apparent conflict between differing provisions found within Section 285.575. Our duty is to resolve the conflict

when possible and bring harmony to the entire statute. See Doe, 526 S.W.3d at 337 (citing Gott v. Dir. of Revenue, 5 S.W.3d 155, 159–60 (Mo. banc 1999)).

I. Protected-Person Status under the WPA

A. Definition of Employer

Interpreting the newly enacted WPA is a matter of first impression before our Court. Our "primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute at issue." Peters, 489 S.W.3d at 789 (quoting Howard v. City of Kan. City, 332 S.W.3d 772, 787 (Mo. banc 2011)). "If the intent of the legislature is clear and unambiguous, by giving the language used in the statute its plain and ordinary meaning, then [this Court is] bound by that intent and cannot resort to any statutory construction in interpreting the statute." Id. (quoting Howard, 332 S.W.3d at 787) (alteration in original). However, if the language is ambiguous or would lead to an absurd or illogical result, we will look beyond the statute's plain meaning. Rasmussen v. Ill. Cas. Co., 628 S.W.3d 166, 175 (Mo. App. W.D. 2021) (internal citation omitted); see State ex rel. Jackson v. Dolan, 398 S.W.3d 472, 479 (Mo. banc 2013) (quoting Spradlin v. City of Fulton, 982 S.W.2d 255, 258 (Mo. banc 1998)) ("Courts look elsewhere for interpretation only when the meaning is ambiguous or would lead to an illogical result defeating the purpose of the legislature."). "When the legislature provides a statutory definition, [that definition] 'supersedes the commonly accepted dictionary or judicial definition and is binding on the courts.'" Cosby v. Treasurer of State, 579 S.W.3d 202, 207 (Mo. banc 2019) (quoting Jackson, 398 S.W.3d at 479).

The legislature included definitions of both "employer" and "protected person" within the WPA. Critically, the definition of "protected person" includes the term "employer." The interplay of these two definitions presents some uncertainty and confusion as to the scope of protected-person status under the WPA. Our task is to interpret these statutory definitions and

harmonize their apparent conflict, if possible. See Rasmussen, 628 S.W.3d at 175 (internal citation omitted). Applying these definitions grants "protected person" status only to those employees who satisfy one of three following categories: (1) an employee who reports to the proper authorities an unlawful act of the employer; (2) an employee who reports to the employer serious misconduct of the employer that violates a clear mandate of public policy as articulated in a constitutional provision, statute, or regulation promulgated under statute; or (3) an employee who refuses to carry out a directive issued by the employer that would violate the law. Section 285.575.2(4).

Here, Yount's Petition alleges he reported co-employee theft of company property to his supervisors and Keller's owners, and was discharged after reporting the theft. Yount argues these facts qualify him as a protected person for reporting an "unlawful act of his [] employer" or "serious misconduct of the employer." See id. Yount's allegations potentially fall within either the first or second category of protected persons as defined by the WPA. See id. However, for either category, Yount only states a claim under the WPA if we hold the circuit court erroneously applied the term "employer" to exclude the alleged misconduct of an employee's ***coworkers.***

Keller correctly notes that the definition of "employer" set forth in Section 285.575.2(2) specifically excludes "an individual employed by an employer[.]" The circuit court, applying the plain meaning of the words used in this definition, found that an employee who reports misconduct of individuals employed by the employer is not a "protected person" under Section 285.575.4 because the employee is not reporting misconduct of the employer. Looking at the definition in isolation supports the circuit court's judgment. However, our inquiry does not end with reviewing the language of only Section 285.575.2(2). To the contrary, we are obligated to construe the statute as a whole and not in isolated parts. See R.M.A. by Appleberry v. Blue

Springs R-IV Sch. Dist., 568 S.W.3d 420, 429 (Mo. banc 2019) (internal citation omitted). We must give the word "employer" meaning that is in harmony with all provisions of Section 285.575 and avoids an absurd result that would defeat the purpose of the legislative act. See Jackson, 398 S.W.3d at 479 (citing Spradlin, 982 S.W.2d at 258); Rasmussen, 628 S.W.3d at 175; Doe, 526 S.W.3d at 337 (internal citation omitted) ("In construing the meaning of an ambiguous enactment, a court should only adopt reasonable interpretations, disregarding constructions that would lead to absurd results."). The circuit court's judgment does not suggest it considered any language of the WPA other than Section 285.575.2(2). Therein lies its error.

In pointing out the confusion in attempting to consistently apply the WPA's definition of "employer" within all the provisions of the WPA, Yount focuses on the practical reality that an employer must conduct its business and activities through natural persons, and those natural persons include its employees.[4] More simply stated, any misconduct or unlawful act of the employer necessarily would include the conduct of the employer's employees when the employer acts through its employees. Although no court has yet addressed this precise issue under the WPA, Yount offers as guidance federal district court opinions that have resolved similarly-worded statutes in other states codifying public-policy whistleblower protection by interpreting unlawful acts of an employer to include unlawful acts of the employer's employees. See, e.g., Williams v. Accelerated Learning Sols., Inc., No. 2:16-CV-239-FTM-38MRM, 2016 WL 3552430, at *4 (M.D. Fla. June 30, 2016) (interpreting Florida's whistleblower protection

[4] For example, Yount highlights how the definition of "protected person" includes "an employee of an employer ***who reports to his or her employer*** serious misconduct of the employer[,]" raising the question of how an employee can report misconduct if not to a person employed by the employer. See Section 285.575.2(4) (emphasis added). Additionally, Yount cautions that the circuit court's misinterpretation will lead to the absurd scenario in which an employer accused of violating the WPA by wrongfully discharging an employee could claim the WPA does not apply to the discharge because, as a practical matter, an employee of the employer effected the discharge, not the employer. See Section 285.575.4 (specifying that "[i]t shall be an unlawful employment practice for an ***employer*** to discharge an individual defined as a protected person in this section") (emphasis added).

law, which grants protection only to employees who object to unlawful acts of their ***employers***, to include unlawful acts of offending employees as imputed to the employer).

Yount maintains that the term "employer" is used multiple times throughout the WPA and that the definition set forth in Section 285.575.2(2) cannot be applied consistently beyond this specific subsection. Yount submits that applying Section 287.575.2(2)'s definition of employer every time the term "employer" is used within the WPA presents myriad challenges and at times would lead to an absurd result unintended by the legislature. We agree that a uniform application of the definition of employer set forth in Section 285.575.2(2) potentially leads to either illogical or absurd results requiring statutory construction to distill the legislature's intended meaning. See Doe, 526 S.W.3d at 336 (internal citation omitted). This absurdity is best illustrated by the apparent conflict between how the legislature defined the term "employer" in Section 285.575.2(2) and the legislature's broad retention of the common-law exceptions to the at-will employment doctrine under Section 285.575.3. When engaging in statutory interpretation, we are not limited to only the words used in the statute, but are guided in our decision by the express legislative intent of the WPA. See Rasmussen, 628 S.W.3d at 175 (internal citation omitted) (noting plain-meaning irregularities should be resolved by determining the intent of the legislature and by giving effect to its intent wherever possible); Doe, 526 S.W.3d at 337 (internal citation omitted). Yount contends that the circuit court's interpretation of the WPA eliminates established common-law protections afforded to employees who report wrongdoings of coworkers. Yount strenuously posits that when enacting the WPA, the legislature intended to codify the existing common-law whistleblower protections—not substantially curtail such protections.

Without question, the circuit court's strict application of the WPA's definition of "employer" found within Section 285.575.2(2) to the definition of "protected person" eliminates a common-law public-policy whistleblower protection for workers previously recognized by our courts, i.e., reporting wrongful conduct of coworkers. See Fleshner, 304 S.W.3d at 97 n.13 (internal citations omitted) (noting "[t]he public-policy exception explicitly recognizes that an employee's superiors can constitute the proper authority to whom to blow the whistle and that an employee who is fired for informing his superiors of wrongdoing by other employees is entitled to bring suit"); see also Drummond v. Land Learning Found., 358 S.W.3d 167, 171 (Mo. App. W.D. 2011) (citing Fleshner, 304 S.W.3d at 97 n.13) (noting "[i]nternal reporting to superiors of illegal actions by other employees can constitute protected activity"). The Western District explained how co-employee misconduct falls within the public-policy exception as follows:

> [W]e must logically look at the clear mandate of public policy which is implicated in encouraging employees to come forward and report criminal activity by co-employees. As pled by appellant in his amended petition, in Missouri the theft of property from another, including one's employer, is a violation of criminal law. We would not quarrel with the fact that public policy would clearly encourage employees to report suspected criminal activity by co-employees to the proper authorities in order to "expose" the wrongdoers and their wrongdoing to prevent further wrongdoing and to aid in the investigation and criminal prosecution of the wrongdoers.

Faust v. Ryder Com. Leasing & Servs., 954 S.W.2d 383, 390–91 (Mo. App. W.D. 1997) (internal citation omitted), *abrogated by* Fleshner, 304 S.W.3d 81. Similarly, the Western District has determined that "sound public policy dictates that the law should encourage the uncovering and prosecution of crime, and that '[a]ny policy that discourages citizens from reporting crime or aiding in prosecution would be undesirable and detrimental to society in general.'" Brenneke v. Dep't of Mo., Veterans of Foreign Wars of U.S. of Am., 984 S.W.2d 134, 138–39 (Mo. App. W.D. 1998) (quoting Faust, 954 S.W.2d at 389–90, *abrogated by*

Fleshner, 304 S.W.3d 81). More recently, the Western District restated that "[t]he purpose of the public[-]policy exception is to prevent employers from discharging employees, without consequence, for doing that which is beneficial to society." Jaeger, 605 S.W.3d at 59 (citing Fleshner, 304 S.W.3d at 92). The circuit court's finding that Missouri's public-policy whistleblower protection extends only to those employees who blow the whistle on their "employers," not employees who report misconduct of their coworkers, ignores the judicial authority holding otherwise at common law. See Drummond, 358 S.W.3d at 171 (citing Fleshner, 304 S.W.3d at 97 n.13).

The pronounced issue before us is whether the legislature intended to displace this common-law whistleblower protection with a more limited statutory remedy when it enacted the WPA in 2017. Keller reasons that by expressly defining the term "employer" to exclude employees of the employer, the legislature affirmatively eliminated the common-law protection of an employee who merely reports an unlawful act or misconduct of coworkers. However, such a result would substantially limit rather than codify Missouri's existing common-law exceptions to the at-will employment doctrine. As is plainly understood by the language of the statute in Section 285.575.3, while the legislature may have had concern with a future expansion of whistleblower rights, the legislature was intent on retaining the common-law protections that existed upon the enactment of the WPA. Because the legislature is presumed to know the common law at the time it enacts a statute, we presume the legislature knew Missouri common law recognized whistleblower protection for reports of coworker misconduct when it enacted the WPA and expressly retained the common-law protections. See Hopfer v. Neenah Foundry Co., 477 S.W.3d 116, 126 (Mo. App. E.D. 2015) (internal quotation omitted) (noting "'the legislature is presumed to be aware of the state of the law at the time it enacts a statute,' [and] a

fundamental rule of construction is that statutes are to be construed 'with reference to the principles of common law in force at the time of their passage'"). Broadly applying the narrow definition of "employer" set forth in 285.757.2(2) directly contradicts the express language of Section 285.575.3, which states [t]his section is intended to codify the ***existing*** common[-]law exceptions to the at-will employment doctrine[.]" Section 285.575.3 (emphasis added).

The legislature's choice to include this provision of legislative intent is fundamental to our resolution of this appeal. We note that this explicit statement of legislative intent distinguishes the WPA from the contemporaneously amended Missouri Human Rights Act ("MHRA"), which in 2017 identically redefined "employer" to exclude "[a]n individual employed by an employer[.]" See Wiedner v. Ferrellgas, Inc., 607 S.W.3d 231, 237, 239 (Mo. App. W.D. 2020) (citing Section 213.010(8)). The Western District found the MHRA's new exclusionary definition of "employer" was a substantive amendment barring retroactive application because it eliminated plaintiffs' causes of actions for discriminatory acts against ***individual defendants that previously were actionable under Missouri law***. Id. at 239. Given that we must interpret "employer" consistent within the provisions of the WPA as well as cognate and other statutes *in pari materia*, we find it reasonable that the legislature employed the same definition of "employer" in both employment-law statutes to effectuate the same result. See Appleberry, 568 S.W.3d at 429 (internal citation omitted). Thus, comporting the WPA with the similarly-worded MHRA, we can give meaning to the exclusionary language in the WPA's definition of "employer" by acknowledging the legislative intent to limit the parties against whom a WPA claim may be brought as the exclusive remedy for wrongful discharge—namely, employers, rather than the individual employees employed by the employer. See Wiedner, 697 S.W.3d at 239. Applying the definition of "employer" in this way harmonizes Section

285.575.2(2) with Section 285.575.3 and eliminates any conflict or potential absurd result when applying the narrow definition in a broader sense throughout the statute. In order to give meaning to every provision within the WPA, we conclude that the correct reading of the WPA distinguishes between the exclusion of individual employees of the employer as proper defendants for wrongful-discharge actions and the fact that employers act through those same individual employees. See Rasmussen, 628 S.W.3d at 175 (quoting Sun Aviation, Inc. v. L-3 Commc'ns Avionics Sys., Inc., 533 S.W.3d 720, 726 (Mo. banc 2017)) ("Because each word of a statute is presumed to have been included for a particular purpose, an interpretation rendering statutory language redundant or without meaning is disfavored."). Such a reading best realizes the legislative intent to preserve existing whistleblower protections for employees who report unlawful acts or misconduct of individual employees of the employer, while avoiding the absurd result of employers claiming immunity from the WPA because the complained of misconduct was taken by individual employees and not "the employer." See Doe, 526 S.W.3d at 342 (internal citation omitted).

By this decision we do not create any ***new*** protections for employees not previously established under common law. See Section 285.575.3 (providing that the WPA "is intended to codify the existing common law exceptions to the at-will employment doctrine ***and to limit their future expansion by the courts***") (emphasis added); Hedrick, 404 S.W.3d at 460 (noting "we decline and are indeed prohibited from taking laws out of their statutory context and piecing them together to create a new law or 'a clear mandate of public policy' involving employee/employer relations where one does not clearly exist"). Nor do we ignore the applicability of the limiting language in the definition in "employer" to other issues not addressed on this appeal, such as the aforementioned proper party-defendants to an action under

the WPA. See, e.g., Ward v. G4s Secure Sols. (USA), Inc., No. 4:20CV891 JCH, 2020 WL 5291938, at *2 (E.D. Mo. Sept. 4, 2020) (illustrating a limitation of the exclusionary definition of "employer" by holding that the WPA does not cover serious misconduct of the employer when the employee who committed the alleged misconduct was working for ***another employer*** at the time of the misconduct). Rather, a reasonable interpretation of the definition of "employer" under the WPA that gives meaning to all of the provisions therein, and respects the intent of the legislature in codifying existing whistleblower protections, requires us to find that a plaintiff who pleads that he or she reported unlawful acts or serious misconduct of co-employees adequately pleads unlawful acts or serious misconduct of the employer for purposes of being a protected person under the WPA. This nuanced interpretation of the defined terms "employer" and "protected person" gives meaning to all provisions within the WPA and avoids contravening the express legislative intent of the statute to codify existing common-law exceptions to the at-will employment doctrine. See Appleberry, 568 S.W.3d at 429 (internal citation omitted); Rasmussen, 628 S.W.3d at 175; Doe, 526 S.W.3d at 337 (citing Gott, 5 S.W.3d at 159–60).

We recognize that some of the jurisprudence establishing whistleblower protection for reporting co-employee misconduct, such as Faust and Brenneke, preceded Margiotta in which the Supreme Court held that a petition for wrongful discharge based upon the employer's violation of public policy must identify authority from either a constitutional provision, statute, or regulation advancing a clear mandate of public policy. Margiotta, 315 S.W.3d at 346; see Section 585.575.2(4) (defining "protected person" in part as "an employee of an employer who reports to his or her employer serious misconduct of the employer that violates a clear mandate of public policy as articulated in a constitutional provision, statute, or regulation promulgated under statute"). Keller suggests that whistleblower protection extends to Yount only if he

alleged serious misconduct violating a clear mandate of public policy as articulated in a constitutional provision, statute, or regulation. Nevertheless, Margiotta is not dispositive here because Yount's claim concerns the criminal act of stealing, and therefore reasonably alleges an "unlawful act" under the first category of protected persons under the WPA, and not the public-policy category. See Section 585.575(4). Contrastingly, in Margiotta the two regulations regarding patient care and safety were deemed to be too vague or too general to support the plaintiff's claim for wrongful discharge under the public-policy exception. Margiotta, 315 S.W.3d at 348. Similarly, a Western District decision affirmed dismissal of a wrongful-discharge petition under the public-policy exception for failure to plead how a law with a clear mandate of public policy was violated where the employee, who alleged wrongful termination after his girlfriend purchased a competitor's car, referenced various sections of the Missouri Merchandising Practices Act ("MMPA") and other restrictive-covenant and antitrust laws purportedly relating to Missouri's public policy of encouraging its citizens to freely conduct business. See Hedrick, 404 S.W.3d at 458.

This court recently held that an employee failed to withstand summary judgment under the public-policy exception where the employee of a satellite service provider alleged wrongful discharge after he refused to establish temporary connectivity with consumers because he believed the practice was deception, fraud, theft, and embezzlement.[5] Jones, 478 S.W.3d 556 at 561, 567–68. We found the act of establishing temporary connectivity with customers as evidenced in the summary-judgment record did not amount to a violation of a clear mandate of

[5] More specifically, the Galaxy employee alleged various public-policy violations arising out of a practice in which Dish Network paid Galaxy an incentive bonus when Galaxy technicians established connectivity at a residence, which could be achieved despite the consumer not having internet connectivity by creating a temporary connection through the technician's cellphone. The connection was sufficient in duration to generate a good code from Dish Network to merit the bonus, however the connectivity would then be lost because the consumer's home lacked a permanent internet connection. See Jones, 478 S.W.3d at 561.

public policy under Missouri's general stealing statute. See id. at 567–68 (also finding inapplicable the Deceptive Business Practice Act, the MMPA, and the Uniform Commercial Code).

Jones is distinguishable from the matter before us. First, Jones was decided on a summary-judgment record, rather than mere pleadings. Next, and more importantly, Jones preceded the enactment of the WPA, which distinguishes our analysis today because the WPA designates three categories of employees who enjoy "protected person" status, including: (1) employees who "report[] to the proper authorities an unlawful act of [their] employer" and (2) employees who report "serious misconduct . . . that violates a clear mandate of public policy[.]" Section 285.575.2(4). This codified categorization persuades us that Jones is not dispositive of this appeal. In particular, Yount's Petition alleges his co-employees committed theft of company property and pleads that "[s]tealing property is a violation of public policy as articulated in Missouri law, and ignoring such stealing would also be a violation of the law." Unlike in Jones, the facts before us do not impose a duty to decide what public policy requires under the relevant statute, because the Petition alleges theft of physical property, specifically vehicle parts. See Jones, 478 S.W.3d 556 at 567–68. Certainly, stealing is an unlawful act found within Missouri's criminal code. See Section 570.030, RSMo (2016).[6] The WPA statutorily defines "protected person" to include the simple reporting to the proper authorities of an "unlawful act of his or her employer[.]" Section 285.575.2(4). The WPA defines "proper authorities" to include "the employee's supervisor . . . employed by the employer[.]" Section 287.575.2(3); see also Drummond, 358 S.W.3d at 171 (quoting Faust, 954 S.W.2d at 391, *abrogated by* Fleshner, 304

[6] Section 570.030 provides in the relevant part: "A person commits the offense of stealing if he or she: (1) [a]ppropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion[.]" Section 570.030.1(1), RSMo (2016).

S.W.3d 81) ("[T]o effectuate the clear mandate of public policy implicated in a given situation, it is axiomatic that the at-will employee report or 'blow the whistle' to the proper authorities, which, depending on the circumstances, would include the employer, 'internal whistleblowing,' and/or a third-party authority, 'external whistleblowing.'"). Yount has alleged that he reported an "unlawful act" to his supervisors, who constitute "proper authorities" under the WPA, therefore satisfying the first category within the definition of "protected person." See Section 282.585.2(3)–(4). Yount's allegations thus state a claim under the WPA and require no further public policy analysis. See Jaeger, 605 S.W.3d at 589 (internal quotation omitted) (noting "[i]f the petition contains any facts that, if proven, would entitle the plaintiff to relief, then the petition states a claim").

Keller counters that Yount's factual allegations cannot amount to stealing even at the pleading stage because, as the circuit court found, the Petition indicates Keller consented to the theft in that Keller could have chosen to ignore or consent to the taking of its property by its employees. See Margiotta, 315 S.W.3d at 347 (internal citation omitted) ("Generally, there is no whistleblowing protection for an employee who merely disagrees personally with an employer's legally-allowed policy."); see also Yerra, 536 S.W.3d at 351 (citing Newsome v. Kan. City, Mo. Sch. Dist., 520 S.W.3d 769, 779 (Mo. banc 2017)) (noting "it is essential that a reported act ***did*** violate public policy, not merely that the plaintiff so believed, even if [his or] her belief was reasonable"). However, we give the facts in the Petition their broadest intendment and construe them in the light most favorable to Yount. See Peters , 489 S.W.3d at 789 (internal citation omitted); Jaeger, 605 S.W.3d at 589 (internal citation omitted). Yount's Petition avers that he reported to his supervisors that coworkers took company property ***without permission*** for personal use. Yount further alleges the supervisor to whom he reported the theft instructed

Yount not to report the theft to Yount's other supervisor or to any members of management. Yount's Petition pleads that the supervisor who ultimately terminated him for reporting the coworker theft sought to cover up the thefts and enlist Yount in doing the same. We acknowledge that Yount also pleads he reported the theft to Keller's owners, who apparently did not act upon the report. Yet Yount alleges that one of Keller's owners informed Yount that his allegation was serious and that he would "take care of it." Viewing the Petition's timeline of events and facts therein in the light most favorable to Yount, Yount's Petition contains facts that, if true, could demonstrate Keller did not clearly consent to the taking of its property. See Jaeger, 605 S.W.3d at 589 (internal citation omitted). The factual allegations within Yount's Petition do not definitively make the stealing statute inapplicable. See Jones, 478 S.W.3d 556 at 568. Accordingly, the Petition sufficiently states a claim under the WPA by pleading that Yount is a "protected person" under the WPA for reporting unlawful theft by his co-employees.

The circuit court's application of the definition of employer in Section 285.575.2(2) to exclude whistleblower protection for those employees who report unlawful acts or serious misconduct of co-employees runs afoul of Missouri's well-established public-policy whistleblower protection jurisprudence and the legislature's express intent to retain such common-law protections. See Section 285.575.3; Drummond, 358 S.W.3d at 171 (citing Fleshner, 304 S.W.3d at 97 n. 13). The circuit court erred by concluding that the definition of "employer" meant Yount, who reported alleged coworker theft to his supervisors, could not be a "protected person" under the WPA. Therefore, we hold the circuit court erred in dismissing the Petition for failure to allege facts that could support a claim under the WPA. We grant the point on appeal. Accordingly, we reverse the circuit court's dismissal of the Petition. See Jaeger, 605 S.W.3d at 589 (internal citation omitted).

Conclusion

The judgment of the circuit court is reversed. We remand the matter to the circuit court to reinstate the Petition and continue proceedings consistent with this opinion.



KURT S. ODENWALD, Presiding Judge

Kelly C. Broniec, J., concurs.
John P. Torbitzky, J., concurs.