[Cite as *Elam v. Carcorp, Inc.*, 2013-Ohio-1635.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Barry Elam,	:	
Plaintiff-Appellant,	:	No. 12AP-260 (C.P.C. No. 10CVC-12107)
v.	:	(REGULAR CALENDAR)
Carcorp, Inc. d.b.a. Dennis Autopoint et al.,	:	
Defendants-Appellees.	:	

D E C I S I O N

Rendered on April 23, 2013

Kemp, Schaeffer & Rowe Co., LPA, and *Erica Ann Probst*, for appellant.

Mazanec, Raskin & Ryder Co., L.P.A., *David K. Frank* and *Douglas C. Boatright*, for appellee Carcorp, Inc., d.b.a. Dennis Autopoint.

APPEAL from the Franklin County Court of Common Pleas

BRYANT, J.

{¶ 1} Plaintiff-appellant, Barry Elam, appeals from a judgment of the Franklin County Court of Common Pleas granting summary judgment to defendant-appellee, Carcorp, Inc., on Elam's claim of wrongful discharge in violation of public policy. Appellant appeals, assigning a single error:

> The trial court committed error as a matter of law when it found that no public policy existed in Ohio which prevented an employer from terminating an employee for filing a lawsuit against their former employer.

Because the trial court properly concluded no public policy exists in Ohio that prevents an employer from terminating an employee for filing a lawsuit against a third party, we affirm.

I. Facts and Procedural History

{¶ 2} Carcorp hired Elam on September 2, 2008 to work in its finance department as an at-will employee. In November 2008, while employed with Carcorp, Elam filed a lawsuit against a previous employer, Bob McDorman Chevrolet, Inc. ("McDorman"), alleging McDorman wrongfully terminated him from employment in August 2008. *See Elam v. Bob McDorman Chevrolet, Inc.*, Franklin C.P. No. 08 CV 16121.

{¶ 3} Carcorp fired Elam on November 2, 2009 in the wake of an incident involving a customer's mishandled check. On August 17, 2010, Elam filed a complaint against Carcorp setting forth, as relevant to Elam's appeal, claims for retaliation and wrongful discharge in violation of public policy. Elam's complaint alleged Carcorp contravened public policy when, in reality, it terminated his employment due to his lawsuit against McDorman.

{¶ 4} Carcorp filed its response on September 16, 2010, denying Elam's allegations; following discovery, Carcorp moved for summary judgment. After the parties fully briefed the motion, the trial court on March 15, 2012 filed its decision and entry granting Carcorp's motion for summary judgment. The court determined Elam could not prevail on his claim for wrongful termination in violation of public policy because Ohio has no clear public policy preventing an employer from terminating an employee for filing a lawsuit against a third-party former employer.

II. Assignment of Error - Wrongful Termination in Violation of Public Policy

{¶ 5} Elam's single assignment of error challenges the trial court's decision granting Carcorp's motion for summary judgment on his claim for wrongful discharge in violation of public policy. According to Elam, the court erred when it concluded Ohio has no clear public policy that "prevent[s] an employer from terminating an employee for filing a lawsuit against their former employer." (Appellant's brief, at 4.)

{¶ 6} An appellate court's review of summary judgment is conducted under a de novo standard. *Coventry Twp. v. Ecker*, 101 Ohio App.3d 38, 41 (9th Dist.1995); *Koos v.*

Cent. Ohio Cellular, Inc., 94 Ohio App.3d 579, 588 (8th Dist.1994). Summary judgment is proper only when the party moving for summary judgment demonstrates: (1) no genuine issue of material fact exists; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds could come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence most strongly construed in its favor. Civ.R. 56; *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181 (1997).

{¶ 7} In Ohio, the common-law doctrine of at-will employment governs employment relationships. "Traditionally, an employer could terminate the employment of any at-will employee for any cause, at any time whatsoever, even if the termination was done in gross or reckless disregard of the employee's rights." *Hout v. Jess Howard Elec. Co.*, 10th Dist. No. 07AP-971, 2008-Ohio-5061, ¶ 10, citing *Collins v. Rizkana*, 73 Ohio St.3d 65, 67 (1995). Even so, an exception to the employment-at-will doctrine exists when an at-will employee is discharged or disciplined for reasons that contravene clear public policy. *Painter v. Graley*, 70 Ohio St.3d 377 (1994), paragraph three of the syllabus. *See also Greeley v. Miami Valley Maintenance Contrs., Inc.*, 49 Ohio St.3d 228, (1990), paragraph two of the syllabus (holding "the right of employers to terminate employment at will for 'any cause' no longer includes the discharge of an employee where the discharge * * * contravenes public policy").

{¶ 8} To establish a claim that an employer wrongfully discharged an employee in violation of public policy, the employee must demonstrate: (1) a " ' "clear public policy existed and was manifested in a state or federal constitution, statute or administrative regulation, or in the common law (the *clarity* element)" ' "; (2) " ' "dismissing employees under circumstances like those involved in the plaintiff's dismissal would jeopardize the public policy (the *jeopardy* element)" ' "; (3) " ' "plaintiff's dismissal was motivated by conduct related to the public policy (the *causation* element)" ' "; and (4) the " ' "employer lacked overriding legitimate business justification for the dismissal (the *overriding justification* element)." ' " *Dohme v. Eurand Am., Inc.*, 130 Ohio St.3d 168, 2011-Ohio-4609, ¶ 13-16, quoting *Painter* at 384, fn. 8, quoting Perritt, Jr., *The Future of Wrongful Dismissal Claims: Where Does Employer Self–Interest Lie?*, 58 U.Cin.L.Rev. 397, 398-99

(1989). Courts determine the clarity and jeopardy elements as a matter of law, while the trier of fact determines the causation and overriding justification elements. *Id.*

{¶ 9} The Supreme Court of Ohio observed that "[t]he basis of this exception is that when the General Assembly enacts laws that are constitutional, the courts may not contravene the legislature's expression of public policy. * * * It is our responsibility to determine when public-policy exceptions must be recognized and to set the boundaries of such exceptions." *Sutton v. Tomco Machining, Inc.*, 129 Ohio St.3d 153, 2011-Ohio-2723, ¶ 8, citing *Painter* at 385 and *Kulch v. Structural Fibers, Inc.*, 78 Ohio St.3d 134, 161 (1997). The court characterized its finding as "simply recogniz[ing] that the judicial doctrine of employment at will must yield when it contravenes the public policy as established by the General Assembly. " *Id.*

{¶ 10} Here, the trial court concluded Elam did not articulate any clear public policy that his termination from employment violated. As he did before the trial court, Elam asserts on appeal that the Ohio Constitution's "Open Courts" provision provides "a public policy exception to the employment at will doctrine for Elam who sought legal redress against his former employer." (Appellant's brief, at 16.) *See Crase v. Shasta Beverages, Inc.*, 10th Dist. No. 11AP-519, 2012-Ohio-326, ¶ 36, citing *Dohme* at ¶ 23 (holding "[u]nless the plaintiff asserts a public policy and identifies federal or state constitutional provisions, statutes, regulations, or common law that support the policy, a court may not presume to sua sponte identify the source of that policy" or "fill in the blanks" for the plaintiff). *Dohme* at ¶ 23.

{¶ 11} To support a wrongful discharge claim, the subject public policy "must be plainly manifested." *Dohme* at ¶ 18. *See also Kaminski v. Metal & Wire Prods. Co.*, 125 Ohio St.3d 250, 2010-Ohio-1027 ¶ 94 (noting the proposed "interpretation of Section 35 [of Article II, Ohio Constitution] cannot be reconciled with the plain language of the section"). The Open Courts provision states, in pertinent part, that "[a]ll courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay." Ohio Constitution Article I, Section 16. Ohio courts have interpreted the Open Courts provision as plainly manifesting public policy favoring "meaningful access" to the courts. *Pride v. Ohio Civil Rights Comm.*, 10th Dist. No. 87AP-665 (Dec. 3, 1987),

citing Ohio Constitution Article I, Section 16. *See also Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, ¶ 44, quoting *Hardy v. VerMeulen*, 32 Ohio St.3d 45, 47 (1987) (holding "[w]hen the Constitution speaks of remedy and injury to person, property, or reputation, it requires an opportunity granted at a meaningful time and in a meaningful manner").

{¶ 12} Elam's claim extends such an understanding of the Open Courts provision, arguing that the provision, by articulating Ohio's interests in encouraging an individual's access to courts, also plainly manifests a clear public policy that categorically prohibits terminating employees who choose to exercise that right by filing a lawsuit against a third party. To support his argument, Elam cites several Ohio court decisions that, he alleges, applied the Open Courts provision to similar claims of wrongful termination in violation of public policy and recognized "the clear, well-established legal implication of an individual's right to seek legal counsel and legal redress in open court." (Appellant's brief, at 12.)

{¶ 13} Although Elam relies on cases addressing the "right to seek legal counsel" to support his appeal, he did not raise that argument in the trial court or in his assignment of error. (Appellant's brief, at 12.) His trial court filings assert only that Carcorp terminated his employment for filing the McDorman lawsuit, as does his assignment of error. Moreover, the record confirms that nothing in the facts Elam submitted in the trial court suggests he was fired for seeking legal advice. Elam nevertheless relies on cases discussing the right to seek counsel.

{¶ 14} In that regard, Elam claims the trial court mistakenly ignored this court's holding in *Simonelli v. Anderson Concrete Co.*, 99 Ohio App.3d 254, 259 (10th Dist.1994), where we concluded that, when the employee consulted an attorney about a matter related to her employment, "the act of firing an employee for consulting an attorney could serve as the basis for a public policy exception to the common-law employment-at-will doctrine." *Id.* Notably absent from *Simonelli* was any reference to either the Open Courts provision or termination from employment for filing a lawsuit; *Simonelli* discussed only an employee's termination for seeking legal advice related to her employment. Moreover, although Elam claims *Simonelli* found consulting an attorney was a right arising from the Ohio and Federal Constitutions, our decision did not

mention constitutional rights beyond a general recitation of another court's holding that the Federal and State Constitutions were potential sources of "clear public policy." *Simonelli* at 258.

{¶ 15} Elam similarly relies on *Chapman v. Adia Servs., Inc.*, 116 Ohio App.3d 534 (1st Dist.1997), for the principle that an employer cannot fire an employee for consulting an attorney. In *Chapman*, the court "held that an employer violates public policy by terminating an employee for consulting an attorney regarding an issue that affects the employer's business interests." *Abrams v. Am. Computer Technology*, 168 Ohio App.3d 362, 2006-Ohio-4032, ¶ 44 (1st Dist.). When the court issuing *Chapman* was asked "to extend the *Chapman* rule and hold that there is a clear public policy in favor of permitting an employee to file suit against his employer," it "decline[d] to do so." *Taylor v. Volunteers of Am.*, 153 Ohio App.3d 698, 2003-Ohio-4306, ¶ 10 (1st Dist.). Noting *Chapman* protects the employee's ability to determine his rights and available remedies, *Taylor* reasoned an employee therefore could "freely elect between filing suit and jeopardizing his employment on the one hand, and foregoing litigation and protecting the employment relationship on the other." *Id.* at ¶ 11.

{¶ 16} As *Taylor* explained, the enunciation of "a clear public policy in favor of permitting an employee to file suit against his employer" could "disrupt the balance of the employer-employee relationship" and "place the employer in the unenviable position of having to continue in a relationship that has been tainted by the acrimonious nature of litigation." *Id.* at ¶ 10, 12. *Taylor* thus concluded that "this demarcation of the employee's right to seek redress against his employer strikes the proper balance between the employee's interest in protecting recognized rights and the employer's interest in maintaining a loyal and responsive workforce." *Id.* at ¶ 13. Notably, the *Chapman* author wrote separately to "agree totally with the decision today." *Id.* at ¶ 15 (Painter, concurring separately.) *Cf. Jenkins v. Parkview Counseling Ctr. Inc.*, 7th Dist. No. 99 CA 60, 2001-Ohio-3151 (determining, pre-*Taylor*, that a public policy violation occurred when the employer terminated Jenkins for suing the company, based on the premise that the First District in *Chapman* "clearly intended to include the right to sue an employer under the umbrella of public policy"); *Terrell v. Uniscribe Professional Servs., Inc.*, 348 F.Supp.2d

890 (N.D.Ohio 2004) (citing *Jenkins* and concluding a cause of action for wrongful discharge exists when an employee is discharged for filing a lawsuit against his employer).

{¶ 17} Elam's claim, however, does not even arise out of his filing a lawsuit against his employer. He sued a third party for whom he formerly worked. *Takach v. Am. Med. Technology, Inc.*, 128 Ohio App.3d 457 (8th Dist.1998) addressed that situation, as it involved an employee who claimed her employer violated the public policy reflected in the Open Courts provision when it terminated her employment because she filed a products liability action against a third party with whom the employer had a professional relationship. *Takach* determined the Open Courts provision did not manifest a public policy exception protecting an employee from termination for "fil[ing] a civil lawsuit against a third-party which affected the business interests of the employer." *Id.* at 581. *See also Noble v. Brinker Internatl., Inc.*, 175 F.Supp.2d 1027, 1043-44 (S.D.Ohio 2001) (concluding that "[w]hile Ohio's Open Courts provision discourages retaliation by employers against employees who consult attorneys, Plaintiff cannot cite any public policy that discourages retaliation against employees who file lawsuits against third-parties").

{¶ 18} Elam argues *Takach* is not instructive because it is "[f]actually * * * inapposite," as the employee in *Takach* was not terminated from employment but instead quit. (Elam's reply brief, at 4.) Elam's argument is unconvincing. A review of *Takach* indicates the employee essentially alleged constructive termination premised on "reassignment of job duties and * * * [an] intolerable and hostile work environment." *Takach* at 462-63. *See Collins* at 71 (recognizing that a public policy exception from the at-will employment doctrine can apply not only in cases of dismissal, but also in cases of "retaliation resulting in constructive discharge"); *Chapman* at 545-46 (noting employee could state a claim for wrongful discharge in violation of public policy sufficient to survive summary judgment where she voluntarily left her employment but claimed she was constructively discharged).

{¶ 19} Elam's argument also is questionable because the issue of whether a clear public policy exception exists is a legal question that does not depend on any particular facts; application of *Takach*'s clarity element analysis thus does not depend upon factual similarity. *Id.*, citing *Collins* at 70 (observing that the clarity and jeopardy elements of the tort of wrongful discharge are questions of law for the court to determine). Elam

speculates that in *Takach*, "[t]he fact that the [employee] had voluntarily terminated her job without cause may have had more to do with the outcome than an analysis of the fundamental protections afforded to citizens of the state of Ohio such as the right to an attorney or to access courts." (Elam's reply brief , at 7.) Nothing in the *Takach* court's analysis, however, indicates the court improperly focused on disputed factual issues in determining, as a matter of law, whether a clear public policy existed. *Takach* at 582. Instead, having concluded the employee could not identify a clear public policy her employer breached, *Takach* never even reached the factual disputes between the parties.

{¶ 20} Elam also claims *Takach* "conflicts with the theory and spirit of decisions issued by this Court and others" but does not substantiate his assertion with reference to specific cases. (Appellant's reply brief, at 4.) If Elam refers to *Simonelli* and *Chapman*, his assertion lacks merit. The employee in *Takach* asserted *Simonelli* supported her claim, but the court determined it was "distinguishable because *Simonelli* involved the right to consult an attorney, which is not a claim in the present case, and the opinion at no point discussed the application of the Open Courts provision which is central to this assignment of error." *Takach* at 465. *Chapman* similarly is distinguishable because it, too, involves the right to seek legal advice. Despite Elam's suggestion that we ignore *Takach*, several other Ohio appellate courts have cited *Takach*'s holding favorably, including the First District in *Taylor* and the Twelfth District in *Popp v. Integrated Elec. Serv., Inc.*, 12 Dist. No. CA2005-03-058, 2005-Ohio-5367, ¶ 14. *See also Noble* at 1044, citing *Takach; Jersey v. John Muir Med. Ctr.*, 97 Cal.App.4th 814, 825-26 (2002), citing *Takach*.

{¶ 21} Instead of applying the analysis of *Takach*, Elam asserts we should adopt the reasoning of the Lake County Court of Common Pleas in *Moskowitz v. Progressive Ins. Co.*, 128 Ohio Misc.2d 10, 2004-Ohio-3100. The question in *Moskowitz* was "whether a cause of action for wrongful discharge in violation of public policy exists when an insurance company terminates one of its employees, who is also a policyholder, in retaliation for the employee's inquiry of her supervisor regarding what the employer's response would be if the employee were to bring a non-job-related lawsuit against the employer based on a coverage issue on a claim arising under the insurance policy." *Id.* at ¶ 3. The Lake County Court of Common Pleas determined the employee had such a cause of action. *Id.* at ¶ 14.

{¶ 22} Despite the narrow issue before the court, *Moskowitz* extended its discussion beyond what was necessary to resolve the employee's claim. *Id.* at ¶ 19. In so doing, *Moskowitz* advocated that *Chapman* should be understood as protecting "employees who consult attorneys because consulting an attorney is often a necessary step in obtaining a remedy." *Moskowitz* at ¶ 19. "Therefore, it is only logical that such protection should extend to an employee who actually seeks to obtain his remedy through the courts." *Id.*

{¶ 23} Not only is that portion of *Moskowitz* on which Elam relies dicta from a court whose decision is not binding on this court, but it is inconsistent with *Simonelli*'s holding that a right to counsel exists independently of the constitutional right to access and the ability to obtain a remedy. For that matter, it also is inconsistent with *Chapman*'s holding that the policy concerning legal advice was derived from sources that would have no bearing on the question of whether the policy should extend to filing lawsuits. Finally, *Moskowitz* does not reconcile its interpretation of *Chapman* with the First District's own explanation in *Taylor* of its *Chapman* opinion. *Moskowitz* instead simply rejected *Taylor* and did not address the *Taylor* concurrence. For these reasons, we decline to follow *Moskowitz*' reasoning.

{¶ 24} In the final analysis, Elam did not demonstrate the Open Courts provision represents a clear expression of legislative policy barring an employer from discharging an employee as a result of the employee's lawsuit against a third party. To hold otherwise would expand the public policy inherent in the Open Courts provision beyond the provision's clear meaning and infringe upon the legislature's duty to make and articulate public policy determinations. *See Rose v. CTL Aerospace, Inc.*, 12th Dist. No. CA2011-09-171, 2012-Ohio-1596, ¶ 25 (noting "it is the General Assembly's prerogative, not ours, to determine whether the basis of [an employee]'s claim should be part of Ohio's public policy"), citing *Bickers v. W. & S. Life Ins. Co.*, 116 Ohio St.3d 351, 2007-Ohio-6751 at ¶ 24 (holding "it is the legislature, and not the courts, [that determines] * * * the policy compromises necessary to balance the obligations and rights of the employer and employee in the workers' compensation system") and *Painter* at 385 (holding " '[j]udicial policy preferences may not be used to override valid legislative enactments,

for the General Assembly should be the final arbiter of public policy' "), quoting *State v. Smorgala*, 50 Ohio St.3d 222, 223 (1990).

{¶ 25} Accordingly, the trial court did not err in determining Elam failed to articulate a clear public policy prohibiting employers from terminating their employees for suing third parties, and Elam's assignment of error is overruled.

III. Disposition

{¶ 26} Having overruled Elam's sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

SADLER, J., concurs.
TYACK, J., dissents

TYACK, J., dissenting.

{¶ 27} I respectfully dissent.

{¶ 28} Terminating an employee for participating in litigation against a third party jeopardizes the public policy favoring access to courts found in the Open Courts Provision. Elam, in his suit against McDorman Chevrolet, was seeking to vindicate his rights as a whistleblower.

{¶ 29} Prior to being employed with Carcorp, Elam was employed by Bob McDorman Chevrolet. Elam was terminated from his employment with McDorman Chevrolet on August 18, 2008. Elam was hired on September 9, 2008 by Carcorp as an at-will employee. On November 11, 2008, Elam filed a lawsuit against McDorman Chevrolet with claims of retaliation and termination in violation of Ohio public policy. Elam alleged that he was wrongfully terminated from McDorman Chevrolet after cooperating with an investigation by the Ohio Attorney General into whether an employee of McDorman Chevrolet was falsifying credit applications. Elam voluntarily dismissed his case against McDorman Chevrolet on May 4, 2010.

{¶ 30} Less than two months after being hired and while the lawsuit was pending, Elam was terminated from his employment with Carcorp. Elam argues that he was terminated from Carcorp solely for bringing the lawsuit against another car dealership as

a whistle-blower and that any other possible legitimate business justifications for his dismissal are after-the-fact justifications designed to cover-up Carcorp's true intention.

{¶ 31} The Supreme Court of Ohio recently reaffirmed an exception to the employment-at-will doctrine when an at-will employee is discharged or disciplined for reasons that contravene clear public policy:

> ("Clear public policy" sufficient to justify an exception to the employment-at-will doctrine may be found in statutory enactments, the Constitutions of Ohio and the United States, administrative rules and regulations, and the common law). The basis of this exception is that when the General Assembly enacts laws that are constitutional, the courts may not contravene the legislature's expression of public policy.

Sutton v. Tomco Machining, Inc., 129 Ohio St.3d 153, 2011-Ohio-2723, ¶ 8, quoting *Painter v. Graley*, 70 Ohio St.3d 377, 385 (1994).

{¶ 32} It is the responsibility of the courts to determine when public policy exceptions must be recognized and to set the boundaries of such exceptions. *Sutton* at ¶ 8. "The employment-at-will doctrine was judicially created, and it may be judicially abolished." *Kulch v. Structural Fibers, Inc.*, 78 Ohio St.3d 134, 161 (1997).

{¶ 33} In addressing the wrongful discharge exception to the employment-at-will doctrine, the Supreme Court stated that the doctrine is a harsh outgrowth of outdated and rustic notions:

> The rule developed during a time when the rights of an employee, along with other family members, were considered to be not his or her own but those of his or her paterfamilias. The surrender of basic liberties during working hours is now seen "to present a distinct threat to the public policy carefully considered and adopted by society as a whole. As a result, it is now recognized that a proper balance must be maintained among the employer's interest in operating a business efficiently and profitably, the employee's interest in earning a livelihood, and society's interest in seeing its public policies carried out."

Collins v. Rizkana, 73 Ohio St.3d 65, 68-69 (1995).

{¶ 34} The Open Court Provision, Ohio Constitution, Article I, Section 16, clearly manifests a public policy favoring access to the courts in which parties may assert their rights. This policy is self-evident as it is ratified in its own provision of Ohio's Constitution creating a constitutional right. Ohio courts are responsible for preserving this constitutional right: "It is the primary duty of courts to sustain this declaration of right and remedy, wherever the same has been wrongfully invaded." *Kintz v. Harriger*, 99 Ohio St. 240 (1919). This policy is sufficiently clear and therefore satisfies the clarity element of *Greeley v. Miami Valley Maintenance Contrs., Inc.*, 49 Ohio St.3d 228 (1990)..

{¶ 35} Dismissing employees under circumstance like those alleged in Elam's dismissal from Carcorp would jeopardize the public policy manifested in the Open Courts Provision. Allowing an employer to fire an employee merely for suing a third party places all employees at risk if the employees have a claim against any third party for any reason even if it is completely unrelated to any business interest of the employer.

{¶ 36} Ohio case law indicates there is a clear public policy favoring reporting criminal activity and cooperating with law enforcement authorities. In *Iberis v. Mahoning Valley Sanitary Dist.*, 11th Dist. No. 2000-T-0036 (Dec. 21, 2001), Iberis alleged he was discharged because he cooperated with an investigation into the corrupt practices at this employer and because he opposed illegal retaliatory actions by his employer against two employees. The Eleventh District held that there was a clear public policy protecting employees who are terminated for cooperating in a criminal investigation and for aiding two former employees in their lawsuit against the employer. *Id*. In *Bailey v. Priyanka Inc.*, 9th Dist. No. 20437 (Oct. 10, 2001), Bailey asserted that the trial court erred when it held that she failed to state a valid wrongful discharge in violation of a public policy claim based upon the public policy favoring reporting criminal activity and cooperating with law enforcement authorities. Bailey acknowledged that she failed to comply with the procedural requirements of the whistle-blower statute and could not bring a claim based upon the public policy embodied in R.C. 4113.52. The Ninth District held that Bailey had satisfied the clarity and jeopardy elements of a wrongful discharge claim in violation of a public policy. *Id*.

{¶ 37} In this context, Elam, in his suit against McDorman Chevrolet, was seeking to vindicate his rights as a whistle-blower. The trial court granted summary judgment because it found that Elam had failed to satisfy the clarity and jeopardy elements of the *Greeley* case. However, summary judgment is a procedural device to terminate litigation, so it must be awarded cautiously with any doubts resolved in favor of the non-moving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-59 (1992). The right to pursue a lawsuit against a third party is a sufficiently clear public policy, a public policy grounded in the Ohio Constitution.

{¶ 38} The right to pursue a lawsuit against a third party is jeopardized if a person seeking to pursue a lawsuit faces the risk of being fired for merely filing the lawsuit. This satisfies the jeopardy element of the *Greeley* case.

{¶ 39} I disagree with the basis for the trial court's granting of summary judgment, and would sustain the sole assignment of error and remand the case for further appropriate proceedings.