2016 IL App (1st) 153655-U

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THIRD DIVISION
November 9, 2016

NO. 1-15-3655

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

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| MARGARET COULTER., | Appeal from the Circuit Court of Cook County, Illinois. |
| Plaintiff-Appellant, | |
| v. | No. 13L2504 |
| SISTERS OF ST. FRANCIS SERVICES, INC., et al., | The Honorable Brigid Mary McGrath, |
| Defendants-Appellees. | Judge Presiding. |

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

**ORDER**

¶ 1 Held: In retaliatory discharge case, summary judgment affirmed where there is no genuine issue of material fact as to whether employee was discharged for non-retaliatory reason. Employee was discharged for failing to comply with employee-ordered mental health evaluation. Affirmed.

¶ 2 Appellant Margaret Coulter appeals from the grant of summary judgment against her and in favor of defendant Sisters of St. Francis Services, Inc., which operates St. James Hospital, her previous employer, in her retaliatory discharge action. Coulter appeals, *pro se*,

and contends the trial court erred in granting summary judgment. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Briefly, plaintiff Coulter, a longtime emergency room registered nurse at St. James Hospital, was allegedly involved in a series of incidents leading up to February 29, 2012, including writing the wrong diagnosis on a patient's discharge papers, failing to check a seclusion patient for contraband, and allowing a patient with chronic obstructive pulmonary to smoke. On February 29, 2012, the hospital determined that Coulter should be temporarily removed from service until she completed a mandatory Employee Assistance Program referral and a fitness-for-duty examination at the hospital. After she did so, the examining physician referred her for a mental health evaluation. Coulter understood that the mental health evaluation was required before she could return to work. She did not complete the mental health examination, and her employment was subsequently terminated. Also on February 29, 2012, Coulter submitted a letter with a number of complaints regarding patient care to the hospital. She later filed a lawsuit, claiming that her employment termination was retaliation by the hospital for the criticisms she lodged against it. The hospital moved for summary judgment, arguing that Coulter was terminated not in retaliation, but for her failure to procure a mandated psychiatric clearance to continue work. Summary judgment was granted.

¶ 5 The following facts and procedural history are taken from depositions and pleadings below. In August 2010, Coulter was involved in an incident at work with nurse Kim Dillon wherein Coulter questioned whether a physician's assistant could intubate a patient. Specifically, Coulter saw a physician's assistant intubate a patient and later complained that

doing so was against hospital policy. Dillon sent Coulter home that day for being disruptive in the emergency room. Coulter was then instructed to make an appointment with the Employee Assistance Program (EAP). Coulter testified at deposition that she did not mind going to EAP at that time, as she was having personal difficulties because three individuals close to her had died in the previous two weeks.

¶ 6 Also in 2010, Coulter was prescribed the antidepressant Zoloft. Coulter testified at deposition that she never took the medicine. In 2010, she agreed to see a physician with a psychiatric specialty for clearance to return to work, and she made an appointment with Dr. Winn in Kankakee. She eventually returned to work.

¶ 7 Around December 2011, Coulter was reprimanded for placing the wrong diagnosis on a patient's discharge papers. Additionally, in mid-February 2012, Coulter was involved in an incident with a 70-year old seclusion patient assigned to her. Coulter testified that she knew law enforcement officers had confiscated a firearm from the patient within the 24 hours prior to the patient's arrival at the hospital. She also knew that a patient should be searched for contraband if the patient was in danger of hurting herself or others. Nonetheless, Coulter failed to search the patient for contraband. Eventually, a security officer arrived and discovered contraband in the patient's purse. Coulter acknowledged she was reprimanded by Warburton for this incident, but explained that the contraband was found in the patient's purse, which the patient did not have with her when she was in seclusion. Also in February 2012, a physician apparently made a complaint that Coulter had allowed a patient with chronic obstructive pulmonary disease to smoke outside the hospital.

¶ 8 On February 29, 2012, Coulter delivered a five-page letter addressed to Warburton and Corcoran, as well as to Chief Nursing Officer Cindy Brassea and to Denise Dudy of Risk

Management.[1] In that letter, Coulter first acknowledged that she had been reprimanded by Warburton, acknowledging that she was disciplined for failing to perform a contraband check. She explained why, in her opinion, the disciplinary action should be rescinded, arguing that she did not, in fact, violate policy. She said her supervisor, Warburton, told her she was incompetent and could not be trusted, and that she "needed remediation by the education department on restraint policy." Coulter explained that Warburton was misinformed about the sequence of events leading to the discipline. She said:

> "I have contacted education for remediation which is required by 3/1, and I have also left a message with risk management. I made contact with Denise Dudy at the education department."

She then stated that the letter is her "formal grievance for being incorrectly reprimanded," and she questioned the hospital's policy regarding restraint and seclusion of particular patients. By the letter, she also accused the hospital of systematic falsification of medical charts.

¶ 9 That same day, St. James Health Vice President of Human Resources Janet Slaven-Allen, Director of Corporate Compliance Clarke Corcoran, and Supervisor Warburton met to discuss Coulter's competency as a nurse. By her affidavit, Slaven-Allen attested, in part:

> "4. On February 29, 2012, I was part of a discussion with Ms. Coulter's Supervisor Diane Warburton, and Director of Corporate Compliance, Clarke Corcoran, during which time numerous questions and concerns regarding Ms. Coulter's recent abilities and competency as a nurse were discussed. Specifically,

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[1] Coulter gave Corcoran the letter in person, left Brassae's copy with her secretary, left Warburton's copy under her door, and also left a copy under Director of Nursing Maureen Keller's door. She spoke with Corcoran in his office and advised him of her concerns regarding the emergency room.

I was made aware by Ms. Warburton of three recent instances prior to February 29, 2012 where Ms. Coulter had exercised poor judgment in the Emergency Room that could have potentially endangered patients. I was also informed of a recent incident with Ms. Coulter in which she displayed concerning behavior.

5. In light of this conversation on February 29, 2012, I had concerns that Ms. Coulter may have competency issues that could potentially jeopardize the health and well-being of patients in the St. James Hospital Emergency Room. Therefore, the decision was made that Ms. Coulter would temporarily be taken off of work until she completed a mandatory Employee Assistance Program referral, as well as a Fitness-for-Duty examination with St. James Hospital [in] the Occupational Health Department. I asked Ms. Warburton to convey this information to Ms. Coulter.

6. I subsequently learned that Ms. Coulter did, in fact, attend an examination with Dr. Herbert White of St. James Hospital—Occupational Health on March 2, 2012 and that Dr. White referred Ms. Coulter for a specialized mental health evaluation.

7. Pursuant to hospital policy, a necessary prerequisite for Ms. Coulter returning to work as an Emergency Room Nurse at St. James Hospital was a finding that she was 'Fit-for-Duty' by a physician at St. James Hospital—Occupational Health. This finding was necessary because an unfit employee could very well impact the health and safety of patients at the Hospital. It was my understanding from Dr. White's report * * * that he could not determine whether

Ms. Coulter was Fit-for-Duty until she was examined by a mental health professional.

8. At no point in time was St. James Hospital's Human Resources Department made aware that Ms. Coulter completed her mental health referral as prescribed by Dr. White and had been subsequently determined to be Fit-for-Duty. Rather, it was my understanding that despite Dr. White's referral, Ms. Coulter failed to attend a mental health evaluation.

9. I and other members of St. James Hospital's Employee Benefits and Human Resources Departments repeatedly telephoned and wrote Ms. Coulter, reminding her that completion of the Employee Assistance Program paperwork and the mental health referral were necessary in order to return to work.

10. At no time did Ms. Coulter complete the required Employee Assistance Program paperwork, the mental health referral, or return to Dr. White to be cleared as Fit-for-Duty.

11. Because Ms. Coulter failed to comply with Hospital policy requiring that she be declared Fit-for-Duty by a doctor, I made the determination that Ms. Coulter would be terminated as a St. James Hospital employee. I approved the June 6, 2012 letter written by Diane Warburton that notified Ms. Coulter of her termination."

¶ 10 The next day, Warburton telephoned Coulter and advised her that she needed to see Dr. White in Occupational Health on March 2, 2012, for a fitness-for-duty evaluation.

¶ 11 Coulter testified at deposition that, when Warburton referred her to see Dr. White, Coulter was concerned Warburton was setting her up to be fired. She decided to seek a

second opinion in order to "cover" herself in the event that Warburton used the Dr. White meeting to determine that Coulter was not physically qualified to work in the emergency room. Coulter then went to Dr. J. Michael Panuska for a "very inclusive" physical. Dr. Panuska performed a department of transportation (DOT) physical, including a drug test. Dr. Panuska concluded that Coulter met the standards for safely driving a commercial vehicle. Coulter signed the medical examiner's certificate on the signature line for "driver."

¶ 12 On March 2, 2012, after being seen by Dr. Panuska, Coulter went to see Dr. White, who explained to her that she was undergoing a fitness-for-duty evaluation. He had been advised by Warburton that Coulter had argued with physicians and had provided the wrong discharge papers to a patient. Dr. White inquired as to whether she was depressed, and Coulter said she was not. Dr. White determined:

> "In view of concerns about judgment and patient safety, Ms. Coulter was informed that she needed an evaluation by a mental health professional to rule out an[y] underlying psychological pathology that could be the etiology of current concerns. She is to remain off work until the evaluation is completed. She is to return to clinic after evaluation is complete."

¶ 13 Coulter acknowledged in her deposition that Dr. White advised her that in order for her to return to work, she needed to see a mental health professional. Dr. White wrote a prescription for Coulter for a mental health evaluation, and he wrote on the prescription "please evaluate Ms. Coulter for her ability to work." Coulter agreed that Dr. White "made it clear *** that you could not return to work until you had a mental health evaluation."

¶ 14 Coulter scheduled an appointment with psychiatrist Dr. Mary Belford, but never went to see her. She explained that the first available appointment was two months out and, when

she informed the hospital's human resources department of the timing, "they got upset." She later saw Dr. White, who told her human resources had called him to say Coulter was having difficulty getting the appointment, so Dr. White called a friend who knew the doctor and they moved Coulter's appointment to an earlier date for her. Coulter was upset that this was a violation of her privacy and was unsure whether, as a friend of Dr. White's, Dr. Belford could provide an independent mental health evaluation. Coulter never saw Dr. Belford.

¶ 15 Instead, Coulter saw Judy Elwood, an employee assistant, who was neither a psychiatrist nor a psychologist. Coulter agreed at deposition that Dr. White "made it clear *** that you could not return to work until you had a mental health evaluation" and that she understood that "when Dr. White referred you to a mental health professional, he was referring either to a psychiatrist or a psychologist." She understood, based on her conversation with Dr. White, that had she been cleared by a psychiatrist or a psychologist, Dr. White would have cleared her for return to work. According to Slaven-Allen's affidavit, Slaven-Allen and other members of the hospital staff repeatedly telephoned and wrote to Coulter, reminding her that completion of the EAP paperwork and the mental health referral were necessary in order to return to work. Nonetheless, Coulter never saw a psychiatrist or a psychologist on Dr. White's referral.

¶ 16 At her deposition, Coulter denied having had any physical or mental health conditions within the last 10 years that would have affected her ability to effectively work as a nurse.

¶ 17 Coulter received a letter on June 6, 2012, terminating her employment. The letter, written by St. James Health Emergency Department Patient Care Manager Diane Warburton, stated, in relevant part:

> "On February 23, 2012 [*sic*] you were temporarily released from duty as a Registered Nurse in the Emergency Department at Franciscan St. James Health. You were mandated to see the Occupational Medicine Physician and obtain a referral for a fitness for duty evaluation, based upon your behavior.
>
> The Occupational Medicine Physician referred you to another physician to obtain a 'Fit for Duty' evaluation. As of today's date, June 6, 2012, you have failed to follow-up with the Occupational Health Department, the Human Resources Department or myself (your manager).
>
> You were also mandated to meet with EAP (Employee Assistance Program) in a letter dated March 6, 2012. As of today's date, June 6, 2012, you have failed to respond to myself or to the Human Resources Department.
>
> Margie, I have attempted to work with you and have waited since March for you to meet the requests made of you. Apparently you have decided not to return to work, based upon your lack of cooperation with all parties involved at Franciscan St. James Health.
>
> Please be advised that I am terminating your employment effective today, June 6, 2012."

¶ 18 In March 2013, Coulter filed, with counsel, a 2-count complaint against St. James Hospital for alleged injuries sustained related to the cessation of her employment with the hospital in June 2012. In short, Coulter claimed her employment was terminated in retaliation for her having made reports regarding specific conduct at the hospital. The first count was premised on the Illinois Hospital Report Card Act, which provides for a private cause of action in certain instances where a hospital penalizes, discriminates, or retaliates

against employees who, in pertinent part, make reports to Illinois state agencies regarding a hospital's violation of state law or rules. See 210 ILCS 86/35 (West 2012). The second count was premised on "unethical or unprofessional conduct" in violation of the Illinois Nurse Practice Act. See 225 ILCS 65/50-50 (West 2012), which sets forth a licensing and regulatory scheme for the nursing profession.

¶ 19 According to the complaint, Coulter has been a licensed registered professional nurse in Illinois since 1979, and worked at St. James Hospital as a full-time registered nurse from 1999 to her termination in 2012. On February 29, 2012, Coulter presented Sisters of St. Francis' Director of Risk Management and Corporate Finance Clarke Corcoran a letter in which she alleged that employees and managers in the St. James Hospital emergency room were guilty of falsifying medical records, violating Illinois mental health laws, and violating the Sisters of St. Francis' fifteen minute rule of observation relating to a nurse's duties. Additionally, the letter included an email attachment to show that Coulter had also informed Laurel Spahn, an attorney with the Illinois Guardianship and Advocacy Commission, of the allegations regarding the violations of Illinois mental health laws.[2] According to the complaint, just days after giving the letter to Corcoran, Coulter "was informed that she was not permitted to return to work for Defendant." Her employment was terminated in June 2012. She alleged in Count I:

> "Based on the short time between the reporting and termination, approximately three months, and the fact Plaintiff was off work without pay for this period, Plaintiff asserts that a retaliatory motive was the reason for the termination; and

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[2] The court later granted the hospital's motion to strike the Spahn affidavit in which Spahn documented email exchanges with Coulter concerning the Mental Health and Developmental Disabilities code.

> the retaliation followed and was related to Plaintiff's reporting of violations of state law to a state agency pursuant to the Illinois Whistleblower Protections Act."

Alleging that Sisters of St. Francis was liable based on a theory of *respondeat superior*, she sought judgment for medical expenses, severe mental anguish, emotional distress, humiliation, loss of income, and pain and suffering in excess of $50,000 plus costs.

¶ 20 Based on the same set of facts, she alleged in Count II:

> "The aforementioned facts illustrate a violation of section 1300.90 of the Illinois Nurse Practice Act because Defendant engaged in conduct likely to deceive, defraud or harm the public, or demonstrating a willful disregard for the health, welfare or safety of a patient [resulting in] a violation of 225 ILCS 65/50-50 (17) because Defendant retaliated against Plaintiff, a nurse, who reported unsafe, unethical, or illegal health care practices or conditions."

Plaintiff sought judgment against Sisters of St. Francis in excess of $50,000 plus costs.

¶ 21 The hospital moved to dismiss Count II, arguing that the Nurse Practice Act does not contain a provision authorizing a private cause of action. The trial court entered an order on June 19, 2013 wherein plaintiff agreed to voluntarily strike Count II.

¶ 22 In April 2004, the hospital filed a motion for summary judgment as to the remaining count, Count I. By that motion, the hospital argued that Coulter was terminated because of her failure to undergo a fitness-for-duty evaluation by either a psychiatrist or a psychologist—not in retaliation for her criticisms of the hospital. It supported its summary judgment motion with Slaven-Allen's affidavit, quoted at length above, in which Slavin-Allen attested that she was involved in discussions concerning Coulter on February 29, 2012, and was advised of a number of potentially patient-endangering incidents in which Coulter

had exercised poor judgment in the emergency room. She further attested that she made a decision that day to temporarily remove Coulter from work until Coulter completed the mandatory EAP program referral and a fitness-for-duty examination with the St. James Hospital occupational health department. She instructed Warburton to convey this information to Coulter. Slaven-Allen further attested that she subsequently learned that Dr. White examined Coulter and referred her for a specialized mental health evaluation and that the hospital never received indication that Coulter completed her mental health referral as prescribed by Dr. White. She attested:

> "Because Ms. Coulter failed to comply with Hospital policy requiring that she be declared Fit-for-Duty by a doctor, I made the determination that Ms. Coulter would be terminated as a St. James Hospital employee."

¶ 23 Coulter, who at that time was still represented by counsel, responded that summary judgment was inappropriate where, although she did not comply with the order for a mental health evaluation, the order itself was only in place as part of the hospital's retaliation against her for complaints she made regarding patient care.

¶ 24 Coulter's counsel filed a motion to withdraw as Coulter's attorney on May 29, 2014. He also sought an extension of time for Coulter to file a revised response to the hospital's motion for summary judgment. On June 18, 2014, the circuit court granted leave to withdraw as counsel, and entered and continued the request to file a revised response until July 16, 2014. Despite the court's order continuing Coulter's request to file a revised response until July 16, Coulter filed a *pro se* amended response to the hospital's summary judgment motion on July 9, 2014. The hospital then moved to strike the amended response,

arguing that it was filed without leave of court and after the hospital's motion for summary judgment had been fully briefed.

¶ 25 A second attorney filed an appearance on behalf of Coulter on September 8, 2014. That same day, the court entered and continued the hospital's motion for summary judgment, defendant's motion to strike Spahn's affidavit, and defendant's motion to strike Coulter's amended response until September 30, 2014. On September 30, the court granted Coulter leave to file a second amended response by October 21, 2014, subject to the hospital's motion to strike. Coulter's new counsel filed a second amended response to the defendant's motion for summary judgment on October 21, 2014. By that motion, Coulter argued in part that she "began receiving disciplines, harassment, retaliation and retaliatory threats upon advocating for the rights of a patient in February 2012" and that, "but for her letter given to Mr. Corcoran and the management team, which include the fact that she had previously brought violations of the seclusion procedures to the attention of a state official, she never would have been ordered to submit to a fitness for duty examination."

¶ 26 The trial court held a hearing on June 5, 2015, after which it granted the hospital's motion for summary judgment. In so doing, it determined that Coulter's alleged injury was not proximately caused by any action prohibited under the Hospital Report Card Act, reasoning that the Act contained nothing prohibiting a hospital from correcting or otherwise taking action to improve employees' performances. The court noted that Dr. White told Coulter that she would have to undergo an evaluation by a mental health professional and advised her to go to a psychologist or psychiatrist of her choosing. The court relied on Coulter's own testimony wherein she acknowledged her understanding that she could not return to work until she had a mental health evaluation. The court noted that hospital

representatives called Coulter repeatedly during the three months she was away from work to remind her she need to complete the EAP paperwork and the mental health evaluation in order to return to work, and found no issue of material fact that Coulter never completed the EAP Paperwork necessary for her to return to work. The court stated, in part: The court stated, in par

> "THE COURT: [T]here is no genuine issue of material fact that the plaintiff was terminated for her failure to obtain a mental health consult from a psychologist or a psychiatrist of her choice for over a three-month period despite repeated requests that she do so."

¶ 27 In July 2015, Coulter filed a motion to vacate the June 5, 2015 order for summary judgment.[3] The court denied the motion in December 2015.

¶ 28 Coulter appeals.

¶ 29 ANALYSIS

¶ 30 On appeal, Coulter contends that the trial court erred in granting summary judgment against her where there is a genuine issue of material fact as to whether her employment termination was an act of retaliation by her employer. She argues she was protected from retaliation upon the moment she provided the letter, but that the "actions of the [hospital] against [her] from the moment she submitted the [letter] are discouraging, disparaging and intimidating." She says the "details and particulars of this case clearly point to a disparity of treatment towards the Plaintiff," as evidenced by her being possibly the first employee to be sent to the occupational medicine clinic "for handing in a letter." It appears that she chose not to complete the psychiatric examination because she "determined it is not necessary for

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[3] Coulter simultaneously filed a notice of appeal. We dismissed the appeal initiated by this notice of appeal, No. 1-15-1919, for want of prosecution on December 4, 2015,

an employee to participate in their own harassment by an employer." She argues that, in the end, the only reason she was required to participate in the psychiatric evaluation was because the hospital was retaliating against her for her protected whistleblowing activities. According to her reasoning, had she not made complaints about patient care standards, the hospital would not have retaliated against her by requiring a psychiatric clearance, and were she not required to get the psychiatric clearance as a prerequisite for keeping her job, she would not have been terminated from her employment for not having completed the psychiatric evaluation. We disagree.

¶ 31 Summary judgment is proper when the pleadings, affidavits, depositions and admissions of record, construed strictly against the moving party, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2012). A party opposing a motion for summary judgment "must present a factual basis which would arguably entitle him to a judgment." *Allegro Services, Ltd. v. Metropolitan Pier & Exposition Authority*, 172 Ill. 2d 243, 256 (1996). "Although the burden is on the moving party to establish that summary judgment is appropriate, the nonmoving party must present a *bona fide* factual issue and not merely general conclusions of law." *Morrissey v. Arlington Park Racecourse, LLC*, 404 Ill. App. 3d 711, 724 (2010). When determining whether a genuine issue of material fact exists, courts construe the pleadings liberally in favor of the nonmoving party. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). A genuine issue of material fact exists where the facts are in dispute or where reasonable minds could draw different inferences from the undisputed facts. *Morrissey*, 404 Ill. App. 3d at 724. The purpose of summary judgment is not to try a question of fact, but to determine whether one exists. *Williams*, 228 Ill. 2d at 417; *Golden*

*Rule Insurance Co. v. Schwartz*, 203 Ill. 2d 456, 462 (2003); *Mann v. Producer's Chemical Co.*, 356 Ill. App. 3d 967, 972 (2005) ("Factual disputes cannot be decided as a matter of law [citation]; therefore, where reasonable persons could draw divergent inferences from the undisputed material facts or where there is a dispute as to a material fact, summary judgment should be denied and the issue decided by the trier of fact [citation].").

¶ 32 "Summary judgment is to be encouraged in the interest of prompt disposition of lawsuits, but as a drastic measure it should be allowed only when a moving party's right to it is clear and free from doubt." *Pyne v. Witmer*, 129 Ill. 2d 351, 358 (1989). "If the plaintiff fails to establish any element of the cause of action, summary judgment for the defendant is proper." *Governmental Interinsurance Exchange v. Judge*, 221 Ill. 2d 195, 215 (2006). We review summary judgment rulings *de novo* (*Espinoza v. Elgin, Joliet & Eastern Ry. Co.*, 165 Ill. 2d 107, 113 (1995)) and we will only disturb the decision of the trial court where we find that a genuine issue of material fact exists. *Addison v. Whittenberg*, 124 Ill. 2d 287, 294 (1988). A reviewing court can affirm the entry of summary judgment on any basis appearing in the record, regardless of whether the trial court relied on that basis or if its reasoning was correct. *Cabrera v. ESI Consultants, LTD*, 2015 IL App (1st) 140933, ¶ 91.

¶ 33 Retaliatory discharge is a limited exception to the general rule that at-will employees are terminable at any time for any or no cause. *Chicago Commons Ass'n v. Hancock*, 346 Ill. App. 3d 326, 328 (2004). The purpose of retaliatory discharge is to balance the employer's interest in operating a business efficiently and profitable, the employee's interest in earning a livelihood, and society's interest in seeing its public policies carried out. *Palmateer v. International Harvester Co.*, 85 Ill. 2d 124, 129 (1981).

¶ 34 To establish a cause of action for retaliatory discharge, a claimant must show: (1) the employer discharged the employee; (2) in retaliation for the employee's activities; and (3) the discharge was in violation of a clearly mandated public policy. *Fellhauer v. City of Geneva*, 142 Ill. 2d 495, 505 (1991). "A defendant in a retaliatory discharge action is entitled to summary judgment if it shows that no genuine issue of material fact exists in that the plaintiff cannot prove any one or more of these propositions." *Wright v. St. John's Hosp. of Hosp. Sisters of the Third Order of St. Francis*, 229 Ill. App. 3d 680, 684 (1992). The key here is that there is a causal relationship among these elements. See *Vorpagel v. Maxell Corp. of America*, 333 Ill. App. 3d 51, 54 (2002); *Paz v. Commonwealth Edison*, 314 Ill. App. 3d 591, 594 (2000) (There is a "causation element:" for a claim of retaliatory discharge). That is, the litigant's cause of action for retaliatory discharge hinges on evidence of a causal connection between his activities as an employee and his discharge. See *Dixon Distributing Co. v. Hanover Insurance Co.*, 161 Ill. 2d 433, 443 (1994). A plaintiff in a retaliatory discharge action fails to prove the necessary element of causation if the employer has a valid basis for discharging the employee. *Hertlein v. Illinois Power Company*, 151 Ill. 2d 142, 159 (1992). An employee's prior performance reviews are relevant to an employer's motive in discharging an employee. *Davis v. Times Mirror Magazines, Inc.*, 297 Ill. App. 3d 488, 494 (1998). The "medical inability to work [is] a 'legitimate nondiscriminatory reason' for discharge." *Wright*, 229 Ill. App. 3d at 688 (quoting *LaPorte v. Jostens, Inc.*, 213 Ill. App. 3d 1089, 1093 (1991)). Additionally, this court has previously held that the mere timing of an employee's termination is not enough to show retaliatory discharge. *Davis,* Ill. App. 3d at 496 (citing *Marin v. American Meat Packing Co.*, 204 Ill. App. 3d 302, 308 (1990)).

¶ 35 Initially, we address the hospital's commentary that Coulter's appellate brief fails to comply with Supreme Court Rule 341(b)(6), which requires facts to be stated accurately, without argument or comment, and with appropriate references to the record. See 188 Ill. 2d R. 341(b)(6). The hospital asserts that Coulter's arguments are either unsupported by proper citations to the record or argumentative, or both. We acknowledge the inaccuracy or omission of adequate citation to the record provided in Coulter's *pro se* brief. While the rules of procedure concerning appellate briefs are rules, not mere suggestions, it is within our discretion to consider an appeal despite minimal citation to the record. See *Silny v. Lorens*, 73 Ill. App. 3d 638, 643 (1979). We find that Coulter's lack of compliance with Rule 341(b) does not preclude our review, as none of her errors are dispositive to our decision. Accordingly, despite these deficiencies, we will not strike Coulter's brief.

¶ 36 Both parties agree that Coulter was discharged, and both agree that the Illinois Hospital Report Card Act, 210 ILCS 86/35 (West 2012), sets forth a public policy against retaliatory discharge for healthcare professionals concerned about patient care. We therefore concern ourselves here with the second element, whether the discharge was in retaliation for Coulter having submitted the grievance letter. See *Fellhauer*, 142 Ill. 2d at 505. On appeal, Coulter contends that her employment was terminated as the result of a 5-page letter she submitted to the hospital on February 29, 2012. In that letter, Coulter acknowledged that she was disciplined for failing to perform a contraband check on a patient. She the stated that the letter was her "formal grievance for being incorrectly reprimanded," and she questioned the hospital's policy regarding restraint and seclusion of particular patients. She claimed that personnel in the emergency department sometimes secluded patients for the convenience of the staff. She also accused the hospital of systematic falsification of medical charts. Coulter

now claims that her termination was in retaliation for her letter of February 29, 2012, in violation of the whistleblower protections contained in the Hospital Report Card Act, 210 ILCS 86/35.[4]

¶ 37 The Act prohibits a hospital from firing an employee because she has engaged in a protected activity. 210 ILCS 86/35 (West 2012). The Act does not, however, prohibit a hospital from discharging an employee for reasons other than the protected activity or from taking actions to improve the performance of an employee. Here, in the three months prior to delivering her grievance letter, Coulter had been reprimanded by her supervisor, nurse Warburton, for failing to complete a contraband check on a psychiatric patient, and her competency as a nurse as it related to a psychiatric patient had been questioned by supervisor Warburton. A physician had recently complained about Coulter in regards to Coulter possibly allowing a patient with chronic obstructive pulmonary disease to smoke outside the hospital. She had also recently been reprimanded for placing the incorrect diagnosis on a patient's discharge papers. Coulter admits she was reprimanded and disciplined for these incidents prior to submitting her grievance letter. These incidents are also supported by

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[4] This Whistleblower portion of the Hospital Report Card Act provides, in pertinent part:
"§ 35. Whistleblower protections.
(a) A hospital covered by this Act shall not penalize, discriminate, or retaliate in any manner against an employee with respect to compensation or the terms, conditions, or privileges of employment who in good faith, individually or in conjunction with another person or persons, does any of the following or intimidate, threaten, or punish an employee to prevent him or her from doing any of the following:
(1) Discloses to the nursing staff supervisor or manager, a private accreditation organization, the nurse's collective bargaining agent, or a regulatory agency any activity, policy, or practice of a hospital that violates this Act or any other law or rule or that the employee reasonably believes poses a risk to the health, safety, or welfare of a patient or the public.
* * *
(b) * * * Nothing in this Section prohibits a hospital from training, educating, correcting, or otherwise taking action to improve the performance of employees who report that they are unable or unwilling to perform an assigned task." 210 ILCS 86/35(a)(1) (West 2012).

Slavin-Allen's affidavit. Coulter's referral to Dr. White in the hospital's occupational health department and Dr. White's subsequent referral to a mental health professional for a fitness-for-duty evaluation were not arbitrary or inexplicable, but were prompted by three recent incidents that raised concerns about Coulter's judgment and its potential effect on patient care.

¶ 38 Coulter also admits she was sent to a mandatory fitness for duty examination with the occupational health department because of concerns regarding her competency as a nurse. Dr. White, the examining physician in the occupational health department, explained to Coulter that she was undergoing a fitness-for-duty evaluation because Warburton had told him Coulter argued with a physician and had provided the wrong discharge papers to a patient. Dr. White determined that Coulter should see a mental health professional "to rule out an[y] underlying psychological pathology that could be the etiology of current concerns [about judgment and patient safety]." He determined that she should "remain off work until the evaluation is completed." Coulter acknowledged in her deposition that Dr. White advised her that, in order for her to return to work, she needed to see a mental health professional. She also agreed that she understood "when Dr. White referred you to a mental health professional, he was referring either to a psychiatrist or a psychologist." She also understood that she could only return to work once she was cleared by a psychiatrist or psychologist.

¶ 39 There is no question here that Coulter did not comply with the order to complete a mental health evaluation. She knew she was required to do so in order to return to work, but she did not do so. According to Slavin-Allen, in the three months between the submission of the letter and her employment termination, hospital representatives "repeatedly telephoned and wrote Ms. Coulter, reminding her that completion of the Employee Assistance

paperwork and the mental health referral were necessary in order to return to work." Nonetheless, Coulter did not comply.

¶ 40 In this case, the undisputed facts defeat any inference that Coulter's discharge was causally related to her submitting the grievance letter to the hospital. Instead, they show that she was terminated for failing to comply with the required fitness-for-work mental health evaluation. Even Coulter's own testimony fails to support her claim of retaliation, as she acknowledged during her deposition that she knew she was required to undergo the mental health evaluation in order to return to work, but chose not to do so.

¶ 41 The reasons Coulter provides regarding why she did not comply with the requisite mental health evaluation are irrelevant to the question on appeal, which is whether Coulter was discharged for a valid basis unrelated to her whistleblower activities. Coulter had three months to schedule an appointment with a psychiatrist or a psychologist of her choosing, and she failed to do so even after repeated reminders from hospital staff.

¶ 42 Additionally, we reiterate that the Act protects individuals from retaliation based on their protected activities, such as, in this case, providing a grievance letter regarding patient care to the hospital. This, however, is not why Coulter's employment was terminated. Her employment was terminated because she failed to comply with a required mental health evaluation, which evaluation was ordered after repeated instances of questionable judgment in her duties as a registered nurse in the hospital emergency room.

¶ 43 Construing the pleadings, depositions, and affidavits in a light most favorable to plaintiff, the nonmoving party, as is required in considering a motion for summary judgment, we hold that the trial court properly granted summary judgment because defendant hospital showed that plaintiff Coulter was not discharged in retaliation for submitting a grievance

letter to the hospital, but for failing to comply with specific orders to obtain a mental health evaluation. Because Coulter failed to present any genuine issue of material fact as to why she was terminated from St. James Hospital and does not, in fact, deny that she failed to comply with hospital policy requiring the return-to-work clearance, summary judgment is proper in this case.

¶ 44 CONCLUSION

¶ 45 For all of the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 46 Affirmed.