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No. 367355

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

LEANNE LEVNO,

Petitioner,

v.

ADDUS HEALTHCARE, INC.,

Respondent.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER – APPELLANT - PLAINTIFF

Petitioner Leanne Levno (“Levno”), Plaintiff below, appealed the Spokane County Superior Court’s summary dismissal of her common law and RCW 74.34 wrongful termination claims to Division III of the Court of Appeals.

B. CITATION TO COURT OF APPEALS DECISION

Petitioner seeks review of *Leanne Levno v. Addus Healthcare, Inc.*, No. 36735-5-III, filed June 2, 2020, a copy of which is attached to this Petition as part of the Appendix.

C. ISSUE PRESENTED FOR REVIEW

Whether The Court Of Appeals’ Determination, That Levno’s Deposition And Declaration Testimony She Was Orally Fired Were Insufficient To Establish A Question Of Fact, Is Contrary To This Court’s Established Precedent (e.g. *Rose v. Anderson Hay and Grain Co.*) That Neither The Trial Court Nor The Appellate Court On *De Novo* Review May Evaluate The Non-Moving Party’s Evidence Or Weigh Her Credibility In Adjudicating A Summary Judgment Motion?

In a wrongful termination case, the facts surrounding the termination are construed in the light most favorable to the non-moving party; the terminated employee’s factual allegation that she was orally terminated must be accepted as true for purposes of adjudicating the motion. *Rose v. Anderson Hay and Grain Co.*, 184 Wn.2d 268, 286, 358 P.3d 1139 (2015). Contrary to this precedent,

The majority writes that Leanne Levno stripped her use of the word “termination” from any probative, factual value. Majority at 9. No summary judgment principle allows a court to ignore the testimony of a declarant, even a party declarant, because the declarant misuses or confuses the meaning of a word. The court impermissibly weighs the credibility of the witness when discounting testimony because of the witness’ misuse of words. Levno unequivocally testified that Dawn Taylor told her she was “being terminated from—from Addus.” CP at 83, 351. The reader should not be confused by concluding, based on this deposition passage, that Levno only testified that Addus Healthcare removed her from the care of a client. Regardless, in her declaration, Leanne Levno employed the word “fired,” when testifying to the action of Addus Healthcare toward her.

Dissent at 14.

Presented for review is whether the Court of Appeals’ determination, that Levno’s deposition and declaration testimony that she was orally fired were insufficient to establish a question of fact, is contrary to this Court’s established precedent that neither the trial court nor the appellate court on *de novo* review may evaluate the non-moving party’s evidence or weigh her credibility in adjudicating a summary judgment motion?

D. STATEMENT OF THE CASE

The Dissent summarizes the facts pertinent to the issue presented in this Petition, of whether the Court of Appeals evaluated evidence and weighed credibility in its *de novo* review of the trial court’s summary

dismissal of Levno's common law and statutory wrongful discharge claims.

See Dissent at pp. 1-8.

Attached as part of the Appendix to this Petition are pages CP 12-13, 82-83, 287-89, 348, and 350-52 of the record. See Dissent at 12, 14. The below narrative sets forth the pertinent facts, along with citation to the record for ease of review.

1. Levno Worked for Addus, Providing Care to Vulnerable Adults.

Beginning in 2007, Levno worked as a home health caregiver for Respondent Addus Healthcare, Inc. ("Addus") for eight years in Spokane, Washington. (CP at 10) Levno provided care for vulnerable adults who suffered from physical and/or mental illnesses. (CP at 10, 19, and 56) Levno was a mandatory reporter to the Department of Social and Health Services ("DSHS") if a reasonable belief of abuse or neglect existed. RCW 74.34.020(14), RCW 74.34.035(1).

From 2007 until 2012, Levno provided care for several patients, one of whom, "L.J.D", was a critical care patient who required constant specialized care. (CP at 26, 293, 327, 331) From 2012 until 2016 Levno was exclusively assigned to L.J.D., and was L.J.D.'s weekday caregiver; another Addus employee was L.J.D.'s weekend caregiver (CP at 57-58, 288, and 409)

2. In 2015, Levno Made A Report to Adult Protective Services, and Was Threatened with Reprisal by Addus.

Beginning in 2012, Levno shared her concerns with Addus that L.J.D. was receiving insufficient care and being left without care on the weekends. (CP at 59–62, 287, and 335) However, Addus failed to take corrective action or otherwise resolve the patient care issues identified by Levno. (CP at 332-335)

In February 2015, Levno reported Addus to APS for leaving L.J.D. without care on multiple occasions. (CP at 10, 64 – 65, 164, and 338) Levno’s supervisor, “Mike”, informed her that she “was no longer to report any further abuse without contacting him first[]”, or else, she “would be fired.” (CP at 10, 95, 331-333, and 338) Shortly after Levno’s APS report, an Addus employee reported Levno to APS. (CP at 10, 75-76) APS investigated, and on May 14, 2015, APS investigator Aime Kuhn determined that the allegation against Levno was unsubstantiated. (CP at 10, 98)

3. On November 5, 2015 Levno Received a Perfect Performance Evaluation from Her Addus Supervisor.

On November 6, 2015, Addus employee Eldon House issued Levno a performance evaluation and assigned her a top rating of “excellent” in every category and commented in writing “[a]bove and beyond. Great

quality care.” (CP at 338) In July 2016, Levno became a delegated nurse for L.J.D.’s care. (CP at 346)

4. On August 29, 2016, Levno Made A Second Report of Abuse to APS.

On August 27, 2016, Levno again believed that L.J.D. had been abused. (CP at 10, 339, 341) On August 29, 2016, Levno reported Addus to APS. (CP at 10; 339) The following day, on August 30, 2016, Levno submitted her prior day APS report to Addus. (CP at 339)

Two days later, on September 1, 2016, APS Investigator Lindsey Parker met with Levno at L.J.D.’s residence to investigate suspected abuse of L.J.D. (CP at 342) Ms. Parker took photographs of L.J.D.’s circumstances and Levno provided Ms. Parker with evidence of abuse that Levno had “stashed away.” (Id.) Levno also informed Ms. Parker of an incident that had occurred over the Fourth of July weekend which Levno had previously reported to Addus supervisor “Alice.” (Id.)

That same day, September 1, 2016, about an hour after Levno left L.J.D.’s residence, Dawn Taylor called Levno to inform her she was subject to a disciplinary review, and that she could not return to work unless and until she attended the disciplinary review. (CP at 342, 349) The disciplinary warning notice issued to Levno lists the violation as September 2, 2016. (CP at 47)

The next day, September 2, 2016, Addus terminated Levno's care of L.J.D. (CP at 31, 340-41) On September 2, 2016, Addus also discharged L.J.D. as a patient, providing her notice by mail that her care would be discontinued immediately because "we will no longer be able to send Leanne Levno to care for you." (CP at 413) Addus scheduled Levno's disciplinary review for September 8, 2016. (CP at 348)

5. Addus Fired Levno At The September 8, 2016 Disciplinary Review.

On September 8, 2016, Dawn Taylor and two other Addus supervisors accused Levno of crossing professional boundaries in her care of L.J.D. (CP at 346) They presented Levno with a document entitled "DISCIPLINARY WARNING NOTICE AND ACTION TAKEN." (CP at 47, 346) The boxes for "written warning", "insubordination" and "Disregard of Known Rule" were checked. (CP at 47) The document was dated September 7, 2016, the day before the meeting. (Id.) The handwritten portion of the document provides:

Not following the plan of care for client, not reporting client changes in condition and client needs to the supervisor. Having other HCA Report to her instead of supervisor if they have questions or concerns about client crossing professional boundaries, providing care for people other than the client. Performing nursing tasks without delegation.

(CP at 47)

When asked to endorse the document, Levno refused, and instead wrote “I don’t agree – I refuse to sign.” (CP at 47, 346) Levno testified that Dawn Taylor told Levno she “was being terminated from [] Addus” and fired Levno. (CP at 349-350, 417)

Following the September 8, 2016 meeting, Addus never reached out to Levno, or offered her renewed employment. (CP at 288, 349) L.J.D., who required specialized care, which Levno had provided since 2007, passed away two months later on October 30, 2016. (CP at 409)

6. Proceedings Below.

Levno filed suit on August 11, 2017, and amended her complaint the following month, alleging wrongful termination in violation of public policy, retaliatory discharge, and violation of the Washington Wage Payment Act. (CP at 1-8, 9-17)

Addus deposed Levno on March 29, 2018. “Q: You never received a termination letter from Addus? A: No. But it was all right in here that – and during the meeting, Dawn told me I was being terminated from – from Addus.” (CP at 351)

Q. [] Isn’t it true that during your meeting with your supervisor, you were specifically told that you were not being terminated.

A. No.

MR. BEST: Objection; form.

A. You want to repeat that.

Q. (By Mr. Arceneaux) Isn’t it true that you were told you were not being terminated?

A. I was –

Q. Excuse me. That you were told that you were not being terminated?

A. I was told that I was being terminated.

(CP at 349-350)

On December 20, 2018 Addus sought summary dismissal, disputing it had terminated Levno. (CP at 34-36; 50-286; 310-375) Opposing the motion, Levno submitted a declaration in which she testified: “they fired me” and “Addus ended my employment.” (CP at 287-88)

The trial court granted Addus’ dismissal motion, on the basis that Levno’s deposition and declaration testimony were “self-serving”, and thus Levno failed to demonstrate any evidence that she was terminated. (CP at 376-77)

Levno moved for reconsideration and filed a second declaration emphasizing that “[o]n September 8, 2016, Addus orally terminated me during my (alleged) misconduct hearing.” (CP at 408) Addus responded, and Levno replied, followed by the trial court denying the motion. (CP 391-401, 402-07, 416-17) An order dismissing all claims was entered March 29, 2019, and the appeal timely followed. (CP at 418-25; 426-43)

On appeal, Levno referred the court to her deposition testimony, as well as to her declaration testimony in which she testified that she had been orally terminated by Dawn Taylor of Addus at the September 8, 2016

meeting. Rejecting this testimony, the Majority “agree[d] with the trial judge that Ms. Levno’s claims of oral termination are too conclusory to overcome summary judgment.” Majority at 9. Disagreeing, the Dissent explained:

Levno presented sufficient evidence to allow the trier of fact to resolve whether Addus Healthcare terminated her employment ... [n]o summary judgment principle allows a court to ignore the testimony of a declarant, even a party declarant, because the declarant misuses or confuses the meaning of a word. The court impermissibly weighs the credibility of the witness when discounting testimony because of the witness’ misuse of words.

Dissent at 14.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. The Court Of Appeals Decision Is In Conflict With, *Inter Alia*, *Rose v. Anderson Hay and Grain Co.*, Warranting Review Pursuant To RAP 13.4(b)(1).

The Court of Appeals evaluated deposition and declaration testimony in affirming the trial court’s dismissal on summary judgment of Levno’s common law and statutory wrongful discharge claims, contrary to precedent concerning *de novo* review of summary judgment orders, as recently expressed by this Court in the context of wrongful termination claims in *Rose v. Anderson Hay and Grain Co.*, 184 Wn.2d 268, 286, 358 P.3d 1139 (2015). See RAP 13.4(b)(1).

Orders granting summary judgment are reviewed *de novo*. *Ehrhart v. King Cty.*, 195 Wn.2d 388, 409, 460 P.3d 612 (2020). The court considers all facts in the light most favorable to the nonmoving party. *Id.* “A genuine issue of material fact exists when reasonable minds could differ on the facts controlling the outcome of the litigation.” *Id.* A material fact is one upon which the outcome of the litigation depends. *In re Estate of Black*, 153 Wn.2d 152, 160, 102 P.3d 796 (2004). In determining whether a material fact exists, the court analyzes whether “the evidence is sufficient for a reasonable jury to return a verdict for the nonmoving party.” *Keck v. Collins*, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). Only where there is no genuine issue of material fact and reasonable people could reach “but one conclusion” from all of the evidence is summary judgment appropriate. *Black*, 153 Wn.2d at 161.

2. RCW 74.34 Remedies are Liberally Construed and Summary Judgment is Inappropriate Where Facts Surrounding Termination are Disputed.

Caregivers of vulnerable adults are mandatory reporters, and have a duty to report suspected abuse. RCW 74.34.035; RCW 74.34.020(2), (14). Failure to report subjects a caregiver to criminal, (RCW 74.34.053), and civil liability. *Kim v. Lakeside Adult Family Home*, 185 Wn.2d 532, 544, 374 P.3d 121 (2016) (“Governmental authorities must give the prevention, treatment, and punishment of child abuse the highest priority, and all

instances of child abuse must be reported The AVAA is similar to the ACA[.]”). “An employee or contractor who is a whistleblower and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action, has the remedies provided under chapter 49.60 RCW.” RCW 74.34.180.

RCW 49.60 remedies are to be liberally construed. RCW 49.60.020; *see Jin Zhu v. N. Cent. Educ. Serv. Dist.-ESD 171*, 189 Wn.2d 607, 614, 404 P.3d 504 (2017). Because of factual issues concerning retaliatory motive, “[s]ummary judgment for an employer is seldom appropriate.” *Cornwell v. Microsoft Corp.*, 192 Wn.2d 403, 410, 430 P.3d 229 (2018); *Mikkelsen v. Pub. Util. Dist. No. 1 of Kittitas Cty.*, 189 Wn.2d 516, 526, 404 P.3d 464 (2017) (plaintiffs may rely on “circumstantial, indirect, and inferential evidence” because “direct smoking gun evidence ... is rare”, and “it will seldom be otherwise.”).

3. Whether Levno was Terminated is a Disputed Material Fact, Which Cannot Be Resolved On Summary Judgment.

Addus moved for summary dismissal of Levno’s wrongful termination and constructive discharge claims, contending Levno offered “no admissible evidence that Addus terminated her employment[.]” (CP at 32, 35-36) Yet, Levno proffered both direct and circumstantial evidence of express termination. Dissent at 1-8.

In her deposition, Levno testified:

A. ... during the [September 8, 2016] meeting, Dawn told me I was being terminated from – from Addus.

...

Q. [] Isn't it true that during your meeting with your supervisor, you were specifically told that you were not being terminated.

A. No.

MR. BEST: Objection; form.

A. You want to repeat that.

Q. (By Mr. Arceneaux) Isn't it true that you were told you were not being terminated?

A. I was –

Q. Excuse me. That you were told that you were not being terminated?

A. I was told that I was being terminated.

(CP at 349-50) Levno's declaration states "they fired me" and "Addus ended my employment." (CP at 287-88)

The Declaration of Dawn Taylor states that on September 8, 2016, Taylor did "not inform [Levno] that her employment was being terminated." (CP at 43) Yet Levno's second declaration provides: "[o]n September 8, 2016, Addus orally terminated me during my (alleged) misconduct hearing." (CP at 408)

The circumstantial evidence also creates an inference that Levno was terminated. Levno had previously reported suspected abuse of L.J.D. to Addus as well as to APS in 2015. (CP at 335-36) In late 2015 Levno received a perfect performance review. (CP at 338) On August 29, 2016 Levno reported Addus to APS a second time and informed Addus of the

report the next day. (CP at 339-40) On September 1, 2016, Levno met with the APS investigator at L.J.D.'s residence and provided evidence of abuse. (CP at 342) That same day Dawn Taylor informed Levno that L.J.D was no longer her patient and that Levno could not work for Addus again until Levno came in for a "meeting" on September 8, 2016. (CP at 340, 347) On September 7, 2016 Addus drafted a "DISCIPLINARY WARNING NOTICE AND ACTION TAKEN" document accusing Levno of insubordination and misconduct. (CP at 47) The next day Dawn Taylor and two other Addus supervisors met with Levno and accused of misconduct and asked her to endorse the warning notice. Levno refused and wrote on the notice "I don't agree – I refuse to sign." (CP at 47, 346)

It is the province of the jury whether to believe Levno that Dawn Taylor orally terminated her on September 8, 2016, or to believe Dawn Taylor that she did not orally terminate Levno. A genuine dispute of material fact exists whether Levno was terminated, and the court of appeals erred in affirming summary judgment.

4. The Court Erred by Weighing the Credibility of Levno's Evidence.

When considering a motion for summary judgment, the court is precluded from weighing the credibility of evidence. *Strauss v. Premera Blue Cross*, 194 Wn.2d 296, 303, 449 P.3d 640 (2019) ("a weighing of conflicting evidence ... is inappropriate at the summary judgment stage);

Jones v. State, Dept. of Health, 170 Wn.2d 338, n. 7, 242 P.3d 825 (2010) (“the rule is settled that ‘[t]he court does not weigh credibility in deciding a motion for summary judgment.’”).

In a case that rests on the “credibility of the parties who make conflicting statements of fact, ‘summary judgment is inappropriate and “[d]eterminations of matters of credibility are [reserved] for the trier of fact.’” *Malnar v. Carlson*, 128 Wn.2d 521, 536, 910 P.2d 455 (1996); *Grove v. PeaceHealth St. Joseph Hosp.*, 182 Wn.2d 136, 147, 341 P.3d 261 (2014) (“Assessing the credibility of that testimony and what weight to give it were for the jury to decide.”). When conflicting evidence is proffered on an essential element of the non-movant’s claim, summary judgment is inappropriate. *Strauss*, 194 Wn.2d at 304.

Here, Levno and Addus proffered conflicting evidence concerning the oral termination of Levno’s employment on September 8, 2016. (Compare CP 349-50 with CP at 43) The Court of Appeals erred in holding otherwise, contrary to precedent set forth in, *inter alia*, *Rose, supra*.

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F. CONCLUSION

Levno asks that the Court accept her Petition for Review of the decision of Division III of the Court of Appeals, No. 36735-5-III.

Dated this 2nd day of July, 2020,

KSB LITIGATION, P.S.

By: 

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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of July, 2020, I caused to be served a true and correct copy of the foregoing Document, on the Petitioner via the Washington State Appellate Court's Secure Portal Electronic Filing System for the Court of Appeals, Division III, as well as to the following:

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APPENDIX

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

LEANNE LEVNO, an individual,)	No. 36735-5-III
)	
Appellant,)	
)	
v.)	UNPUBLISHED OPINION
)	
ADDUS HEALTHCARE, INC., an)	
Illinois corporation,)	
)	
Respondent.)	

PENNELL, C.J. — Leanne Levno appeals an order of summary judgment, dismissing her claims of wrongful employment termination against Addus Healthcare, Inc. We affirm.

FACTS

Ms. Levno worked at Addus Healthcare as a home caregiver for vulnerable adults. From 2012 to 2016, Ms. Levno provided caregiver services for one client, L.J.D. On August 29, 2016, Ms. Levno filed an incident report with Adult Protective Services (APS), alleging neglect and abuse of L.J.D. by other Addus employees. She followed up with a report to Addus the next day.

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Shortly after the APS report, Ms. Levno was contacted by L.J.D.'s husband. He advised he received a letter from Addus dated September 2, 2016, indicating Ms. Levno had been removed from L.J.D.'s care. The letter stated:

Please accept this as formal notice that Addus HomeCare will no longer be able to provide you with services per our voicemail. We normally give two week[s'] notice before stopping services which means the last day of services will be 9/16/16. Unfortunately, we will no longer be able to send Leanne Levno to care for you, which means that we may not have enough staff to guarantee full coverage until the 16th. Therefore, it is our hope that you can work with your case manager . . . to select another provider before the 16th.

Clerk's Papers (CP) at 413.

Addus did not provide Ms. Levno a copy of the aforementioned letter. However, Ms. Levno was informed that she could not return to work for L.J.D. until after meeting with her supervisors.

The supervisor meeting took place on September 8, 2016. At that time, Ms. Levno was informed she had been removed from L.J.D.'s case for performance reasons, including failure to maintain professional boundaries. Ms. Levno was provided various paperwork, including Addus's written policy on maintaining client boundaries and a document entitled "Disciplinary Warning Notice and Action Taken." *Id.* at 47 (some capitalization omitted).

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The disciplinary warning document indicated Ms. Levno was provided a “written warning” for “disregard of known rule” and “insubordination.” *Id.* Included was the following explanation:

Not following the plan of care for client, not reporting client changes in condition and client needs to the supervisor. Having other HCA report to her instead of supervisor if they have questions or concerns about client crossing professional boundaries, providing care for people other than the client, performing nursing tasks without delegation.

Id. The bottom of the disciplinary warning bears the following statement: “IMMEDIATE SATISFACTORY IMPROVEMENT MUST BE SHOWN OR FURTHER DISCIPLINARY ACTION WILL BE TAKEN, INCLUDING POSSIBLE SUSPENSION FROM DUTY OR DISCHARGE.” *Id.* Below this further action options are listed, including “Warned Verbally,” “Warning in Writing,” “Suspended,” and “Discharged.” *Id.* None of the boxes next to these action items are marked. In the comments section, Ms. Levno wrote, “I don’t agree—I refuse to sign.” *Id.* at 47, 348.

Addus maintains that after September 8, efforts were made to contact Ms. Levno and offer her new assignments. However, Ms. Levno never agreed to alternate arrangements. Ms. Levno denies that she was ever contacted after the meeting on September 8.

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In January 2017, Addus claims it terminated Ms. Levno's employment due to abandonment.

PROCEDURE

Ms. Levno sued Addus Healthcare for wrongful termination. The crux of her complaint was that she had been terminated on September 8, 2016, in retaliation for the APS report and in violation of public policy. Ms. Levno's termination claim was specific to September 8 and she did not allege any other form of adverse employment action.

Addus moved for summary judgment, claiming Ms. Levno lacked proof of termination. Ms. Levno filed two responsive declarations. One was from L.J.D.'s daughter, H.D. It stated an unnamed "Addus supervisor" called H.D. in late August 2016 and stated that Addus had terminated Ms. Levno. *Id.* at 294. The second declaration was from Ms. Levno. Ms. Levno's declaration stated she had been terminated on September 8 and that Addus's terminology to the contrary was "irrelevant because [she] was given zero hours, zero clients, and zero income." *Id.* at 289. Ms. Levno's declaration did not state she had been orally terminated during the September 8 meeting.

Addus filed excerpts of Ms. Levno's deposition in support of its summary judgment motion. Throughout the deposition, Ms. Levno repeatedly equated being removed from L.J.D.'s case with termination. For example:

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Q, So on September 8th, you were taken off of the [L.J.D.] assignment?

A. I was wrongfully terminated, yes.

Id. at 79, 347.

Q. Were you taken off of the [L.J.D.] assignment on September 8th?

[Objection to form]

A. Yes, I was wrongfully terminated on—

Q. [By counsel for Addus] I didn't ask you whether or not you were terminated. I just asked whether or not you were taken off of the [L.J.D.] assignment.

Were you taken off of the [L.J.D.] assignment?

A. I was taken off the [L.J.D.] assignment and wrongfully terminated.

....

Q. Respectfully, Ms. Levno, I understand that you have your beliefs. I'm not asking you that.

All I'm asking you is whether or not when you sat down with your supervisor, were you told that you were being taken off of the [L.J.D.] assignment for crossing professional boundaries.

[Objection to form]

A. I was told I was being taken off the client. But it was a wrongful termination. I was wrongfully terminated.

Id. at 79-81, 347-48.

In discussing the paperwork generated by Addus, Ms. Levno claimed the disciplinary notice provided to her during the September 8 meeting "explicitly" stated she was being terminated and the September 2 letter to L.J.D.'s husband "specifically" stated she was terminated.¹ *Id.* at 84-85, 320-21, 352. Apparently recognizing that neither the disciplinary notice nor the September 2 letter mention termination, counsel for Addus

¹ In the deposition, the disciplinary warning notice was referred to as Exhibit 9.

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asked Ms. Levno if she understood the difference between termination and reassignment. She answered, “[y]es . . . But I was wrongfully terminated. . . . And they did not offer me any employment.” *Id.* at 86, 322, 353.

The trial court issued a letter ruling, concluding Ms. Levno failed to meet her burden of establishing material issues of fact as to termination. The court refused to consider H.D.’s declaration as hearsay attributed to an unidentified speaker. The court was also unimpressed with Ms. Levno’s deposition testimony because it was purely conclusory. Noting that Ms. Levno had not alleged constructive discharge, the trial court granted summary judgment to Addus on the basis that Ms. Levno lacked admissible evidence indicating she had been terminated on September 8, 2016.

The day prior to presentment, Ms. Levno filed a motion for reconsideration. In her motion, Ms. Levno again relied on the declaration of H.D. For the first time, Levno alleged constructive discharge. The trial court denied Ms. Levno’s motion. Noting that Ms. Levno’s response to Addus’s motion for summary judgment had been untimely, the court refused to consider her postdecision claim of constructive discharge.

Ms. Levno appeals.

ANALYSIS

A case is appropriate for resolution on summary judgment if competent evidence shows no genuine issue of material fact for trial. CR 56. “We review summary judgment orders de novo,” with the evidence and all reasonable inferences construed in the “light most favorable to the nonmoving party.” *Keck v. Collins*, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). The party moving for summary judgment bears the initial burden of establishing the absence of an issue of material fact. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). If this showing is met, then the burden “shifts to the party with the burden of proof at trial, the plaintiff.” *Id.*

The contested material fact relevant to Ms. Levno’s retaliation and public policy claims is termination. Addus asserts that Ms. Levno was not terminated; she instead abandoned her job. Ms. Levno contends she was terminated during the September 8 meeting with her supervisors.

Contrary to Ms. Levno’s deposition statements, the parties now agree that none of the paperwork generated by Addus at the time of the September 8 meeting specified termination. Instead, Ms. Levno claims she was orally terminated.² Although Ms. Levno

² Ms. Levno’s reply brief acknowledges this core issue, stating “the disputed fact of whether [management] orally terminated Levno on September 8, 2016 . . . is the crux of the case at bar.” Reply Br. of Appellant at 11.

did not mention oral termination in her declaration filed in response to Addus's motion for summary judgment, Ms. Levno points to excerpts of her deposition testimony where she discusses oral termination:

- When asked if she had received a termination letter from Addus, Ms. Levno stated, "No. But it was all right in here that—and during the meeting, Dawn [Ms. Levno's manager] told me that I was being terminated from—from Addus." CP at 83, 351.
- Regarding what happened during the September 8 meeting, Ms. Levno stated, "I was told that I was being terminated." *Id.* at 352. In immediate follow-up, Ms. Levno was asked if she had any documentation to reflect termination from employment. She referenced the disciplinary notice and the letter to L.J.D.'s husband.
- When asked where Addus's paperwork stated Ms. Levno was being fired, Ms. Levno stated, "Right in here. It's not following the care plan, not—right here are these comments. Right here. And what was said between Dawn [and two other managers]. They all three—the verbal." *Id.* at 84, 352.

- In describing her September 8 conversation with supervisors, Ms. Levno stated, “They told me I was wrongfully terminated from my job.” *Id.* at 351. When asked to clarify that “[i]n fact, they specifically told you that you were wrongfully terminated from your job?” Ms. Levno answered, “[y]es, they did.” *Id.*

Viewing the matter de novo, we agree with the trial judge that Ms. Levno’s claims of oral termination are too conclusory to overcome summary judgment. Throughout her deposition, Ms. Levno explicitly and repeatedly refused to disentangle her opinion about what happened to her (“wrongful termination”) from what was actually stated (she was removed from L.J.D.’s care). *See, e.g., id.* at 81, 348 (“I was told I was being taken off the client. But it was a wrongful termination.”). *Id.* By so doing, Ms. Levno stripped her use of the word “termination” from any probative, factual value. No reasonable reading of Ms. Levno’s deposition suggests that she was told words to the effect of “you are terminated” or “you are fired.” Rather, it is abundantly clear that Ms. Levno was told she was being removed from Ms. Levno’s case and she subjectively equated that communication to being told she was wrongfully terminated from her job. Given this circumstance, Ms. Levno’s deposition fails to raise a material issue of fact as to whether termination took place on September 8, 2016.

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Ms. Levno claims that H.D.'s declaration should be considered to support her claim of termination. However, we agree with the trial court; the letter is inadmissible. H.D.'s declaration fails to specify who it was that claimed to be an Addus supervisor. Without specific attribution, the out-of-court statement cannot qualify as an admission of a party opponent. ER 801(d)(2). Nor can it qualify for admission as state of mind evidence. ER 803(a)(3). After all, not just anyone's state of mind is relevant. Only the state of mind of a person authorized to terminate Ms. Levno would be relevant to proving Ms. Levno was, in fact, terminated. H.D.'s declaration was properly excluded as inadmissible hearsay. ER 801(c), 802.

The last argument raised by Ms. Levno is that the trial court failed to consider her claim of constructive discharge. The problem here is that Ms. Levno did not argue constructive discharge until her motion for reconsideration. Unlike a summary judgment motion, a motion for reconsideration is reviewed for abuse of discretion. *Wilcox v. Lexington Eye Inst.*, 130 Wn. App. 234, 241, 122 P.3d 729 (2005). Regardless of whether Ms. Levno's complaint was sufficient to allege a claim of constructive discharge, she did not argue facts in support of constructive discharge until her motion for reconsideration. Constructive discharge involves a legal theory distinct from express discharge. *See Hill v. GTE Directories Sales Corp.*, 71 Wn. App. 132, 143, 856 P.2d 746 (1993). As such, it

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was not properly argued for the first time on reconsideration. *See Wilcox*, 130 Wn. App. at 241. In her motion for reconsideration, Ms. Levno failed to explain why she had not previously argued constructive discharge. Particularly given the tardiness of Ms. Levno's summary judgment briefing, the trial court did not abuse its discretion in refusing to excuse Ms. Levno's belated theory of relief.

CONCLUSION

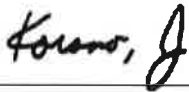
The trial court's order on summary judgment is affirmed. Addus's request for attorney fees is denied.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.



Pennell, C.J.

I CONCUR:



Korsmo, J.

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FEARING, J. (dissenting) — Both direct and circumstantial evidence create an issue of fact as to whether Addus Healthcare, Inc. fired caregiver Leanne Levno for reporting abuse of a vulnerable adult client of Addus Healthcare to Adult Protective Services (APS). Therefore, I dissent.

Since the trial court dismissed Leanne Levno's lawsuit on summary judgment, I draw the facts from affidavit and deposition testimony. I consider the facts in a light favorable to Levno.

In 2007, plaintiff Leanne Levno gained employment with defendant Addus Healthcare as a home caregiver. Levno cared for vulnerable adults, who suffered from physical or mental illnesses. As a mandated reporter, Levno possessed a duty to report her reasonable belief of abuse or neglect of a client to APS. RCW 74.34.020 (14); .035(1).

From 2012 to 2016, Leanne Levno cared for one critical care client, Lois Davenport, a pseudonym, who could not attend to her basic needs. Levno cared for Davenport from Sunday to Thursday afternoon, and another caregiver, Kelly Crawford, cared for Davenport Thursday to Saturday. Substitute caregivers assisted with care on the one Sunday a month when Levno did not work. Levno grew concerned about the

adequacy of care provided by one or more substitute caregivers. Substitute caregivers, at the request of Lois Davenport's husband, often called Levno and asked questions about Davenport's care.

According to Leanne Levno, she reported to Addus Healthcare's ever changing supervisors neglect and abuse of Lois Davenport by other caregivers ten to fifteen times between 2012 and 2016. She presented the reports by direct conversations, timesheets, phone calls, and letters.

One weekend in November 2013, Leanne Levno reported neglect of Lois Davenport to Sandra Kester, an employee at Addus Healthcare's Illinois corporate office. Levno called the corporate office because the local Addus office closes on the weekends and all calls are forwarded to the corporate office. During this call, Levno expressed her concern for Davenport's lack of care on the weekends because of bedsores suffered by Davenport. Levno added that Lois Davenport's husband complained that some substitute Addus Healthcare caregivers failed to show at the couple's home, leaving Davenport stranded in soiled diapers for hours.

As a result of her concern for abuse of Lois Davenport by substitute care, Leanne Levno began to provide some care for Davenport on the weekends. Levno worked as much as eighty hours per week in order to provide the care. On one occasion, Levno reported extra work to Addus Healthcare because of a failure of a substitute to appear, but Addus Healthcare failed to pay her for the time.

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On Sunday, February 15, 2015, Lois Davenport's daughter complained to Leanne Levno of the failure of a caregiver to appear at Davenport's residence to care for Davenport. Because of her belief that Addus Healthcare supervisors ignored her reports of neglect, Levno decided she needed to take additional steps. Levno then reported the history of neglect and abuse of Davenport to Ann Moreland at APS. Levno elaborated that the dire state of Davenport's condition required her to work extra hours. Levno did not inform her supervisor that she reported Addus Healthcare to APS.

After the February 2015 report to APS, Leanne Levno's supervisor, Mike, informed her to report any neglect or abuse of Lois Davenport to him before reporting the lack of care to APS. Mike would be the one to decide whether a report should be forwarded to APS. Mike also warned Levno that Addus Healthcare would fire her if she did not obey his instruction.

On August 19, 2016, Addus Healthcare assigned Dawn Taylor to be Leanne Levno's supervisor. On August 29, 2016, Levno filed an incident report with APS reporting that Lois Davenport again suffered neglect.

On September 1, 2016, at 4:00 p.m., Dawn Taylor telephoned Leanne Levno and informed Levno that she could not return without first speaking with Taylor. Taylor scheduled a meeting with Levno for the following day. Levno replied that, as a union member, she possessed the right to union representation at a meeting and, due to the late notice, she could not promise to be present the next day. Taylor and Levno postponed the

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meeting and met on September 8. After September 1, but on an unspecified day, Leanne Levno received a phone call from Lois Davenport's husband. He told Levno that he received a September 2 letter from Addus Healthcare that declared that Levno would no longer care for Davenport. Levno had been unaware that Addus Healthcare had removed her from the care of Davenport. The letter read:

Please accept this as formal notice that Addus HomeCare will no longer be able to provide you with services per our voicemail. We normally give two week's [sic] notice before stopping services which means the last day of services will be 9/16/16. Unfortunately, we will no longer be able to send Leanne Levno to care for you, which means that we may not have enough staff to guarantee full coverage until the 16th. Therefore, it is our hope that you can work with your case manager (Patricia Breidt at Elder Services) to select another provider before the 16th.

Clerk's Papers (CP) at 413. The husband wanted an explanation for the removal of Levno from his wife's care. In her deposition, Leanne Levno testified to her belief that the September 2 letter to the Davenports terminated her from employment.

At the September 8 meeting, Leanne Levno met with Dawn Taylor, Susie Young, and another supervisor, Alice. Levno's supervisors told her that Addus Healthcare was removing her from the care of Lois Davenport because Levno failed to follow the care plan for Davenport, failed to report changes in the client's condition, failed to report the client needs to her supervisor, told other healthcare aides to report to her rather than their supervisor, crossed professional boundaries, provided health care for one other than her client, and performed nursing tasks without delegation from a nurse. Susie Young

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provided Levno with a written disciplinary warning that listed the causes for the reassignment and listed insubordination and disregard of a known rule as the basis of the warning. Below the listed violations, the form language declared:

IMMEDIATE SATISFACTORY IMPROVEMENT MUST BE SHOWN OR FURTHER DISCIPLINARY ACTION WILL BE TAKEN, INCLUDING POSSIBLE SUSPENSION FROM DUTY OR DISCHARGE.

CP at 47. Levno refused to sign the disciplinary warning since she denied the truthfulness of the charges. Leanne Levno considered the disciplinary warning and removal from the care of Lois Davenport as retaliation.

During her deposition, Leanne Levno impliedly conceded that she measured Lois Davenport's blood sugar level and added medications to her regimen without Addus Healthcare's approval. Nevertheless, Levno insisted on the need to perform these acts because of the lack of resources provided by Addus Healthcare. Leanne Levno agreed that other caregivers called her and asked questions about the care for Lois Davenport because of the unavailability of Addus Healthcare supervisors, but Levno denied that any caregiver "reported" to her. CP at 350.

In her deposition, Leanne Levno repeatedly testified, even when not asked, that, by the end of the September 8 meeting, Addus Healthcare wrongfully terminated her on September 8, 2016, for reporting neglect of Lois Davenport to APS. For example, Levno averred:

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Q. . . . It says that you're receiving a written warning, correct?

A. Yes. But that—this is not correct. I was wrongfully terminated, and it's also due to the retaliation of what happened on August 29th, and they had to come back with something to come back on me. And this is what they came back up and not following the care plan.

This has nothing to do—it's all because of retaliation.

And so why did they take my client away from me?

CP at 350.

During the deposition of Leanne Levno, Addus Healthcare's counsel repeatedly asked what Addus Healthcare representatives told her during the September 8 meeting in order to discover the basis on which Levno claimed termination from employment.

Levno responded:

A. I was told I was being taken off the client. But it was a wrongful termination. I was wrongfully terminated.

CP at 348.

Leanne Levno agreed that she never received a letter of termination from employment from Addus Healthcare. Rather, she declared during her deposition that her supervisor verbally terminated her: "Dawn told me that I was being terminated from— from Addus." CP at 83, 351. Levno also averred that Alice and Susie, the other managers at the September 8 meeting, also told her she was fired.

According to Dawn Taylor, she and other supervisors at Addus Healthcare attempted to contact Levno several times after September 8 to offer assignments as a substitute home health giver or as a permanent home health caregiver for other clients.

Leanne Levno denied any phone calls after September 8 from Dawn Taylor. She testified that Addus Healthcare offered her no hours, clients, or income after September 8, 2016.

Leanne Levno sued Addus Healthcare for wrongful termination in violation of public policy and retaliatory discharge based on Addus Healthcare terminating her employment on September 8, 2016, ten days after reporting abuse and neglect of Lois Davenport to APS. CP 3-8. In her amended complaint, Leanne Levno alleged:

2.24 Ms. Levno was officially terminated from Addus on September 8, 2016.

2.25 Ms. Levno was terminated in retaliation for her reporting abuse of her client.

2.26 Ms. Levno was terminated in violation of public policy.

....

3.3 It is a violation of public policy to terminate the employment of an employee that is required to report abuse/neglect under RCW 74.34 *et seq.*

3.4 Under RCW 74.34.180, any employee that faces a workplace reprisal or retaliatory action for reporting abuse/neglect is granted the remedies of RCW 49.60 *et seq.*

3.5 Ms. Levno was terminated ten days after reporting the abuse/neglect of her client.

....

3.8 Ms. Levno's termination for reporting abuse is in violation of RCW 74.34 *et. seq.* and therefore, RCW 49.60 *et seq.*

CP at 12-13.

In support of its summary judgment motion, Addus Healthcare submitted excerpts from Levno's deposition. Addus Healthcare emphasized the following passage in Levno's deposition:

Q. You never received a termination letter from Addus?

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A. No.

CP at 82-83.

Leanne Levno responded by filing her own declaration. Levno testified, in part, in her declaration:

4. Addus did not respond to my repeated reports of abuse *until they* [sic] *fired me*.

....

10. After I reported the weekend caregiver, another Addus employee, to APS, Addus ended my employment.

....

12. I do not know exactly when Addus learned of my report, but they knew of it *when they terminated me*.

13. After being removed from the care of my only client, I was never offered work with another client.

14. I did not receive a letter from Addus instructing me to respond by September 30, 2016 or that I would be terminated.

15. I received no phone calls from Dawn Taylor in October 2016 regarding accommodations or work available to me.

16. Addus told my only client that I was terminated.

17. Addus states that I was not “terminated” but my weekly hours went from 40-60 hours per week to zero hours per week.

18. Whether Addus claims I was terminated or suspended is irrelevant because I was given zero hours, zero clients, and zero income.

CP at 287-89 (emphasis added).

On appeal, Leanne Levno challenges the trial court’s grant of summary judgment to Addus Healthcare. We review a trial court’s order granting summary judgment *de novo*. *Briggs v. Nova Services*, 166 Wn.2d 794, 801, 213 P.3d 910 (2009). Summary judgment is appropriate only if the pleadings, depositions, answers to interrogatories, and admissions on file and affidavits show that there is no genuine issue as to any material

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fact. *Morris v. McNicol*, 83 Wn.2d 491, 494, 519 P.2d 7 (1974). The purpose of summary judgment is to avoid a useless trial when there is no genuine issue of any material fact. *Olympic Fish Products, Inc. v. Lloyd*, 93 Wn.2d 596, 602, 611 P.2d 737 (1980). Summary judgment is appropriate only when, from all the evidence, reasonable persons could reach but one conclusion. *Ellis v. City of Seattle*, 142 Wn.2d 450, 458, 13 P.3d 1065 (2000); *Clements v. Travelers Indemnity Co.*, 121 Wn.2d 243, 249, 850 P.2d 1298 (1993).

Leanne Levno seeks recovery for retaliatory discharge in violation of RCW 74.34. Home health caregivers are mandated reporters, who must report suspected abuse of vulnerable adults. RCW 74.34.020(2), (14); 035. Failure to report subjects a caregiver to criminal and civil liability. RCW 74.34.053; *Kim v. Lakeside Adult Family Home*, 185 Wn.2d 532, 544-45, 374 P.3d 121 (2016). The Washington Supreme Court compares the importance of reporting abuse of vulnerable adults to reporting abuse of children. *Kim v. Lakeside Adult Family Home*, 185 Wn.2d at 543-44.

In turn, RCW 74.34.180 prohibits retaliation against whistleblowers of abuse or neglect of vulnerable adults. The lengthy statute declares, in relevant part:

(1) An employee or contractor who is a whistleblower and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action, has the remedies provided under chapter 49.60 RCW. RCW 4.24.500 through 4.24.520, providing certain protection to persons who communicate to government agencies, apply to complaints made under this section. . . .

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(2)(a) An attempt to expel a resident from a facility, or any type of discriminatory treatment of a resident who is a consumer of hospice, home health, home care services, or other in-home services by whom, or upon whose behalf, a complaint substantiated by the department or the department of health has been submitted to the department or the department of health or any proceeding instituted under or related to this chapter within one year of the filing of the complaint or the institution of the action, raises a rebuttable presumption that the action was in retaliation for the filing of the complaint.

(b) The presumption is rebutted by credible evidence establishing the alleged retaliatory action was initiated prior to the complaint.

....

(3) For the purposes of this section:

(a) “Whistleblower” means a resident or a person with a mandatory duty to report under this chapter . . . , who in good faith reports alleged abandonment, abuse, financial exploitation, or neglect to the department, or the department of health, or to a law enforcement agency;

(b) “Workplace reprisal or retaliatory action” means, but is not limited to: Denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work . . . ; letters of reprimand or unsatisfactory performance evaluations; demotion; denial of employment; or a supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower. The protections provided to whistleblowers under this chapter shall not prevent a facility or an agency licensed under chapter 70.127 RCW from: (i) Terminating, suspending, or disciplining a whistleblower for other lawful purposes; or (ii) for facilities licensed under chapter 70.128 RCW, reducing the hours of employment or terminating employment as a result of the demonstrated inability to meet payroll requirements.

In addition to recovery for termination from employment, the statute allows damages for refusal to assign meaningful work and for letters of reprimand.

Washington also permits a common law cause of action for wrongful discharge when the discharge violates established public policy. *Bennett v. Hardy*, 113 Wn.2d 912,

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922, 784 P.2d 1258 (1990). Leanne Levno asserts both a statutory claim and one at common law.

A claim of wrongful discharge in violation of public policy requires the plaintiff to show that he or she was discharged, and the discharge may have been motivated by reasons that “contravenes a clear mandate of public policy.” *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 232, 685 P.2d 1081 (1984). The parties do not dispute that a discharge for whistleblowing would be a violation of RCW 74.34.180 as well as public policy.

Leanne Levno must show a causal link between the filing of her incident report and the adverse employment action. Causation can be shown by the timing of the adverse action to that of the protected activity. *Kahn v. Salerno*, 90 Wn. App. 110, 130-31, 951 P.2d 321 (1998). The Washington State Supreme court has stated that, in retaliation claims for filing a discrimination claim, the worker presents sufficient evidence of causality if the worker takes a protected action, the employer knows of the report, and the adverse action is taken against them. *See Allison v. Housing Authority of City of Seattle*, 118 Wn.2d 79, 89 n.3, 821 P.2d 34 (1991). Leanne Levno filed a report with APS, and, according to Levno’s evidence, Addus Healthcare terminated her employment within 10 days. One supervisor earlier warned Levno that, if she reported abuse to APS again, Addus Healthcare would fire her.

Addus Healthcare argues that Leanne Levno presented no admissible evidence that the company terminated her employment. To Addus Healthcare, Levno only relied on speculation and argumentative assertions. She merely repeated her allegations in her complaint. She supplied ultimate facts and conclusions. Her declaration is self-serving, and her declaration contradicts her deposition testimony. Addus Healthcare emphasizes that the September 8, 2016, written notification to Leanne Levno disciplined her, rather than terminated her employment.

I agree that the September 8, 2016, written notification does not state that Addus Healthcare terminated Leanne Levno. The disciplinary notice that excludes mention of termination may harm the credibility of Leanne Levno's claim. But we do not weigh evidence or resolve questions of credibility in reviewing a summary judgment order. *Sluman v. State*, 3 Wn. App. 2d 656, 699, 418 P.3d 125 (2018).

I disagree that Leanne Levno fails to cite to the record to support her contention that Addus Healthcare terminated her employment. In both her opening and reply briefs, Levno repeatedly cites to pages 183 and 287 through 289 in the clerk's papers, on which she testified to her oral termination. She cites to the pages on which she testified that Addus Healthcare offered her no more work following the September 8, 2016 meeting.

Addus Healthcare complains that Leanne Levno's declaration is self-serving. Nevertheless, the healthcare company cites no authority that precludes a litigant from filing self-serving declarations. All of Addus Healthcare's declarations are self-serving.

Anyway, Leanne Levno's deposition testimony provides support for Levno's claims in addition to her declaration.

When contending that Leanne Levno contradicted her deposition testimony, Addus Healthcare contends Levno admitted in her deposition that she never received any termination notice from Addus. Addus Healthcare emphasizes the following passage in Levno's deposition:

Q. You never received a termination letter from Addus?

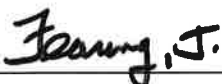
A. No.

CP at 82-83. One might be confused with the answer of Levno because of the double negatives. Even if Levno agreed she received no termination letter, it does not follow that Addus Healthcare did not terminate her employment. Levno has consistently testified that Dawn Taylor orally gave her notice of termination.

I do not deem Leanne Levno's critical testimony conclusory in nature. One's testimony that the other party told one something is factual in nature. Perhaps the testimony would be less conclusory in nature if Levno testified to the exact words uttered by Dawn Taylor, assuming Levno could remember the exact words. But Levno averred to the gist of the comments from Taylor—that she was fired. Addus Healthcare never asked Levno, in her deposition, as to the exact words used by Taylor or Levno's other supervisors.

In short, Leanne Levno testified that Addus Healthcare supervisors informed her in person on September 8, 2016, that she was fired. Levno testified that she no longer received any work after September 8. Addus Healthcare disagreed and provided countering evidence, but Levno presented evidence sufficient to allow the trier of fact to resolve whether Addus Healthcare terminated her employment.

The majority writes that Leanne Levno stripped her use of the word “termination” from any probative, factual value. Majority at 9. No summary judgment principle allows a court to ignore the testimony of a declarant, even a party declarant, because the declarant misuses or confuses the meaning of a word. The court impermissibly weighs the credibility of the witness when discounting testimony because of the witness’ misuse of words. Levno unequivocally testified that Dawn Taylor told her she was “being terminated from—from Addus.” CP at 83, 351. The reader should not be confused by concluding, based on this deposition passage, that Levno only testified that Addus Healthcare removed her from the care of a client. Regardless, in her declaration, Leanne Levno employed the word “fired,” when testifying to the action of Addus Healthcare toward her.



Fearing, J.

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- 2.21 Ms. Levno has not crossed any professional boundaries while caring for her client.
- 2.22 Ms. Levno became Nurse Delegated on July 27, 2016.
- 2.23 Ms. Levno has not provided care to other people than her client.
- 2.24 Ms. Levno was officially terminated from Addus on September 8, 2016.
- 2.25 Ms. Levno was terminated in retaliation for her reporting abuse of her client.
- 2.26 Ms. Levno was terminated in violation of public policy.

III. CAUSES OF ACTION

FIRST CAUSE OF ACTION: WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

- 3.1 Plaintiff incorporates paragraphs 1.1 through 2.26 as if set forth fully herein.
- 3.2 Ms. Levno was engaged in the protected activity of reporting abuse of her client as required by RCW 74.34 *et seq.*
- 3.3 It is a violation of public policy to terminate the employment of an employee that is required to report abuse/neglect under RCW 74.34 *et seq.*
- 3.4 Under RCW 74.34.180, any employee that faces a workplace reprisal or retaliatory action for reporting abuse/neglect is granted the remedies of RCW 49.60 *et seq.*
- 3.5 Ms. Levno was terminated ten days after reporting the abuse/neglect of her client.
- 3.6 Ms. Levno's client was told four days after Ms. Levno reported the abuse that Ms. Levno would no longer be providing the client with care.

1 3.7 Defendant has intentionally withheld wages, not paid wages, and refused to
2 pay wages upon demand.

3 3.8 Ms. Levno's termination for reporting abuse is in violation of RCW 74.34 *et.*
4 *seq.* and therefore, RCW 49.60 *et seq.*
5

6
7 SECOND CAUSE OF ACTION: RETALIATORY DISCHARGE

8 3.9 Plaintiff hereby incorporates paragraphs 1.1 through 3.7 as if set forth fully
9 herein.

10 3.10 Ms. Levno was terminated in retaliation of her reporting the abuse/neglect of
11 her client in violation of RCW 74.34 *et. seq.*
12

13
14 THIRD CAUSE OF ACTION WASHINGTON WAGE PAYMENT ACT

15 VIOLATION

16 3.11 Plaintiff hereby incorporates paragraphs 1.1 through 3.10 as if set forth fully
17 herein.

18 3.12 Washington's Wage Payment Act, RCW 49.38.010 provides in relevant part
19 "when any employee shall cease to work for an employer, whether by
20 discharge or by voluntary withdrawal, the wages due her on account of her
21 employment shall be paid to him or her at the end of the established pay
22 period.
23

1 refused to work with other clients, correct?

2 MR. BEST: Objection; form.

3 A. No, she did not.

4 Q. (By Mr. Arceneaux) You were angry about being
5 taken off of the Dady assignment, correct?

6 MR. BEST: Objection; form.

7 A. The whole issue is that she already had made
8 up her mind that she was going to terminate me before
9 even the September 8th meeting. The letter dated on
10 September 1st was my last day at the Dady's house.

11 Because at 4:00 in the afternoon, she called
12 me and told me that I had to be in the office the next
13 day, and I told her that I couldn't. I'd have to call
14 the union to see what I can do for a union rep.

15 And so in the meantime, she wrote a letter,
16 and they -- Addus had already made up their mind that
17 they were going to terminate me on September 2nd
18 because she had wrote up that letter, which -- and had
19 it in the mail.

20 And then September 5th, I believe it is, was
21 Labor Day. And then September 6 is when I received the
22 letter stating that "Leanne will no longer be providing
23 care for Loujean." And Addus had already made up their
24 mind that they were --

25 Q. You never received a termination letter from

1 Addus?

2 A. No.

3 But it was all right in here that -- and
4 during the meeting, Dawn told me that I was being
5 terminated from -- from Addus.

6 Q. And despite the fact that --

7 A. And it's all due to retaliation.

8 Q. And despite the fact that you are being --
9 according to you, you were being terminated, your
10 supervisor asked you to sign a policy acknowledging
11 that you would follow a policy about maintaining
12 professional boundaries during the meeting?

13 A. I'm sorry?

14 Q. Is it your testimony that despite the fact
15 that you were being terminated, your supervisor asked
16 you to sign a policy on the same day during the meeting
17 saying that you would respect and maintain professional
18 boundaries with your Addus clients?

19 A. She gave me this paper stating what
20 professional boundaries were and if I understood what
21 my professional boundaries were. And like I said, it
22 had nothing to do with the professionals. It's because
23 of a retaliation because I filed another report with
24 APS, and Addus had to retaliate by one way or another.

25 They couldn't -- they didn't know what to do

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SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

LEANNE LEVNO, an individual	No. 17-2-03142-3
Plaintiff,	Second Declaration of Leanne Levno
vs.	
ADDUS HEALTHCARE, INC., an Illinois corporation,	
Defendant.	

1. I am over the age of eighteen, competent to testify to the matters contained herein, and the matters contained herein are based upon personal knowledge.

2. Attached hereto as **Exhibit 1**, is a true and correct copy of the letter from Addus Healthcare, Inc., dated September 2, 2016.

3. Attached hereto as **Exhibit 2**, is a true and correct copy of the Leanne Levno timesheet, dated September 8, 2016.

4. Addus accused me of misconduct only after the August 29, 2016 report of Addus' abuse of Loujean Dady.

5. On September 8, 2016 Addus orally terminated me during my (alleged) misconduct hearing.

SECOND DECLARATION OF
LEANNE LEVNO - 1

KSB LITIGATION, P.S.
221 N. WALL STREET, SUITE 210
SPOKANE, WASHINGTON 99201
PHONE (509) 624-8988

1 6. I was the primary night caregiver for Loujean Dady from about December 2007
2 until 2012. I was the primary day and night caregiver for Loujean Dady from 2012 until 2016.
3 From 2012 until 2016 Loujean Dady was my only client.
4

5 7. Loujean Dady had survived multiple strokes, had severe diabetes, had an
6 amputated leg, and suffered chronic urinary tract infections, all of which required specialized
7 care

8 8. Following my removal from providing Loujean Dady care, her physical
9 condition deteriorated rapidly.

10 9. After Addus removed me from providing care for Loujean Dady, she died two
11 months later on or about October 31, 2016.

12 10. Due to being accused by Addus of misconduct and being discharged by Addus,
13 subsequent to and immediately following my August 29, 2016 report of Addus' abuse of
14 Loujean Dady, and due to the substandard care provided to Loujean Dady following Addus'
15 removal of me from providing her care, I have experienced severe emotional anxiety, I have
16 not been able to eat causing me to lose over twenty pounds, I have not been able to sleep, I
17 have been depressed, and I have twice attempted suicide.
18

19 11. While working for Addus I earned nearly twenty dollars per hour.
20

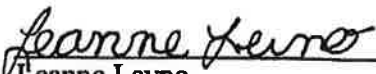
21 12. Since being discharged by Addus, the only employment opportunities available
22 to me are minimum wage jobs.

23 13. As a result, I am financially destitute, homeless, rely on my children for shelter
24 and support, and am on the verge of losing my vehicle and storage space.
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I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF
WASHINGTON THAT THE FOREGOING IS TRUE AND CORECT.

Signed this 7th day of March, 2019.



Leanne Levno

94

1 September 8th?
2 MR. BEST: Object; on the basis of the
3 form.
4 A. Yes, I was wrongfully terminated on --
5 Q. (By Mr. Arceneaux) I didn't ask you whether or
6 not you were terminated. I just asked whether or not
7 you were taken off of the Dady assignment.
8 Were you taken off of the Dady assignment?
9 A. I was taken off the Dady's assignment and
10 wrongfully terminated.
11 MR. BEST: Objection; form.
12 Q. (By Mr. Arceneaux) Were you told that you were
13 taken off of the Dady assignment for not following the
14 plan of care for the client?
15 A. Yes.
16 Q. And you were told that you were taken off of
17 the Dady assignment for not reporting changes in the
18 client's condition?
19 A. Correct.
20 Q. That you were taken off of the assignment for
21 not reporting the client needs to your supervisor?
22 A. Correct.
23 Q. That you were taken off for having other
24 healthcare aides report to you instead of their
25 supervisor for questions?

95

1 MR. BEST: Objection; form.
2 A. Yes. But all these questions you are asking
3 me are incorrect. They -- it's not true. What they
4 are . . .
5 Q. (By Mr. Arceneaux) Was that what you were
6 told?
7 A. Yes, that's what I was told. But these --
8 Q. Then you were told that you were taken off the
9 Dady assignment for crossing boundaries with Miss Dady?
10 A. Yes. But the whole thing was in -- because --
11 in retaliation, again, for filing another report with
12 APS is the whole -- was the whole issue.
13 Then they came back and decided to ding me for
14 not filing the care plan and not doing this and walking
15 the dog and taking care of the husband and . . .
16 Q. Respectfully, Ms. Levno, I understand that you
17 have your beliefs. I'm not asking you that.
18 All I'm asking you is whether or not when you
19 sat down with your supervisor, were you told that you
20 were being taken off of the Dady assignment for
21 crossing professional boundaries.
22 MR. BEST: Objection; form.
23 A. I was told I was being taken off the client.
24 But it was a wrongful termination. I was wrongfully
25 terminated.

96

1 Q. (By Mr. Arceneaux) Were you also told by your
2 supervisor that you were being taken off of the Dady
3 assignment for providing care to people other than
4 Miss Dady?
5 A. Yes. But which is incorrect. I was wrong- --
6 Q. Were you also told you were being taken off of
7 the Dady assignment for performing nursing tasks
8 without appropriate delegation?
9 A. I was delegated. And that's a whole issue.
10 I've been waiting nine years to be delegated. And then
11 I waited another whole year after I took the course.
12 So, yeah, it all boils down to retaliation on the last
13 abuse.
14 Q. Again, that's not that I asked you.
15 All I asked you was whether or not your
16 supervisor told you during the meeting that you were
17 being taken off of the Dady assignment because -- in
18 part, because of performing nursing tasks without
19 delegation.
20 Were you told that?
21 A. Yes. But I was delegated.
22 Q. Okay.
23 A. I was delegated in July 2016 when I had to
24 find my own resources to get myself delegated. And
25 then Addus uses my -- you know, the nurse that

97

1 delegated me, Addus used my nurse to delegate other
2 employees.
3 (Deposition Exhibit 9 was marked for
4 identification.)
5 Q. I'm showing you what's been marked as Exhibit
6 No. 9. It's a disciplinary warning notice and action
7 taken.
8 Do you recognize Exhibit No. 9?
9 A. Yes, I do.
10 Q. There's a notation and -- well, first of all,
11 do you recognize Exhibit No. 9 from your meeting with
12 your manager on September 8th --
13 A. Yes.
14 Q. -- of 2016?
15 There's a notation in the Comments section
16 that says, "I refuse to sign. I don't agree"?
17 A. Correct.
18 Q. Is that because you told your manager that you
19 refused to sign this form, and you didn't agree with
20 it?
21 A. Yes. Because what's up above on the violation
22 is incorrect.
23 Q. And what was stated in Exhibit No. 9, the
24 disciplinary notice form, is that, "HCA was called
25 Friday, September 2nd, and told she needed to come into

25 (Pages 94 to 97)

Veritext Corporate Services

800-567-8658

973-410-4040

CP 348

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1 A. Mm-hmm.

2 Q. Is that a yes?

3 A. Yes.

4 Q. And then you see a box that says "Further

5 Action," correct?

6 A. Yes.

7 Q. And that box -- in that row of boxes on this

8 disciplinary warning notice, the box that's marked --

9 or the box that's X'd is "Written Warning," correct?

10 A. It's crossed, yes. But this was not a

11 warning. This was -- I was wrongfully terminated.

12 Q. And then if you go down -- actually, before I

13 said this, this disciplinary warning notice that you

14 received on September 8th, does it say anywhere on the

15 form that you were being terminated?

16 MR. BEST: Objection; form.

17 A. No, it does not. But --

18 Q. (By Mr. Arceneaux) It says that you're

19 receiving a written warning, correct?

20 A. Yes. But that -- this is not correct. I was

21 wrongfully terminated, and it's also due to the

22 retaliation of what happened on August 29th, and they

23 had to come back with something to come back on me.

24 And this is what they came back up and not following

25 the care plan.

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1 This has nothing to do -- it's all because of

2 retaliation.

3 And so why did they take my client away from

4 me?

5 Q. And during -- and during your September 8th

6 meeting, September 8, 2016, meeting with your managers,

7 they discussed with you the items that we just talked

8 about, which are in the middle of the form, not

9 following the plan of care for the client.

10 Do you see that?

11 A. I see that.

12 Q. They discussed that with you?

13 A. And how am I supposed to follow -- not follow

14 the care plan. The only care plan that I received

15 clear back in 2007. It was Addus's responsibility to

16 keep those care plans updated at all times and give us

17 caregivers updated care plans.

18 Q. Ms. Levno, did they discuss that with you not

19 following the care plan?

20 A. Yes, they did.

21 Q. And did they discuss with you not reporting

22 client changes in condition, in client needs to the

23 supervisor?

24 A. Yes, they did. And I also responded to them

25 that -- told them, yes, I did report Loujean's

104

1 conditions.

2 Q. Did they discuss with you during the

3 September 8th meeting, having other HCAs report to you

4 instead of to the supervisor if they had questions or

5 concerns about the client?

6 A. And, yes, they did. And again, here, I told

7 Dawn that they reported -- they didn't report to me.

8 They called me for questions or answers how to do

9 something because Addus was not available.

10 Q. And they also discussed with you during the

11 September 8th, 2016, meeting, crossing professional

12 boundaries?

13 A. Yes. And I didn't cross no professional

14 boundaries.

15 Q. And they discussed with you providing care for

16 people other than the client?

17 A. Yes, they did. And I didn't care.

18 Q. And they discussed with you performing nursing

19 tasks without delegation?

20 A. And I was delegated.

21 Q. They discussed with you --

22 A. Yes.

23 Q. -- performing nursing tasks without

24 delegation?

25 A. Yes. And I was delegated. And then, like I

105

1 said, it all boils down to another retaliation. They

2 didn't know which direction to go.

3 Q. And, then, as part of that discussion, they

4 had you sign an acknowledgment which is attached as

5 Page 2 to Exhibit No. 10 regarding maintaining

6 professional boundaries with your client, correct?

7 A. I've always maintained professional boundaries

8 with my clients.

9 Q. During your September 22nd meeting with your

10 supervisors --

11 A. And the meeting was on September 8th.

12 Q. Excuse me. September 8th. Thank you for that

13 correction.

14 During your September 8th meeting with your

15 supervisors at Addus, as part of that meeting, they had

16 you sign the second page of Exhibit No. 10, which is

17 the policy on maintaining professional boundaries with

18 your clients?

19 A. Yes.

20 Q. And they did tell you that you would not be

21 allowed to continue the Dady assignment, correct?

22 A. Yes. And with no explanation why.

23 Q. But they also told you that they would find

24 you another patient?

25 A. No, they did not.

106

1 Q. In fact --

2 A. They told me I was wrongfully terminated from

3 my job.

4 Q. In fact, they specifically told you that you

5 were wrongfully terminated from your job?

6 A. Yes, they did.

7 Q. Okay. Who was it that told you --

8 A. Dawn.

9 Q. -- you were terminated from your job?

10 A. Dawn.

11 Q. Did Dawn Taylor subsequently call you to tell

12 you that she'd found other patients or clients for you

13 to service?

14 A. No, she did not.

15 Q. Dawn Taylor never called you?

16 A. Yeah, she called me during -- when she was my

17 supervisor about issues.

18 Q. After September 8th, did Dawn Taylor call you?

19 A. Not that I recall.

20 Q. And Miss Taylor offered you work with other

21 clients, didn't she?

22 MR. BEST: Object; on the basis of form.

23 A. No, she did not.

24 Q. (By Mr. Arceneaux) In fact, she -- Miss Taylor

25 offered you other work with other clients, and you

107

1 refused to work with other clients, correct?

2 MR. BEST: Objection; form.

3 A. No, she did not.

4 Q. (By Mr. Arceneaux) You were angry about being

5 taken off of the Dady assignment, correct?

6 MR. BEST: Objection; form.

7 A. The whole issue is that she already had made

8 up her mind that she was going to terminate me before

9 even the September 8th meeting. The letter dated on

10 September 1st was my last day at the Dady's house.

11 Because at 4:00 in the afternoon, she called

12 me and told me that I had to be in the office the next

13 day, and I told her that I couldn't. I'd have to call

14 the union to see what I can do for a union rep.

15 And so in the meantime, she wrote a letter,

16 and they -- Addus had already made up their mind that

17 they were going to terminate me on September 2nd

18 because she had wrote up that letter, which -- and had

19 it in the mail.

20 And then September 5th, I believe it is, was

21 Labor Day. And then September 6 is when I received the

22 letter stating that "Leanne will no longer be providing

23 care for Loujean." And Addus had already made up their

24 mind that they were --

25 Q. You never received a termination letter from

108

1 Addus?

2 A. No.

3 But it was all right in here that -- and

4 during the meeting, Dawn told me that I was being

5 terminated from -- from Addus.

6 Q. And despite the fact that --

7 A. And it's all due to retaliation.

8 Q. And despite the fact that you are being --

9 according to you, you were being terminated, your

10 supervisor asked you to sign a policy acknowledging

11 that you would follow a policy about maintaining

12 professional boundaries during the meeting?

13 A. I'm sorry?

14 Q. Is it your testimony that despite the fact

15 that you were being terminated, your supervisor asked

16 you to sign a policy on the same day during the meeting

17 saying that you would respect and maintain professional

18 boundaries with your Addus clients?

19 A. She gave me this paper stating what

20 professional boundaries were and if I understood what

21 my professional boundaries were. And like I said, it

22 had nothing to do with the professionals. It's because

23 of a retaliation because I filed another report with

24 APS, and Addus had to retaliate by one way or another.

25 They couldn't -- they didn't know what to do

109

1 because I filed another report. And in order to stop

2 me from reporting any more abuse and neglect against

3 Addus, they came up with doing -- not following the

4 care plan.

5 I mean, they had to come up with something.

6 This is what they came up with. There was no reason

7 why they had to fire me. Absolutely no reason.

8 Q. Who told you that? Who is "they"?

9 A. Dawn and Alice.

10 Q. And --

11 A. What was the purpose of firing me?

12 MR. BEST: Can we take a break?

13 MR. ARCENEUX: Yeah.

14 MR. BEST: Let's take five minutes.

15 MR. ARCENEUX: Yeah.

16 THE VIDEOGRAPHER: Off the record at

17 1:34 p.m.

18 (Recess taken.)

19 THE VIDEOGRAPHER: Back on the record at

20 1:42 p.m.

21 Q. (By Mr. Arceneaux) When we left off,

22 Ms. Levno, you, I believe, were stating your belief

23 that your employment had been terminated by Addus.

24 Isn't it true that during your meeting with

25 your supervisor, you were specifically told that you

110

1 were not being terminated?
 2 A. No.
 3 MR. BEST: Objection; form.
 4 A. You want to repeat that.
 5 Q. (By Mr. Arceneaux) Isn't it true that you were
 6 not told that you were being terminated --
 7 A. I was --
 8 Q. Excuse me. That you were told that you were
 9 not being terminated?
 10 A. I was told that I was being terminated.
 11 Q. You don't have any documents that reflect that
 12 you were terminated from employment?
 13 MR. BEST: Objection; form.
 14 A. Just what's right here and that letter that is
 15 dated September 2nd and, then, the verbal that was
 16 taken between Dawn and Alice and I and this union rep.,
 17 Susie Young.
 18 Q. (By Mr. Arceneaux) I want to tick off the list
 19 of things that you just said. Because I asked you
 20 whether or not you had documents that reflect that you
 21 were terminated. I said that I'd asked you if you did
 22 not, and you said you do.
 23 You said the letter -- first of all, you said,
 24 "Just what's right here . . ."
 25 What are you referring to when you say "just

111

1 what's right here?"
 2 A. This. These two, Exhibit 9 and 10.
 3 Q. Okay. We'll talk about each one of these,
 4 Exhibit 9, Exhibit 10.
 5 What other --
 6 A. And a letter dated --
 7 Q. -- documents?
 8 A. -- September 2nd that was sent to my client.
 9 Q. And is that the letter which you're referring
 10 to that Miss Dady was -- and her family were told you
 11 would not be providing care for that family?
 12 A. Correct.
 13 Q. Okay.
 14 A. Not for the family.
 15 Q. For --
 16 A. For Loujean.
 17 Q. For Loujean Dady. Thank you.
 18 Are there any other documents that you -- that
 19 you assert -- state that you were terminated from
 20 employment?
 21 A. Just Exhibit 9 and 10.
 22 Q. Okay.
 23 A. And the letter dated September 2nd.
 24 Q. Okay.
 25 A. And what was said in verbal.

112

1 Q. As to Exhibit No. 9, does Exhibit No. 9 state
 2 that you were being terminated from employment?
 3 A. No, it doesn't.
 4 Q. As to Exhibit No. 10, does Exhibit No. 10
 5 state that you're being terminated from employment?
 6 A. No. It's just what they're -- it explains to
 7 why they are letting me -- yeah, it explains to why
 8 they are terminating me. These are the reasons why
 9 they are terminating me.
 10 Q. Does --
 11 A. And there is no reason. These allegations are
 12 not correct. That's why I said I do not agree and
 13 refused to sign because it all boils down to, again,
 14 retaliation on -- from August 20.
 15 Q. Please tell me where on Exhibit No. 10, your
 16 disciplinary warning notice, the document states that
 17 you are being terminated from employment.
 18 A. Right in here. It's not following the care
 19 plan, not -- right here are these comments. Right
 20 here. And what was said between Dawn, Alice, and
 21 Susie. They all three -- the verbal.
 22 Q. So it's your testimony that Exhibit No. 10
 23 explicitly states that you're being terminated from
 24 employment?
 25 A. Exhibit 9 and 10, yes.

113

1 Q. Okay.
 2 A. And that letter, September 2nd.
 3 Q. And the September 2nd letter. That letter,
 4 you recall --
 5 A. And Addus had already previously determined
 6 that they were going to terminate me because I did not
 7 respond. She called me on that Thursday after I got
 8 off work, approximately 4:00 p.m., and wanted to meet
 9 on September 2nd.
 10 And in the meantime, Addus had already wrote
 11 up this letter and had already -- it was already
 12 determined that they were going to terminate me.
 13 Q. So the letter dated September 2nd, did the
 14 letter -- September 2nd letter to the Dadys
 15 specifically state, We are terminating --
 16 A. Yes, it did.
 17 Q. Wait a minute. I'm not done with my question.
 18 Did the September 2nd letter specifically
 19 state that -- that Addus was terminated Leanne Levno's
 20 employment?
 21 A. Yes.
 22 Q. And, then, you also stated that Addus had
 23 already determined -- I believe you said prior to the
 24 meeting -- that your employment would be terminated; is
 25 that correct?

KSB LITIGATION

July 02, 2020 - 3:39 PM

Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: Leanne Levno v. Addus Healthcare, Inc. (367355)

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