

Goodbye to McDonnell Douglas Under the Minnesota Whistleblower Act?

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On April 6, 2022, Minnesota's Supreme Court in [Lori Dowling Hanson v. State of Minnesota, Department of Natural Resources](#) affirmed the lower courts' summary dismissal of a Minnesota Whistleblower Act ("MWA") claim brought by a former Department of Natural Resources ("DNR") employee Lori Dowling Hanson ("Hanson"). The case left unanswered the fate of McDonnell Douglas in MWA claims.

On August 14, 2017, Hanson, a DNR regional director, attended a work-related conference, staying at a hotel on an Indian Reservation in her region. At times during the day, she heard a crying baby in a neighboring hotel room and became concerned. Hanson reported her concern to the hotel. Shortly after, she talked to two men in the hallway who she believed were "johns or pimps."

Hotel security arrived, calling 911 to report Hanson's concerns. As an officer from the Bureau of Indian Affairs ("BIA") was dispatched to the hotel, hotel security entered the neighboring room and talked to its occupants—a woman, three children, and a teething infant. Hotel security confirmed the room occupants were safe and secure.

Hanson insisted on talking with law enforcement and called 911 herself. She identified herself as a "state official," asked for "safe escort," and stated she was "barricaded" inside because she "stumbled upon" a prostitution ring. She demanded state law enforcement, not BIA, respond to the hotel to provide her a "safe exit."

Thereafter, hotel management asked Hanson to leave. She became angry, refused to leave, and asked for a DNR conservation officer to respond to the hotel. She then called a high-ranking DNR official and reported she suspected child neglect and a prostitution ring were occurring at the hotel. The DNR official sent over a conservation officer. With the assistance of state law enforcement, Hanson left the hotel.

On September 25, 2017, following paid investigatory leave, the DNR terminated Hanson for her conduct during her report of suspected illegal activity, not because of her report. She sued alleging an MWA violation.

The Minnesota Court of Appeals upheld the trial court's summary judgment in favor of the DNR. The

Minnesota Supreme Court, utilizing McDonnell Douglas, held Hanson did not provide evidence that her report of suspected child neglect and a prostitution ring motivated the termination decision. The Court held the record demonstrated the DNR terminated Hanson because of her conduct during her report, not her report itself. The Court reasoned her conduct constituted an intervening event that severed any reasonable inference of a temporal connection between the alleged protected activity and termination.

Having a potentially broader impact, the Court declined to address whether Minnesota should abandon the McDonnell Douglas framework in MWA cases. As part of her appeal, Hanson asked the Court to replace McDonnell Douglas with a standard derived from model jury instructions “that focuses on whether the whistleblowing activity ‘was a motivating factor’ or ‘played a part’ in the adverse employment action.” The Court declined, holding the outcome was the same under either standard.

In a first of its kind, a concurring opinion held Minnesota should replace McDonnell Douglas in MWA cases with the Rule 56 standard. The concurring opinion reasoned McDonnell Douglas should be abandoned because it is cumbersome and obsolete, and the Court never previously analyzed whether it was the proper test in MWA cases.

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National Law Review, Volume XII, Number 137

Source URL: <https://natlawreview.com/article/goodbye-to-mcdonnell-douglas-under-minnesota-whistleblower-act>