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03-27-2019  
Clerk of Circuit Court  
Waukesha County  
2018CV001693

BY THE COURT:

DATE SIGNED: March 27, 2019

Electronically signed by William J. Domina  
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT  
CIVIL DIVISION

WAUKESHA COUNTY

Ruzica Kuzmanovic Ms.  
Plaintiffs,

CASE NO. 18CV1693

vs.

Labor and Industry Review  
Commission, Department of  
Workforce Development  
Defendants.

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**DECISION AND ORDER**

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**INTRODUCTION**

This matter involves an appeal of the dismissal of five claims for lack of jurisdiction, each relating to the alleged retaliatory firing of Ms. Ruzica Kuzmanovic by her employer, Petra Living Assistance LLC, d/b/a Visiting Angels (hereinafter "Petra"). Because this appeal requires this Court to review the finding and conclusions of the Wisconsin Labor and Industry Review Commission, (hereinafter "LIRC"), the Court summarizes the findings of fact and memorandum opinion authored by LIRC.

*Procedural History*

On January 22, 2016, Ms. Kuzmanovic filed a retaliation complaint under several elder abuse and health care worker protection laws; specifically, Wis. Stat. §§ 16.009, 46.90, 50.07,

55.043 and 146.997. On November 22, 2016, an equal rights officer for the Equal Rights Division (ERD) issued a preliminary determination dismissing Ms. Kuzmanovic's complaint for lack of jurisdiction under the elder abuse and health care worker protection laws. Ms. Kuzmanovic appealed to an administrative law judge (ALJ), who affirmed the preliminary determination on May 16, 2017. Ms. Kuzmanovic appealed to LIRC, who on September 8, 2017 set aside the Preliminary Determination and the ALJ's decision. The case was remanded to ERD to further investigate the retaliation claim and to determine whether Visiting Angels and Petra Living Assistance LLC singly or jointly should be considered a home health agency and Ms. Kuzmanovic's employer.

On March 20, 2018 an equal rights officer for the ERD issued four separate preliminary determinations dismissing the complaint for lack of jurisdiction under Wis. Stats. §§ 16.009, 50.07, 55.043 and 146.977. ERD did not issue a preliminary decision under Wis. Stat. § 46.90. On June 22, 2018, an ALJ affirmed the determinations and dismissed the complaint. Ms. Kuzmanovic appealed to LIRC, who agreed with the ALJ and adopted the decisions as its own. LIRC further addressed Wis. Stat. § 46.90 in its memorandum opinion.

#### *Factual Findings*

LIRC made the following findings. Ms. Kuzmanovic had worked as a caregiver for Petra Living Assistance LLC, a non-medical homecare business that provides assistance around the home for the elderly and others in need. Petra Living Assistance was registered in Wisconsin under the trade name "Visiting Angels," making them the same legal entity for the purposes of this complaint. Ms. Kuzmanovic worked for the respondent from May 2012 until October 29,

2015, when she was discharged for insubordination in violation of the company's employment policy. Shortly before her termination, Ms. Kuzmanovic had filed an incident report regarding an incident that occurred while she was providing care for a customer and alleged that she sustained a back injury while providing these services. Though Ms. Kuzmanovic is not licensed to provide health care services to clients, she contends that Petra has acted as a "health care provider" to its clients and that her retaliation complaint against Petra should proceed.

#### *Determinations*

LIRC adopted the following determinations from the ALJ:

- a. Wis. Stat. § 146.997 protects employees of health care facilities and health care providers who are subjected to disciplinary action or threatened with disciplinary action from their employer for reporting violations of law or regulations, or standards established by law, regulations or clinical or ethical standards that may pose a potential risk to public health or safety. It further provides protections for such employees who participate in certain legal proceedings or share certain information with the legislature. A "health care facility" under this statute must operate according to a "continuing care contract" (pursuant to Wis. Stat. § 647.01) and must fall within the list of institutions that qualify under the statute. LIRC found that Petra failed to qualify as a health care facility on both these grounds.
- b. Additionally, the statute provides twenty subdivisions of individuals and entities that qualify as "health care providers." LIRC found the only category Petra potentially qualifies under is as a "home health agency." However, Petra fails to

qualify for several reasons: (1) Petra does not provide “skilled nursing services” because its services are not provided under the supervision of a registered nurse; (2) Petra does not provide “personal care services” because such services are not provided in accordance with a “plan of care” under Wis. Admin. Code § DHS 133.30, nor are they supervised by a registered nurse, therapist or home health aide; and (3) Petra is not an organization that has policies established by professional group and does not provide supervision of these services by a physician or registered nurse. Thus, Petra does not qualify as a “home health agency” and is not in the purview of Wis. Stat. § 146.997.

- c. Wis. Stat. § 16.009 protects employees who are discharged, discriminated or otherwise retaliated against for contacting, providing information to or otherwise cooperating with any representative of the Board of Aging and Long-Term Care. This board has a general duty to monitor “long-term care facilities” as defined under Wis. Stat. § 16.009. Of “long-term care facilities” provided, LIRC considered that Petra may qualify as a “facility” pursuant to Wis. Stat. § 647.10, but LIRC found that Petra, as a provider of non-medical home care service, does not meet the statutory definition because none of the services were provided under a continuing care contract. Thus, Petra is not a “long-term care facility.”
- d. Wis. Stat. § 50.07 provides protections for employees of care and service residential facilities who are discharged, discriminated or otherwise retaliated

against by their employer. However, LIRC found that Petra is not a care and service residential facility under the statute.

- e. Wis. Stat. §§ 46.90 and 55.43 protect for certain types of employees from discharge, discrimination, or other retaliation from their employer for reporting elder abuse to a county department, elder-at-risk agency, state or local law enforcements, the board of aging and long-term care or adult-at-risk agencies as designated by a county board. LIRC considered whether Ms. Kuzmanovic qualified for such protection as a health care provider but determined that Ms. Kuzmanovic did not meet the definition provided by Wis. Stat. § 155.01(7). Thus, Ms. Kuzmanovic is not subject to the protections provided by Wis. Stat. §§ 46.90 and 55.043. LIRC found that none of the violations of law alleged in the complaint to be applicable given their factual findings and subsequently dismissed the complaint.

#### STANDARD OF REVIEW

Administrative decisions are subject to judicial review. A trial court must accept the agency's finding of fact if there is substantial evidence to support such findings, however, a court is not bound by the agency's conclusions of law. *Sanitary Transfer & Landfill, Inc., v. DNR*, 85 Wis.2d 1, 15, 270 N.W.2d 144 (1978); *Richland School Dist. v. DILHR*, 174 Wis.2d 878, 890, 498 N.W.2d 836 (1993). The court can only set aside an order or award upon three grounds: (1) where the commission acted without or in excess of its powers, (2) where the order of award was

procured by fraud, or (3) that the findings of fact by the commission do not support the order or award. Wis. Stat. § 102.23(1)(e).

#### ANALYSIS

This Court need only determine whether the findings of fact reasonably support LIRC's dismissal of the complaint. Ms. Kuzmanovic contends that her firing by Petra was unlawful retaliation prohibited by state elder abuse and health care protection laws. LIRC considered each alleged violation and in each instance determined that the provisions do not apply to either Petra or Ms. Kuzmanovic. Most of Ms. Kuzmanovic's allegations are beyond the scope of her complaint, and arguably the only allegation relevant to this review is Ms. Kuzmanovic's plain assertion that Petra is a health care provider. Ms. Kuzmanovic does not support this assertion with law or administrative regulation. Alternatively, LIRC squarely rebuts this assertion by showing that it is not supported by state law or administrative regulation.

Even assuming that Ms. Kuzmanovic's allegations toward Petra are true, LIRC has demonstrated that none of the laws are applicable given the facts of this case. Neither Petra nor Ms. Kuzmanovic are within the purview of the laws Ms. Kuzmanovic seeks protection from. As such, this Court finds that each of LIRC's determinations are reasonable and will not disturb the order to dismiss.

#### ORDER

**IT IS HEREBY ORDERED** that the plaintiff's claims are hereby **DENIED** and this appeal is **DISMISSED**.

This is intended as a **FINAL ORDER** for purposes of appeal.