

STATE OF MINNESOTA  
IN SUPREME COURT

A20-0747

Court of Appeals

Gildea, C.J.  
Concurring, Chutich, Thissen, JJ.

Lori Dowling Hanson,

Appellant,

vs.

Filed: April 6, 2022  
Office of Appellate Courts

State of Minnesota,  
Department of Natural Resources,

Respondent.

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for appellant.

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## SYLLABUS

The district court did not err in granting summary judgment for the employer because the employee did not create a genuine issue of material fact over whether her protected activity was a motivating factor in her termination.

Affirmed.

## OPINION

GILDEA, Chief Justice.

Appellant Lori Dowling Hanson was terminated from her position as a regional director with respondent State of Minnesota Department of Natural Resources (DNR) after an incident at a hotel, where she was staying for a work-related conference. Hanson sued the DNR, alleging that her reporting of suspected illegal activity at the hotel caused her termination, in violation of the Minnesota Whistleblower Act, Minn. Stat. § 181.932, subd. 1(1) (2020). The district court granted summary judgment for the DNR, concluding that Hanson had not provided evidence of a causal connection between the protected activity and her termination or that the DNR's stated reason for terminating her was pretextual. The court of appeals affirmed, holding that even though there was a causal connection, Hanson did not offer evidence of pretext. *Hanson v. Dep't of Nat. Res.*, No. A20-0747, 2021 WL 1525296, at \*5–6 (Minn. App. Apr. 19, 2021). Because we conclude that Hanson did not establish a genuine issue of material fact for trial over whether her alleged protected activity was a motivating factor in the DNR's termination decision, we affirm.

## FACTS

This action arises from the DNR's decision to terminate Hanson from the high-level position she held as the regional director of the northeastern region of Minnesota. Regional directors are the chief spokesperson for the DNR in their respective region and represent the Commissioner in relationships with other governmental units, special interest groups, and Native American tribes. Hanson's position also required her to lead and maintain an outreach program to strengthen partnerships with government agencies, tribes, constituent leaders, and other groups in the region. As one of four regional directors in the State, Hanson reported directly to the DNR Deputy Commissioner. She was an at-will employee who served at the pleasure of the DNR Commissioner and the Governor.

On August 14, 2017, Hanson arrived at Fortune Bay Resort Casino on the Bois Forte Indian Reservation for a work-related conference. The hotel is located within the boundaries of Hanson's DNR region. Hanson was planning to attend meetings over the course of 3 days as a DNR representative on an international water quality board.

During the first night of her stay, Hanson was awakened three times by noises coming from the room next door. She heard "a lot of noise," "a crying baby," and "bodies . . . being thrown against the wall." She called the front desk to complain each time.

The next day, Hanson again heard a baby crying in the neighboring room when she left her room that morning and when she returned at lunch. She did not call the front desk or law enforcement to report her concerns but "made a mental note . . . that if the baby was still in distress by that evening, [she] would do something."

At dinner, Hanson ordered one alcoholic drink but did not finish it and brought the rest back to her room. After dinner, Hanson went to the hotel hot tub and then went back to her room and tried to sleep. The baby was still crying, so Hanson called the hotel's front desk. Hanson noted that the hotel staff member "was very concerned" and replied to Hanson, "Oh, that sounds just awful. Let me look into it, and thank you for calling."

About 10 minutes later, Hanson opened her room door—not wearing any clothes—and peered up and down the hallway for 10 to 12 seconds before returning to her room. Approximately 5 minutes after that, Hanson opened her door, now clothed, and talked to two men in the hallway who were knocking on the neighboring room's door. She told them that she was "pretty concerned about the baby inside," and they replied, "Well, we don't want no baby." The men left shortly after that. Hanson believed these men were "johns or pimps."

A couple of minutes later, Hanson left her room to speak to hotel management. Hotel security called 911 to report a possibly unattended crying baby after hearing Hanson's concerns. A Bureau of Indian Affairs (BIA) police officer was dispatched to the hotel in response.<sup>1</sup>

Hanson returned to her room and then soon came back out and looked up and down the hallway. Two women opened the door of the neighboring room, one of them holding a bra. One of the women said, "What's your problem?" Hanson responded, "It's gonna

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<sup>1</sup> The BIA has law enforcement jurisdiction on the Bois Forte Reservation. *See* Act of May 23, 1973, ch. 625, § 3, 1973 Minn. Laws 1500, 1501 (retroceding criminal jurisdiction over the Bois Forte Reservation to the federal government).

go down.” Hanson said that she told them that she was “concerned about the baby.” According to Hanson, they “kinda laughed” at her and closed the door. This reaction made Hanson “very scared,” and she thought that she “had stumbled across something very serious.”

After Hanson talked to the two women in the neighboring room, the hotel manager and the head of hotel security talked to the occupants of that room and were let inside. The hotel manager and the head of hotel security later told the BIA officer, after he had arrived, that “everything was secure and the child was safe.” They also reported this to Hanson, who still insisted that she talk with law enforcement.

Hanson then called 911. She identified herself as “a state official,”<sup>2</sup> asked for a “safe escort” from the hotel, and stated that she was “barricaded” inside because she had “stumbled upon” a prostitution ring.<sup>3</sup> She asked the dispatcher to send St. Louis County law enforcement officers because hotel management had “only offered to call BIA.”<sup>4</sup>

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<sup>2</sup> Hanson did not indicate which agency she worked for when asked by the dispatcher. (“I’m not willing to reveal that at this point. You can ask [the County Administrator].”) At the time, she asserted that she revealed she was a state official to let the dispatcher know that she was “not some random person off the street.” She later said that she “did not want to play the DNR card” as “it would escalate the situation,” but she “was there on state time, and there [would be] liability to the state if . . . something happened to” her.

<sup>3</sup> Hanson testified that she “was scared of the repercussions of reporting the suspected illegal activity and child abuse nextdoor [sic],” including that “somehow [she] would not be able to leave,” although she did not attempt to leave the hotel on her own.

<sup>4</sup> The St. Louis County sergeant who eventually responded to the hotel got the impression that Hanson “mistakenly believed the county did have law enforcement authority on tribal land.” (Emphasis omitted.) Hanson later testified that she “was used to

When the dispatcher informed Hanson that it “is routine for them” to call the BIA, Hanson responded, “What’s routine for me right now? Help me. . . . I’m barricaded in my room and scared shitless.” When informed that they had “a call to check on a child,” Hanson replied, “Ok, do you have a call to check on a Minnesota state official who would like safe . . . exit?” Hanson also reported that “they could be suffocating this child as we speak.” Though she told the dispatcher that she felt “threatened,” she refused to answer whether anyone made threats to her.<sup>5</sup> She told the dispatcher that “law enforcement [should] use full precautions” when responding.

During the 911 call, Hanson received a phone call from the St. Louis County Undersheriff, who asked, “What the hell’s going on? I got [the County Administrator]

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mutual aid” and that they “were never trained that a State employee could not call on other law enforcement.”

<sup>5</sup> Hanson insisted that she called 911 because she thought she was in trouble when the responding officers “indicated that [she] should get dressed with them watching” and asked her to take a breathalyzer test. She said that she “wanted more eyes, not less, because of the antagonistic behavior that the head officer had towards” her. She “did not feel safe with [the BIA]” and said that they were trying “to discredit” her.

Call logs, however, indicate that Hanson actually called 911 about 30 minutes *before* the responding officers arrived at the hotel. When confronted with this order of events at her deposition, Hanson said that “there’s definitely questions about the timeline that are troubling” but still maintained “that [she] called 911 because of the BIA.” Hanson believed that when she called the front desk to ask for help, she talked to a BIA officer over the phone and was concerned that they would not allow St. Louis County law enforcement to be involved in the response and this is what triggered her 911 call. She also stated that she did not “distrust” the BIA officer but then also said that she “would have been fine” with having only the BIA respond if they “hadn’t shown up with breathalyzers and ask[ed her] for warrants.”

calling me.” Hanson asked him to send a St. Louis County officer to provide her “safe exit” from the hotel.<sup>6</sup>

The BIA officer and a Breitung Township police officer then arrived at the hotel and knocked on Hanson’s door. The hotel manager and head of hotel security arrived after Hanson opened her door. Hanson stated that they asked her for identification, if she had any warrants, and whether she would take a breathalyzer test.

The BIA officer then knocked on the neighboring room’s door and found one woman and four children. He entered the room, along with the hotel manager. He noted that “[t]he room was clean and orderly.”<sup>7</sup> The woman explained that the youngest child “was teething and crying a lot.”

Hanson, who was still talking to the township officer, asked if she could change from her pajamas. She said that “the head guy”<sup>8</sup> laughed at her and said, “Yeah, you can go get dressed, but the door’s staying open.” Hanson felt “very threatened.”<sup>9</sup> Hanson

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<sup>6</sup> At some point during the evening, Hanson called her assistant at the DNR and said that she was “scared” and did not “know what to do.” Her assistant remained on the phone through much of the incident. Hanson then called the St. Louis County Administrator, identified by Hanson as “her husband’s friend” who he had worked with “for several years,” in order to get “advice.” According to Hanson, the County Administrator told her that he would dispatch the sheriff, and he called the undersheriff.

<sup>7</sup> Hanson testified that she believed there was prostitution occurring in the neighboring room in part because the room “was in total disarray.”

<sup>8</sup> In the hotel surveillance video, the person talking to Hanson before the door was closed was the township officer.

<sup>9</sup> Hanson elaborated that she felt threatened because the officers “were in threatening positions”: “[t]hree people with Tasers and guns and . . . badges.”

nevertheless closed the door to her room. The township officer and the head of hotel security then entered the neighboring room.

The BIA officer then knocked on Hanson's door and reported that the children in the neighboring room were "fine" and that the hotel's video surveillance "did not capture any suspicious footage." He told her that "she would be arrested for trespassing if she did not leave the resort within ten minutes." Hanson requested police escort from the reservation, asking for a St. Louis County deputy sheriff. The BIA officer responded with something like, "That's not going to happen."<sup>10</sup> Hanson replied that "she knew people and was calling them now."<sup>11</sup> The officer told Hanson that she needed "to pack her things and that management wanted her to leave." Hanson became "angry" and "refused to leave." The officer repeated that Hanson needed "to pack her things." During this encounter, the BIA officer and the township officer smelled alcohol on Hanson's breath.

Hanson asked the officers if it would be possible for her to ask a DNR conservation officer to respond to the hotel. According to Hanson, they "laughed" and said, "No [conservation officer]'s gonna come here—but yeah, . . . go ahead." Hanson replied, "I know their boss'[s] boss." Hanson called DNR Captain Tom Provost, the Division of

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<sup>10</sup> The BIA officer's rationale for saying this was that the nearest St. Louis County deputy was in Ely, approximately 40 minutes away, and that the hotel "wanted her to leave the premises." Hanson said that they "laughed" and told her that "Saint Louis County isn't allowed here."

<sup>11</sup> The BIA officer said that Hanson told them that "she would be calling the Grand Rapids P[olice] D[eartment] Chief of Police, Leech Lake Tribal P[olice] D[eartment], and MN DNR Captain [Tom] Provost," along with tribal leadership. Hanson contends that she did not name any specific individuals, but also that they "went through a whole litany of people" that might be allowed to assist her.

Enforcement's northeast regional manager, and reported that she suspected that child neglect and prostitution were occurring in a neighboring room. Hanson told him that hotel management was "snarky" when she reported her concerns. Hanson said that "she [had] locked herself in her room" and people were "coming to throw her out" of the hotel. Captain Provost advised Hanson to stay in her room and allow entry only to people she could trust and that were affiliated either with law enforcement or hotel management. Hanson requested that Captain Provost send a DNR conservation officer to assist her, and he responded that a sheriff's deputy "at minimum" would respond. At Hanson's request, her assistant called Captain Provost to provide specifics on Hanson's situation at the hotel.

Captain Provost then called a DNR conservation officer, who was at home, and told him that a DNR employee was at the hotel and "might've run afoul of the political issues at the casino." Captain Provost asked him to respond to the hotel in plain clothes and provided Hanson's name and phone number. Captain Provost asked the conservation officer to determine if any St. Louis County deputies were also available to respond.

Before he left for the hotel, the conservation officer called Hanson, and she told him that "she was afraid." Hanson said "that she had stumbled onto a sex ring" and wanted an escort from the hotel but that "security wouldn't let Saint Louis County on the property." The conservation officer described Hanson's demeanor during the call as "kind of frantic" and "very distraught." On his way to the hotel, the conservation officer called Captain Provost to report that a St. Louis County sergeant would also be responding. Captain Provost asked the conservation officer to call him when it was over.

A short time later, a St. Louis County sergeant arrived at the hotel and knocked on Hanson's door, identifying himself and telling Hanson that management wanted her to leave the hotel. Hanson allowed the sergeant into her room. Hanson told the sergeant that she had reported suspected child neglect to hotel management and "had told them that if they did not call social services, she would." Hanson asked the sergeant to escort her from the hotel, to which he responded, "Yeah. And I'm here to do that." The sergeant told Hanson, "I'm gonna tell these guys they can go," presumably talking about the BIA officer and the township officer. Hanson responded, "That would be wonderful. I would . . . love never to see them again." Around this time, Hanson assured her assistant over the phone "that things were okay." Her assistant asked Hanson if there was anything else she needed. Hanson responded, "Tell me how we're gonna handle this with the Commissioner's Office," and ended the call.

The conservation officer then arrived at the hotel and knocked on Hanson's door. The officer saw that Hanson and the sergeant were packing up her belongings and almost ready to leave.

As the conservation officer, the sergeant, and Hanson were leaving the hotel, the township officer handed a breathalyzer test device to the conservation officer and asked him to get Hanson to provide a breath sample. The conservation officer asked Hanson to take the test. Hanson refused, telling the officers that she had not consumed alcohol since 5 p.m. that evening. Hanson heard the BIA officer say, "Now I'm calling *my* boss."<sup>12</sup> The

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<sup>12</sup> The sergeant later described the BIA officer as "unnecessarily 'antagonistic' toward" Hanson during this time.

sergeant and the conservation officer told Hanson, “You know they’re trying to set you up, Lori—so if you’ve been drinking at all, you can’t get in that car.” Hanson interpreted their statement as a warning to her: that she “saw something, said something, and they had to discredit” her. The conservation officer asked Hanson, “Are you driving, Lori? How much have you had?” She responded, “I’m okay.” Hanson left the hotel property in her car, with the sergeant and the conservation officer following behind.

Hanson then called Captain Provost to report that she was leaving the hotel, and she thanked him for sending the conservation officer. Soon after, the conservation officer called Captain Provost and “expressed amazement about ‘this crazy situation.’ ” The officer reported that at least one BIA officer had been at the hotel and that Hanson had now left.

The next day, the BIA officer called Deputy Commissioner David Schad, Hanson’s supervisor at the time, and reported that Hanson “had been harassing and abusive toward hotel staff and law enforcement[,] . . . refused to leave her hotel room until a DNR state conservation officer arrived[,] . . . acted erratically, including being observed in the hallway without any clothes on, and . . . misused her state title.” Schad later informed DNR Commissioner Tom Landwehr of the incident.

The DNR placed Hanson on paid investigatory leave the day after the BIA officer’s call to Schad, stating that the decision was made because of her “recent conduct at Fortune Bay Resort Casino,” and began an investigation into the events at the hotel. Approximately 4 weeks later, a DNR human resources investigator submitted a 42-page report describing the incident. The report recounts many of the facts described above. It focused on the

events of the second night, from the time that Hanson went to dinner until she left the hotel, although it also included a short summary of the previous evening and Hanson's calls to the front desk about a crying baby. The report summarized eyewitness interviews, 911 call transcripts, dispatch logs, police reports, a cell phone recording made by Hanson the night of the incident, and hotel surveillance video. But the report made no specific recommendations.

After receiving the report of the investigation and consulting with Schad and the DNR human resources director, Landwehr terminated Hanson's employment on September 25, 2017. The only communication that Hanson received about the decision was a termination letter, and Landwehr did not state the reason for her termination in the letter. But Landwehr and Schad testified at their depositions about the concerns that lead to the termination decision. They testified that they were concerned that Hanson was nude in a public space, was asked to leave the hotel because of the way she was conducting herself, questioned the BIA's jurisdiction to respond to the hotel, and misused her state position. Schad did not "have a problem with what she reported"; he was concerned about "how she handled herself during the reporting."<sup>13</sup>

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<sup>13</sup> Statements in the record by Schad and Landwehr indicate that Hanson had "problematic" relationships with a former supervisor and assistant at the DNR, but no formal disciplinary actions were taken against Hanson as a result. They also testified that these previous problems influenced the decision to terminate Hanson after the hotel incident because she had been warned that her next misstep would result in termination. Hanson contends that she was a good employee and was not warned that she had two strikes. Because the standard of review requires us to view evidence in the light most favorable to Hanson, *see Kratzer v. Welsh Cos.*, 771 N.W.2d 14, 18 (Minn. 2009), we disregard these issues that occurred before the incident in question.

Hanson sued the DNR, alleging a violation of the Minnesota Whistleblower Act, Minn. Stat. § 181.932, subd. 1(1).<sup>14</sup> Under the statute, “[a]n employer shall not discharge . . . an employee . . . because . . . the employee, . . . in good faith, reports a violation, suspected violation, or planned violation of any federal or state law . . . to any governmental body or law enforcement official.” *Id.* Hanson contended that her reporting of suspected child neglect and prostitution were reports of suspected violations of state law made in good faith and that these reports motivated her termination. The DNR moved for summary judgment, arguing that Hanson failed to establish a prima facie case of discrimination because (1) her reporting was not in good faith, (2) the facts that she alleged do not constitute illegal conduct, and (3) she did not establish a causal connection between her reports and the DNR’s decision to end her employment. The DNR also argued that, even if Hanson had established a prima facie case, she was terminated because the way she conducted herself that night was not appropriate for a DNR representative, not because of her reporting. Hanson responded that the deposition testimony of Landwehr and Schad acknowledged that her reporting was a basis for terminating her and that the reason she was terminated was because of what happened at the hotel.

The district court granted the DNR’s motion for summary judgment, concluding that Hanson did not establish a prima facie case, the first step of the *McDonnell Douglas*

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<sup>14</sup> Hanson also alleged that by terminating her, the DNR violated the Maltreatment of Minors Act, Minn. Stat. § 626.556, subd. 4a (2019) (renumbered as Minn. Stat. § 260E.07 (2020)), but we did not grant review of that issue.

framework,<sup>15</sup> because she could not prove a causal connection between her reporting and her termination. The court stated that although temporal proximity can sometimes suffice to establish a causal connection, usually something more is required. But Hanson offered no “competent evidence or reasonable facts” to support her claim that she was indeed fired because she reported suspected illegal activity. The court concluded “that any inference of a causal connection imaginable between Hanson’s report of alleged illegal conduct and her termination is undermined by intervening events, namely, her unprofessional conduct during the incident at the hotel.” The court also concluded that even if she did make a prima facie case, Hanson did not show that the DNR’s stated reasons for her termination were pretextual, as required by the third step of *McDonnell Douglas*. Without any evidence that the DNR’s reason was offered simply “to mask retaliatory animus,” Hanson’s claim failed.

Hanson appealed, and the court of appeals affirmed. *Hanson*, 2021 WL 1525296, at \*8. The court held that Hanson had not submitted direct evidence of retaliation and so applied the *McDonnell Douglas* framework to her claims. *Id.* at \*4–6. The court observed that the first step of *McDonnell Douglas* “is a relatively low burden” for a plaintiff to bear. *Id.* at \*5. It further stated that the prima facie case can “be established merely by ‘showing that the employer has actual or imputed knowledge of the protected activity and the adverse employment action follows closely in time.’ ” *Id.* (quoting *Hubbard v. United Press Int’l, Inc.*, 330 N.W.2d 428, 445 (Minn. 1983)). Unlike the district court, the court of appeals

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<sup>15</sup> *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

held that Hanson had established a prima facie case of discrimination, including a causal connection between her protected reporting and the DNR’s decision to terminate her employment. *Id.*

The court of appeals then considered whether Hanson met her burden at step three of *McDonnell Douglas* to provide sufficient evidence “to create a genuine issue of material fact as to whether the DNR’s non-retaliatory reasons for the termination are a pretext.” *Id.* The court held that “the DNR submitted evidence that its termination decision was based *solely* on Hanson’s misconduct during the incident at the hotel and *not at all* based on” Hanson’s reports of suspected illegal activity. *Id.* at \*6. The court went on to state that “[t]o prove pretext, Hanson must, at the least, prove that the DNR’s evidence of non-retaliatory reasons is untrue.” *Id.* The court held that Hanson did not meet her burden because she did “not identify any evidence in the record that casts doubt on or contradicts the DNR’s evidence of non-retaliatory reasons.” *Id.*

We granted Hanson’s petition for review on her whistleblower claim.

### **ANALYSIS**

This case comes to us on review of the district court’s grant of summary judgment for the DNR, which we review de novo. *See Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 190 (Minn. 2019). We will affirm a grant of summary judgment if no genuine issues of material fact exist and if the court accurately applied the law. *Hoover v. Norwest Priv. Mortg. Banking*, 632 N.W.2d 534, 542 (Minn. 2001). In determining whether there are genuine issues of material fact, “we view the evidence in the light most favorable to the nonmoving party . . . and resolve all doubts and factual inferences against the moving

parties.” *Henson*, 922 N.W.2d at 190 (alteration in original) (citation omitted). Fact issues exist “when reasonable persons might draw different conclusions from the evidence presented.” *Id.* (citation omitted).

Employment relationships are “generally at-will” in Minnesota, so “an employer may discharge an employee for any reason or no reason and . . . an employee is under no obligation to remain on the job.” *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 150 (Minn. 2014) (citation omitted) (internal quotation marks omitted). But there are statutory exceptions to the employment-at-will doctrine that prevent an employer from discharging an employee for improper reasons. The Minnesota Whistleblower Act (MWA), Minn. Stat. § 181.932 (2020), is one of several statutes that limit the employment-at-will doctrine. *See, e.g.,* Minnesota Human Rights Act (MHRA), Minn. Stat. §§ 363A.01–.44 (2020) (prohibiting employment discrimination on the basis of race, color, creed, religion, national origin, sex, marital status, and other protected characteristics); Minn. Stat. § 176.82 (2020) (prohibiting retaliatory discharge of an employee for seeking workers’ compensation benefits); Civil Rights Act of 1991, 42 U.S.C. § 2000e-2 (prohibiting employment discrimination on the basis of race, color, religion, sex, or national origin). The MWA states that “[a]n employer shall not discharge . . . an employee . . . because . . . the employee, . . . in good faith, reports a violation, suspected violation, or planned violation of any federal or state law or common law or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official.” Minn. Stat. § 181.932, subd. 1(1). In short, the statute makes it illegal for an employer to punish an employee for reporting violations of law in good faith. *See id.*

When employment discrimination claims are challenged at summary judgment, we often employ the *McDonnell Douglas* burden-shifting framework to allocate the burden of proof between the plaintiff and defendant. *See, e.g., Hoover*, 632 N.W.2d at 548 (applying *McDonnell Douglas* to an MHRA reprisal claim brought by a former employee who requested reasonable accommodation for her disability and was subsequently terminated).<sup>16</sup> The three-step framework was articulated by the U.S. Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), to be used in Civil Rights Act cases when there is no direct evidence of retaliation by the employer, which is often difficult or impossible to obtain in employment discrimination cases. *See Price Waterhouse v. Hopkins*, 490 U.S. 228, 271 (1989) (O’Connor, J., concurring), *superseded by statute*, Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071, *as recognized in Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, \_\_\_ U.S. \_\_\_, 140 S. Ct. 1009 (2020).

At the first step, the employee must establish a prima facie case of discrimination, the elements of which will vary depending on the facts of the case. *McDonnell Douglas*,

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<sup>16</sup> We have recognized *McDonnell Douglas* as the appropriate framework to use in whistleblower cases since the MWA was enacted. *See Phipps v. Clark Oil & Refin. Corp.*, 408 N.W.2d 569, 572 (Minn. 1987) (“The procedure suggested by the court of appeals is that used in Title VII actions . . . . We agree . . . .”); *Graham v. Special Sch. Dist. No. 1*, 472 N.W.2d 114, 119 n.7 (Minn. 1991) (“*McDonnell Douglas* . . . must be used in analyzing a retaliatory discharge claim.”); *McGrath v. TCF Bank Sav., FSB*, 509 N.W.2d 365, 366 (Minn. 1993) (clarifying that in a whistleblower case applying *McDonnell Douglas*, an employer may still be liable even if it provides a legitimate reason for terminating an employee “if an illegitimate reason ‘more likely than not’ motivated the discharge decision” (quoting *Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619, 627 (Minn. 1988))).

411 U.S. at 802 & n.13. This raises a rebuttable presumption that the employer discriminated against the employee. *Hubbard v. United Press Int'l, Inc.*, 330 N.W.2d 428, 441 n.12 (Minn. 1983).

At the second step, the burden of production shifts to the employer to provide “some legitimate, nondiscriminatory reason” to explain why it took the adverse employment action. *McDonnell Douglas*, 411 U.S. at 802. If the employer does so, the presumption of discrimination no longer applies. *Tex. Dep’t of Cmty. Affs. v. Burdine*, 450 U.S. 248, 255 (1981).

At the third step, the burden shifts back to the employee to demonstrate that the employer’s proffered reason is pretextual. *McDonnell Douglas*, 411 U.S. at 804. Sufficient evidence of pretext could include that the employer’s stated reason is untrue. *See Hoover*, 632 N.W.2d at 546. In Minnesota, an employee could alternatively offer evidence at this step that an improper reason “motivated the discharge decision,”<sup>17</sup> rather than proving that the employer’s reason is untrue. *McGrath v. TCF Bank Sav., FSB*, 509 N.W.2d 365, 366 (Minn. 1993). The employee retains the ultimate burden of persuasion. *Burdine*, 450 U.S. at 253.

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<sup>17</sup> Other formulations of this standard include “whether retaliation was a ‘discernible, discriminatory, and causative factor,’ ” *Graham*, 472 N.W.2d at 119 n.7 (quoting *Anderson*, 417 N.W.2d at 623), a “substantial causative factor,” *Anderson*, 417 N.W.2d at 624, or whether discrimination “actually motivated” the decision, *LaPoint v. Fam. Orthodontics, P.A.*, 892 N.W.2d 506, 513 (Minn. 2017) (citation omitted). But these various articulations are driving at the same standard: whether the protected whistleblowing was a motivating factor in the employer’s adverse employment action.

Here, Hanson disputes application of the *McDonnell Douglas* framework. She also contends that it was not appropriate for the district court to grant summary judgment for the DNR because unresolved fact issues warrant a trial.

A.

Hanson first claims that she offered direct evidence of retaliation and so we should not apply the *McDonnell Douglas* framework in our analysis. See *Hoover*, 632 N.W.2d at 542 (“Discrimination plaintiffs may prove discriminatory intent by direct evidence or by using circumstantial evidence in accordance with [*McDonnell Douglas*].”). Direct evidence establishes “that the employer’s discrimination was purposeful, intentional or overt,” *Goins v. W. Grp.*, 635 N.W.2d 717, 722 (Minn. 2001), “such as where an employer announces he will not consider females for positions,” *Sigurdson v. Isanti County*, 386 N.W.2d 715, 720 (Minn. 1986).

As proof of direct evidence, Hanson points to Landwehr’s and Schad’s deposition testimony to imply that if Hanson had not reported suspected illegal activity, she would not have been terminated. Landwehr was asked, “[T]he report was a basis for terminating her?” He responded, “Yes.” Landwehr agreed that the baby crying and Hanson’s suspicions of prostitution “were the triggering features for what happened the rest of that evening”; they “started the process.” Similarly, Schad was asked, “So had there not been an incident and had there not been a report of that incident, she wouldn’t have been terminated; right?” Schad answered, “Correct.” Schad testified that the “events” of that evening were “the trigger for terminating her.”

But when they discussed the “report” in this testimony, Landwehr and Schad were describing the DNR’s investigative report; they were not discussing Hanson’s report of suspected illegal activity. Hanson’s argument to the contrary misconstrues the record by conflating the *investigative report* generated as a product of the DNR’s investigation into the hotel incident with Hanson’s *reporting* of suspected illegal activity. In fact, neither Landwehr nor Schad testified that Hanson’s reporting was the basis or a cause of her termination. Landwehr explicitly said that Hanson’s reporting was *not* a motivation for his decision. Accordingly, we conclude that Hanson has presented no direct evidence of retaliation.

B.

Without direct evidence of retaliation, our analysis proceeds according to the three-step framework of *McDonnell Douglas*.

First, Hanson has established a prima facie case. Because the DNR does not argue that Hanson’s reporting was not protected conduct, we assume that her reporting is statutorily protected. *See* Minn. Stat. § 181.932, subd. 1(1) (protecting reports made “in good faith”). The DNR clearly made an adverse employment decision when it chose to terminate Hanson’s employment. *See id.*, subd. 1 (listing one of the prohibited actions as “discharge”). And there is a causal connection between the two, because under Minnesota law, the employer’s knowledge of the employee’s protected activity along with close

temporal proximity to the adverse action suffices to establish a causal connection.<sup>18</sup> *See Hubbard*, 330 N.W.2d at 445 (holding that a “causal connection may be demonstrated indirectly by evidence of circumstances that justify an inference of retaliatory motive, such as a showing that the employer has actual or imputed knowledge of the protected activity and the adverse employment action follows closely in time”). There is ample evidence that the DNR was aware that Hanson had reported suspected illegal activity, and the termination of her employment closely followed her reporting. Hanson has, therefore, established a causal connection for purposes of her prima facie case. Her burden at step one is satisfied.

Second, the DNR offered a legitimate reason for Hanson’s termination: that it was inappropriate for Hanson to appear in a public space without clothes on, assert her position as a state official to gain preferential treatment, use DNR resources in a personal situation, insist that county law enforcement officers needed to respond where the BIA had jurisdiction, and create such a disturbance that she is asked to leave a hotel in a region where she was supposed to be cultivating good working relationships. The DNR has accordingly satisfied its burden of offering a legitimate reason for the employment action.

Third, and fatally for Hanson’s claim, she did not provide any evidence that her reporting of suspected illegal activity in any way motivated the DNR’s decision to

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<sup>18</sup> Some federal courts interpreting the MWA have held that “something more” than temporal proximity may be required to establish a causal connection. *See, e.g., Lissick v. Anderson Corp.*, 996 F.3d 876, 883 (8th Cir. 2021) (“Although close temporal proximity between protected activity and termination ‘may occasionally raise an inference of causation, in general, more than a temporal connection is required.’ ” (quoting *Mervine v. Plant Eng’g Servs., LLC*, 859 F.3d 519, 526 (8th Cir. 2017))). But we have never mandated anything beyond close temporal proximity to establish a causal connection for an employee’s prima facie case. *See Hubbard*, 330 N.W.2d at 445.

terminate her or that the DNR's stated reasons were pretextual. To overcome summary judgment in a single-motive employment case—when there is only one basis for the adverse action—an employee needs to provide evidence that the employer's “proffered reason was not the true reason for the employer's actions” and that discrimination was the real reason. *Hasnudeen v. Onan Corp.*, 552 N.W.2d 555, 557 (Minn. 1996). Here, the summary judgment record shows that the DNR terminated Hanson because of the way she conducted herself by repeatedly insisting that a law enforcement agency without jurisdiction should respond to the hotel and reacting to the situation in a way that caused hotel management to ask her to leave. To create a fact issue and proceed to trial, Hanson needed to produce evidence that this reason was not true. She offered no such evidence. Alternatively, Hanson could have produced evidence that despite what the DNR stated, it considered her reporting as one of the reasons for terminating her employment, that is, the DNR had mixed motives. Hanson did not meet this burden either. Therefore, the district court properly granted summary judgment in favor of the DNR.

Hanson argues that Schad and Landwehr testified that she would not have been terminated but for her reporting, which demonstrates unlawful discharge. But this argument ignores the impact of intervening events at the hotel that night, namely the way that she conducted herself. In one sense, it is true that if Hanson had not reported the suspected illegal activities, she likely would not have been terminated. If Hanson had not reported the suspected illegal activities, she likely would not have called subordinate law enforcement personnel, undermined the BIA's jurisdiction, inappropriately used her high-level position, and been asked to leave the hotel. But it is different to say that the DNR

terminated her employment *because* she made the report. The DNR's argument is that Hanson was fired for the way she conducted herself, rather than for the fact that she made a report. The record evidence confirms that the way that Hanson conducted herself cut off any reasonable inference of a connection between her protected reporting and her eventual termination.

As additional evidence that her whistleblowing caused her termination, Hanson asserts that the DNR was concerned that her reporting of suspected illegal activities would cause problems with the DNR's relationship with the tribe. Hanson points to Landwehr's testimony that it was inappropriate for Hanson to insist that a county or state law enforcement officer escort her from the hotel instead of the BIA and township officers who responded. But Landwehr said that it was appropriate for Hanson to report her concerns about the activities in the neighboring room and that he would have done the same thing if he had been in that situation. And Landwehr stated that, rather than the fact that Hanson reported her suspicions, it was the way that Hanson conducted herself at the hotel—in particular, that she insisted on a response from law enforcement agencies without jurisdiction—that might cause issues with the DNR's relationship with the tribe.

Hanson also points out that the termination letter that she received from the DNR did not state any reasons for the decision, and she contends that this raises suspicion about whether the DNR's reasons given after the fact are pretextual.<sup>19</sup> An employer's shifting

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<sup>19</sup> Hanson could have requested a written record of the reasons for her termination, but the record does not contain any evidence that she did. *See* Minn. Stat. § 181.933, subd. 1 (2020) (allowing an involuntarily terminated employee 15 working days to request the

reasons for making an employment decision may give rise to a fact issue about whether the later-stated reasons are pretextual. *See Kobrin v. Univ. of Minn.*, 34 F.3d 698, 703 (8th Cir. 1994) (“Substantial changes over time in the employer’s proffered reason for its employment decision support a finding of pretext.”). But the DNR’s reasons, as provided by Landwehr’s and Schad’s testimony, are not inconsistent with the termination letter, because the letter was silent as to the DNR’s reasons. Hanson presents no authority for the proposition that silence as to the reason for termination is tantamount to inconsistency with a later-stated reason. There are no shifting reasons here, and therefore, no fact issue on that basis.

Hanson asserts that this is a mixed-motive case because Hanson and the DNR offer conflicting reasons for Hanson’s termination. In a mixed-motive case, “the court finds that an employment decision was based partly on legitimate motives and partly on unlawful ones.” *Hasnudeen*, 552 N.W.2d at 557. We apply the *McDonnell Douglas* framework in mixed-motive cases, too, *Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619, 626–27 (Minn. 1988), however, the third step focuses on whether the improper reason “motivated” the employer’s decision, *McGrath*, 509 N.W.2d at 366.

Hanson did not provide evidence to support her assertion that the DNR fired her for an improper reason. Specifically, Hanson did not provide evidence that her protected conduct—reporting suspected illegal activity—was a motivating factor in her termination.

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reason for termination from their former employer and requiring an employer receiving such a request to “inform the terminated employee in writing of the truthful reason for the termination” within 10 working days).

To the contrary, no evidence suggests that the DNR considered her reporting when it made the decision. Even when viewing the facts in the light most favorable to Hanson, there is not an issue of fact as to whether her reporting was a motivating factor; rather, the evidence supports a finding that her reporting played *no* part in the DNR's decision. Consequently, Hanson's claim does not survive summary judgment under either a single-motive or a mixed-motive analysis.

Hanson argues that the court of appeals held that she had established a causal connection and that thereby raises a fact issue as to whether her reporting motivated the termination decision. But a causal connection based on temporal proximity, while enough to satisfy her prima facie case, is not sufficient to satisfy Hanson's burden to provide evidence that the DNR's stated reasons are pretextual or that her reporting motivated the termination decision. *See Hubbard*, 330 N.W.2d at 445–46. Temporal proximity alone is not sufficient for an employee's claim to proceed to trial, and so Hanson's argument fails. *See id.*

Without any other evidence either that the DNR's reasons are untrue or that her reporting motivated the DNR to terminate her employment, summary judgment was appropriately granted to the DNR because there is no genuine issue of material fact.<sup>20</sup> *See Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 884 (Minn. 2019) (holding that a party

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<sup>20</sup> Hanson claims that her good standing at the DNR before she was terminated is evidence that counters the DNR's reasons for terminating her. But her past performance is not at issue here; the DNR was concerned about the way she conducted herself at the hotel on the night in question, not about whether she had been a good employee up to that point.

“cannot survive summary judgment by simply resting on his assertions” without providing evidence to support them). There are no facts, nor reasonable inferences from facts, that support Hanson’s position that the DNR was motivated by her reporting of suspected illegal activity when it decided to terminate her employment.

### C.

Alternatively, Hanson argues that we should not apply the *McDonnell Douglas* framework in MWA cases and suggests a streamlined summary judgment standard to use in its place. Hanson asks us to replace *McDonnell Douglas* with a standard based on the model jury instructions that focuses on whether the whistleblowing activity “was a motivating factor” or “played a part” in the adverse employment action. *See* 4 Minn. Dist. Judges Ass’n, *Minnesota Practice—Jury Instruction Guides, Civil*, CIVJIG 55.65 (6th ed. 2021).

We acknowledge that there is debate about the continuing viability of the *McDonnell Douglas* framework. *See, e.g., Coleman v. Donahoe*, 667 F.3d 835, 863 (7th Cir. 2012) (Wood, J., concurring) (“Perhaps *McDonnell Douglas* was necessary nearly 40 years ago, when Title VII litigation was still relatively new in the federal courts. By now, however, as this case well illustrates, the various tests that we insist lawyers use have lost their utility. Courts manage tort litigation every day without the ins and outs of these methods of proof, and I see no reason why employment discrimination litigation (including cases alleging retaliation) could not be handled in the same straightforward way.”); *Wells v. Colo. Dep’t of Transp.*, 325 F.3d 1205, 1221–28 (10th Cir. 2003) (Hartz, J., writing

separately) (“One therefore wonders why we need to have this artificial, often confusing, framework. The answer is that there is no need.”).<sup>21</sup>

But we reach the same outcome in this case whether we apply *McDonnell Douglas* or the jury instructions standard advocated for by Hanson. Hanson contends that she was fired because she reported suspected illegal activity. The DNR counters that the decision to terminate her employment was because she acted in an unprofessional manner at the hotel. These competing reasons could raise a question of fact as to whether the whistleblowing was a motivating factor in the termination decision, in addition to the DNR’s stated reasons. But, as detailed above, Hanson offers no evidence to support her claim that her reporting was a factor that the DNR considered in making its decision to fire her, and her speculation to the contrary is not enough to survive summary judgment. *See Bob Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 328 (Minn. 1993) (“Mere speculation, without some concrete evidence, is not enough to avoid summary judgment.”). In sum, there is no genuine issue as to whether the DNR was motivated to terminate Hanson based on her whistleblowing, because there is no evidence that her reporting played any part in, much less was a motivating factor in, the DNR’s decision.

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<sup>21</sup> Hanson also points to the recently decided California Supreme Court case *Lawson v. PPG Architectural Finishes, Inc.*, \_\_\_ P.3d \_\_\_, 2022 WL 244731 (Cal. Jan. 27, 2022), claiming that it represents “a court in another jurisdiction rejecting the *McDonnell Douglas* framework . . . and utilizing a state law caus[us]al analysis.” But California has a statute that specifies the standard to apply in whistleblower cases, whereas Minnesota does not. *See* Cal. Lab. Code § 1102.6 (West 2022). For that reason, we find *Lawson* unpersuasive to our analysis here.

Because Hanson's claim fails under both *McDonnell Douglas* and her proposed replacement standard, we decline to reach the issue of whether we should abandon the *McDonnell Douglas* framework in whistleblower cases.

### **CONCLUSION**

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

## CONCURRENCE

CHUTICH, Justice (concurring).

I agree with the court that appellant Lori Hanson’s whistleblowing claim fails as a matter of law, and that the decision of the court of appeals should be affirmed. I write separately, however, because I agree with Hanson and the amici, the National Employment Lawyers Association-Minnesota Chapter and the Employee Lawyers Association of the Upper Midwest, that the *McDonnell Douglas* framework has become cumbersome and increasingly obsolete. Because this court has never been asked to analyze whether courts should use the *McDonnell Douglas* framework for cases brought under the Minnesota Whistleblower Act, Minnesota Statutes section 181.932 (2020), I would not extend this troubled framework to apply to claims brought under that statute. Instead, I would apply the ordinary summary-judgment standard in Rule 56.01 of the Minnesota Rules of Civil Procedure. Because Hanson’s whistleblowing claim fails under this standard as well, I concur with the court’s decision to affirm the decision of the court of appeals, upholding the grant of summary judgment to the Minnesota Department of National Resources.

### I.

Since its creation a half-century ago, *McDonnell Douglas* has evolved into a wide-reaching, burdensome, and—for many plaintiffs—insurmountable framework. *See generally* Katie Eyer, *The Return of the Technical McDonnell Douglas Paradigm*, 94 Wash. L. Rev. 967 (2019) (describing plaintiffs’ challenges reaching a jury under courts’ rigid application of *McDonnell Douglas* tests). *McDonnell Douglas* originated as a framework to help federal judges evaluate Title VII claims that were to be tried without

juries. Today, the *McDonnell Douglas* approach has permeated cases far beyond its original scope, including state law employment claims and cases decided by juries. *See, e.g., Sigurdson v. Isanti County*, 386 N.W.2d 715, 721–22 (Minn. 1986) (using an advisory jury to evaluate a state-law claim); *see also* 42 U.S.C. § 1981a(c) (2020) (permitting jury trials for Title VII claims).

In response to the expanded scope of *McDonnell Douglas*, federal and state courts alike have developed confusing and inefficient inferences and tests in their attempts to follow the framework across employment discrimination cases. Courts began, for example, to distinguish between direct evidence, which can be evaluated on its own, and indirect evidence, which requires the *McDonnell Douglas* framework. *Griffith v. City of Des Moines*, 387 F.3d 733, 743–45 (8th Cir. 2004) (Magnuson, J., concurring specially). Minnesota courts also ask whether there was close temporal proximity between the employment decision and the discrimination, *e.g., Hubbard v. United Press Int’l, Inc.*, 330 N.W.2d 428, 445 (Minn. 1983), infer against discrimination when the same decision-maker hired and made the adverse employment decision, *e.g., Alagock v. State*, No. A12-1658, 2013 WL 1707692, at \*6 (Minn. App. Apr. 22, 2013) (citing *Herr v. Airborne Freight Corp.*, 130 F.3d 359, 362–63 (8th Cir. 1997)), and question whether the discrimination was merely a “stray remark,” *e.g., Diez v. 3M*, 564 N.W.2d 575, 579 (Minn. App. 1997). These requirements impose unnecessary impediments at the summary-judgment stage.

Unsurprisingly, members of the academy have long critiqued the fraught evolution of *McDonnell Douglas*. In addition to objecting to its burdensome tests and inferences,

academics argue that the framework lacks statutory basis, distracts from the ultimate factual question of whether discrimination occurred, and unfairly raises the plaintiff's burden at summary judgment by requiring more than the preponderance of the evidence burden used at trial. *See, e.g.,* Sandra F. Sperino, *Flying Without a Statutory Basis: Why McDonnell Douglas is Not Justified by Any Statutory Construction Methodology*, 43 *Hous. L. Rev.* 743, 795 (2006) (“[B]y isolating *McDonnell Douglas* into a summary judgment standard only, the courts are using one standard to determine whether a case should go to trial and having the jury apply quite a different standard at the trial itself. This is simply not the approach allowed by the Federal Rules of Civil Procedure.”).

Courts are increasingly voicing these same concerns. Some are uncomfortable with the mismatch between *McDonnell Douglas*' requirements to survive summary judgment and the less-burdensome standard of proof at trial. In *Walker v. Abbott Laboratories*, 416 F.3d 641, 645 (7th Cir. 2005), for example, the Seventh Circuit concluded that the *McDonnell Douglas* “formula has its place but does not displace the general standards for summary judgment.” Similarly, in *Jones v. City School District of New Rochelle*, 695 F.Supp.2d 136, 143-44 (S.D.N.Y. 2010), the court applied a “simplified” *McDonnell Douglas* approach for summary-judgment motions in employment discrimination cases, which focused on the “ultimate question” for a potential jury of whether the plaintiff presented sufficient evidence of discrimination.<sup>1</sup> *See also* The Hon. Denny Chin, *Summary*

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<sup>1</sup> This “simplified” approach for summary judgment aligns with the Second Circuit’s determination that juries should not be instructed about the *McDonnell Douglas* test, concluding that the framework “is at best irrelevant, and at worst misleading.” *Gordon v.*

*Judgment in Employment Discrimination Cases: A Judge’s Perspective*, 57 N.Y. Sch. L. Rev. 671, 677 (2013) (advocating for replacing *McDonnell Douglas* with a “simplified” and “more focused” method for assessing employment discrimination and retaliation cases).

Courts have also started to question other aspects of *McDonnell Douglas*. In *Griffith*, for example, the concurrence probed—although it did not challenge—the lack of a statutory basis for the *McDonnell Douglas* burden-shifting framework. *Griffith*, 387 F.3d at 740 (Magnuson, J., concurring specially). And in *Ortiz v. Werner Enterprises, Inc.*, 834 F.3d 760, 765–66 (7th Cir. 2016), the Seventh Circuit went so far as to abandon the *McDonnell Douglas*-driven distinction between direct and circumstantial or indirect evidence, although it ultimately left in place the “burden-shifting framework.”

## II.

Given these critiques, I would urge the court to pause before assuming that *McDonnell Douglas* applies in the context of Minnesota’s whistleblowing statute. It is well-settled that the “rule of stare decisis is never properly invoked unless in the decision put forward as precedent the judicial mind has been applied to and passed upon the precise question.” *Fletcher v. Scott*, 277 N.W. 270, 272 (Minn. 1938); *see also In re Krogstad*, 958 N.W.2d 331, 337–38 (Minn. 2021) (recognizing the principle articulated in *Fletcher*). We have mentioned *McDonnell Douglas* in only three Minnesota Whistleblower Act cases, either in dicta or without analyzing whether the framework actually applies.

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*N.Y. City Bd. of Educ.*, 232 F.3d 111, 118 (2d Cir. 2000) (citation omitted) (internal quotation marks omitted).

In *McGrath v. TCF Bank Savings, FSB*, 509 N.W.2d 365, 366 (Minn. 1993), we clarified part of the *McDonnell Douglas* analysis, but we did not address whether—and certainly did not hold that—the analysis was appropriate in whistleblowing cases. In *Graham v. Special School District No. 1*, 472 N.W.2d 114, 119 n.7 (Minn. 1991), we said in dicta that *McDonnell Douglas* should be used for retaliatory discharge claims but did not actually apply the framework. Similarly, in *Phipps v. Clark Oil & Refining Corp.*, 408 N.W.2d 569, 572 (Minn. 1987), we accepted the court of appeals’ limited use of *McDonnell Douglas* but did not adopt it.<sup>2</sup> Consequently, I conclude that this court has never focused its “judicial mind” on the question of whether *McDonnell Douglas* applies to Minnesota Whistleblower Act claims, and we are therefore not bound to apply the framework to these cases.

Moreover, nothing in the text of the Minnesota Whistleblower Act shows that courts should use the *McDonnell Douglas* framework instead of the usual Rule 56.01 summary-judgment standard. See Minn. Stat. § 181.932. The statute first prohibits employers from retaliating against a whistleblowing employee, *id.* at subd. 1, and then provides identity protection for employees who make whistleblowing reports to governmental bodies or law

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<sup>2</sup> To be sure, we have held that courts should analyze claims under the Minnesota Human Rights Act using the *McDonnell Douglas* framework, although we emphasized that it is “merely a tool” and should not be applied “rigidly and mechanically.” *Sigurdson*, 386 N.W.2d at 721–22; see also *Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619, 627 (Minn. 1988) (quoting *Sigurdson*). Despite some similarities—each statute concerns wrongful adverse employment decisions—Minnesota Whistleblower Act claims fall under a separate statute and are distinguishable from discrimination and reprisal claims brought under the Minnesota Human Rights Act. The continued utility of applying the *McDonnell Douglas* framework to claims brought under the Minnesota Human Rights Act is not raised in this case, and I do not consider it here.

enforcement agencies, *id.* at subd. 2. The statute also preserves collective bargaining rights for whistleblowers, *id.* at subd. 4, and carves out exceptions to its protection for employees who make false disclosures, *id.* at subd. 3, and for disclosures that “would violate federal or state law or diminish or impair the rights of any person to the continued protection of confidentiality of communications provided by common law,” *id.* at subd. 5. At no point does the statute discuss burdens of proof, litigation requirements for the employer or employee, or any other threshold that would require deviating from the ordinary summary-judgment standard.

In addition, extending the framework to claims under the Minnesota Whistleblower Act makes little sense. *McDonnell Douglas* is burdensome, complex, and hinders plaintiffs’ access to justice. It was also designed for federal judges hearing Title VII discrimination claims when a right to a jury trial for those claims did not exist. By contrast, Minnesota Whistleblower Act claims are based on state law and plaintiffs have a right to trial by jury. Tellingly, those juries are not instructed on *McDonnell Douglas*, meaning a judge would use a more rigorous analysis at summary judgment (*McDonnell Douglas*) than the jury would use at trial (that the employer more likely than not retaliated against the employee). Those shifting standards invert the purpose of summary judgment and subvert the role of juries.

For these reasons, I conclude that this court should not expand the weathered *McDonnell Douglas* standard to claims brought under the Minnesota Whistleblower Act. Instead, courts should use the general summary-judgment standard in Rule 56.01 of the Minnesota Rules of Civil Procedure. Under Rule 56.01, the court must grant summary

judgment when “the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. As the court rightly concludes, Hanson’s claim fails under this standard. Beyond her own speculation, she offered no evidence supporting her claim that her whistleblowing report was a motivating factor in the decision of the Department of Natural Resources to terminate her employment.

Because Hanson did not raise a genuine dispute of material fact, the district court did not err in granting summary judgment for the Department of Natural Resources. Accordingly, I concur in the court’s decision to affirm the decision of the court of appeals.

THISSEN, Justice (concurring).

I join in the concurrence of Justice Chutich.