

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1887**

Anne Doering,
Appellant,

vs.

Neighbor Senior Services, LLC,
Respondent.

**Filed July 8, 2024
Affirmed
Smith, Tracy M., Judge**

Washington County District Court
File No. 82-CV-22-2874

Anne Doering, Shakopee, Minnesota (pro se appellant)

David W. Larson, Hudson, Wisconsin; and

Michael D. O'Neill, Martin & Squires, P.A., St. Paul, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Johnson, Judge; and
Florey, Judge.*

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant, a home-healthcare nurse, challenges the summary-judgment dismissal of her claim against respondent, her former employer, for an alleged violation of the

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Minnesota whistleblower act (MWA), Minnesota Statutes section 181.932 (2022 & Supp. 2023).¹ Appellant contends that she was discharged for making two reports to respondent in which she asserted that it was unlawful to require her to get vaccinated against COVID-19 because the available vaccine was only approved under an emergency use authorization (EUA). Appellant argues that the district court erred by determining that she did not engage in protected conduct and that she was discharged for fraudulent activity unrelated to her COVID-19 vaccine refusal. Because we conclude that appellant failed to create a genuine issue of material fact that she engaged in protected conduct and thus that her claim under the MWA fails as a matter of law, we affirm.

FACTS

Respondent Neighbor Senior Services LLC, also known as CareAparent, provides home-healthcare services to veterans, seniors, and other individuals. Appellant Anne Doering was hired as a home health nurse by CareAparent in August 2019 as an at-will contract employee. Based on the summary-judgment record, the following facts are not genuinely disputed.

CareAparent is a federally recognized provider of home-healthcare services and is eligible to receive reimbursement from Medicare, Medicaid, and the Veterans Administration for services that it provides to its clients. Eligibility for reimbursement

¹ We cite the most recent version of Minnesota Statutes section 181.932 because it has not been amended in relevant part. *See* 2023 Minn. Laws ch. 53, art. 11, § 26, at 243; *see also Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, “appellate courts apply the law as it exists at the time they rule on a case”).

depends on CareAparent's compliance with governmental regulations and mandates for providing services.

On August 23, 2021, the United States Food and Drug Administration (FDA) publicly announced its final approval of the Pfizer-BioNTech COVID-19 vaccine, to be known as Comirnaty, for individuals 16 years of age or older. The vaccine continued to be available for individuals ages 12 to 15 under an EUA and was also approved for a third dose in certain immunocompromised individuals under the EUA.

On November 5, 2021, the United States Department of Health and Human Services (HHS) issued an interim final rule amending the existing conditions of participation in the Medicare and Medicaid programs to require that home-healthcare providers ensure that their covered staff were vaccinated against COVID-19. 86 Fed. Reg. 61,555, 61,621-61,622 (Nov. 5, 2021) (codified at 42 C.F.R. pt. 484). The interim final rule did not restrict the vaccination mandate to vaccines with final approval from the FDA. The mandate was challenged in federal court, and, on January 13, 2022, the United States Supreme Court upheld the federal regulation. *Biden v. Missouri*, 595 U.S. 87, 95-97 (2022). In mid-January 2022, CareAparent notified its nursing staff of the vaccination mandate.

On January 20 and 25, 2022, Doering reported to CareAparent that it was illegal to require staff to be vaccinated because the only vaccine available was an EUA vaccine. Doering's supervisor was unaware of Doering's reports.

Toward the end of January, the wife and daughter of one of Doering's clients requested that CareAparent assign them a different nurse. In response to this request, Doering's supervisor and another nurse visited the client, his wife, and his daughter. The

wife and daughter reported that Doering was supposed to make weekly visits in December and January but that Doering had appeared only once in November and she was three hours late for that appointment.

Following that meeting with the client and his family, Doering's supervisor initiated an investigation and made findings that Doering had falsely reported at least five visits to the client's home and submitted false documentation for payroll and billing to CareAparent for those visits. Doering's supervisor recommended that Doering's employment be immediately terminated. Doering had previously been put on a performance-improvement plan. On January 29, CareAparent sent Doering an email terminating her employment. In a follow-up letter, CareAparent informed Doering that her employment was terminated for "several reasons," the most serious of which was "an allegation of fraud."

Doering commenced an action in district court alleging a violation of the MWA. CareAparent moved for summary judgment. Following a hearing, the district court granted CareAparent's motion on the grounds that (1) Doering's MWA claim failed "as a matter of law" because she did not establish "any illegality or unlawfulness in either the federal government's mandate requiring home-healthcare providers to be vaccinated against COVID-19, or in [CareAparent's] compliance with that mandate," and (2) Doering's claim failed "as a matter of fact" because the "termination of [Doering's] at-will employment contract was motivated by a reasonable belief that [Doering] had falsified her charting, documentation, and billing records, and that belief was sufficient to justify the termination."

Doering appeals.

DECISION

Appellate courts review a district court's grant of summary judgment de novo. *Hanson v. Dep't of Nat. Res.*, 972 N.W.2d 362, 371 (Minn. 2022). Summary judgment is appropriate if "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. Appellate courts "affirm a grant of summary judgment if no genuine issues of material fact exist and if the court accurately applied the law." *Hanson*, 972 N.W.2d at 371-72. The reviewing court views the evidence in the light most favorable to the nonmoving party and resolves all doubts and factual inferences against the moving party. *Id.* at 372.

In Minnesota, employment relationships are generally "at-will," and therefore "an employer may discharge an employee for any reason or no reason." *Id.* (quotations omitted). But the MWA is one of several statutes that prevent an employer from discharging an employee for improper reasons. *Id.* The MWA provides that "[a]n employer shall not discharge . . . an employee . . . because . . . the employee, . . . in good faith, reports a violation, suspected violation, or planned violation of any federal or state law." Minn. Stat. § 181.932, subd. 1(1).

Doering argues that the district court erred by granting summary judgment against her because she produced sufficient evidence to establish a genuine issue of material fact as to whether she reported a violation of law and as to whether CareAparent terminated her employment in retaliation for that protected conduct.

To sustain a claim under the MWA, an employee must have engaged in conduct protected by the statute. *Kratzer v. Welsh Cos.*, 771 N.W.2d 14, 22 (Minn. 2009). To

engage in protected conduct, “the employee does not need to identify in the report the exact law that is violated, but the conduct reported must at least implicate a federal or state law.” *Id.* at 19. “The proper standard to apply when assessing the legal sufficiency of a claim under the whistleblower statute is to assume that the facts have occurred as reported and then determine . . . whether those facts constitute a violation of law or rule adopted pursuant to law.” *Id.* at 22 (quotation omitted). Doering contends that she has met this standard because the facts she reported—that CareAparent’s vaccine mandate required vaccination with an EUA vaccine—constituted a violation of law. We disagree.

Doering’s argument appears to question the legality of the underlying rule promulgated by the secretary of HHS rather than the legality of CareAparent’s mandate based on that rule. The United States Supreme Court upheld HHS’s vaccine mandate requiring Medicare- and Medicaid-certified providers to ensure that covered employees were vaccinated against COVID-19. *Biden*, 595 U.S. at 95-97. And Doering does not point to any binding legal authority, nor are we aware of any, that prohibits an employer from implementing a vaccine mandate that requires vaccination with an EUA vaccine.²

In sum, based on the undisputed facts, Doering fails to demonstrate that she engaged in protected conduct under the MWA and her claim fails as a matter of law. The district

² Doering cites *Doe v. Rumsfeld*, No. Civ.A. 03-707, 2005 WL 1124589 (D.D.C. Apr. 6, 2005), an unreported case from the United States District Court for the District of Columbia, to support her argument that vaccine mandates requiring vaccination with an EUA vaccine are illegal. But *Doe*, a decision from a foreign jurisdiction, is not binding on this court. See *Minneapolis Grand, LLC v. Galt Funding, LLC*, 791 N.W.2d 549, 556 (Minn. App. 2010) (stating that decisions from foreign jurisdictions are not binding precedent).

court therefore properly granted summary judgment in favor of CareAparent. Because we resolve Doering's appeal on this basis, we do not reach Doering's argument that the record demonstrates the existence of genuine issues of material fact regarding the nonretaliatory reason that CareAparent provided for terminating Doering.

Affirmed.