STATE OF OHIO	) IN THE COURT OF COMMON PLEAS
	) SS.
COUNTY OF CUYAHOGA	) Civil Case No. 460869
	) **JOURNAL ENTRY AND**
	) **OPINION**
	)
MALERIA LEWIS	)
	)
Plaintiff,	)
	)
Vs.	)
	)
FAIRVIEW HOSPITAL	)
	)
	)
Defendant.	)

Kathleen Ann Sutula, J:

IT IS SO ORDERED:

Defendant Fairview Hospital (hereinafter "Fairview") moves this court to grant summary judgment in its favor. Fairview filed its brief, asserting that there are no genuine issues of material fact, on March 27, 2003. Plaintiff Maleria Lewis ("Lewis") filed her brief in opposition on May 12, 2003. The Court then permitted Fairview leave to file a reply brief, which Fairview did on May 21, 2003.

In her complaint against Fairview, Plaintiff seeks relief on (1) a Title VII retaliation claim and (2) a wrongful discharge in violation of public policy claim. Having construed the facts of the case in the light most favorable to the non-moving party, the Court sets forth the facts, for purposes of the motion for summary judgment, as follows.

Plaintiff is a registered nurse who began working for Fairview in November 1991. *See* Plaintiff's Opposition, p. 9. Among her duties with Fairview, Lewis was expected to communicate with her fellow nurses and doctors in order to effectuate a positive team environment. *See* Lewis Depo., pp.45-46. The goal of this atmosphere was to ensure that

Fairview's patients would receive the proper care, which was Lewis's and Fairview's primary responsibility. *See* Lewis Depo., p.43, 46. In providing care to the patients, Lewis had to be able to follow instructions while simultaneously being accurate in her work. *See* Lewis Depo., pp. 43, 46.

During her employment with Fairview, Lewis had troubles communicating with her colleagues. A summary of a conference held on April 4, 1996, shows that Lewis had an issue with "clear direct communication" with another nurse. *See* Sauer Aff., Ex. A. This pattern repeated itself throughout 1998 and 1999 as Lewis's supervisors and co-workers found her wanting in the areas of teamwork and communication. *See* Murray Aff., ¶3; Christensen Aff.. ¶5; Bores Aff., ¶4; Biggs Aff., ¶¶3-4; Jozefczyk Aff., ¶3.

Eventually, on April 1, 1999, Lewis filed a racial discrimination charge, alleging disparate treatment, with the Ohio Civil Rights Commission ("OCRC") against Fairview. The charge filed with the OCRC followed Fairview's own investigation that was spurred by Lewis's complaints of race based workplace treatment. *See* Lewis Depo., Ex. J.

In the months that followed, Lewis had increasing difficulties with her colleagues. For example, Lewis (1) refused to take an assignment from her charge nurse (Lewis Depo., pp.108-09); (2) refused to communicate with other nurses (Christensen Aff., ¶6; Bores Aff., ¶6; Biggs Aff., ¶¶3); and (3) initially refused to again accept a patient assignment (Lewis Depo., Ex. P).

As a result of this last incident, the Clinical Manager on Lewis's floor, Margaret Glenny, held a counseling session with Lewis on July 28, 1999. At that meeting, Glenny endeavored to counsel Lewis concerning Lewis's refusal to accept the patient assignment (referenced above). *See* Glenny Aff., ¶8. Lewis, however, merely reiterated the fact that

she ultimately accepted the patient. *See* Lewis Depo., p. 257. As a consequence of that meeting, during which Glenny regarded Lewis's actions as inappropriate, Glenny sought reassignment for herself. *See* Glenny Aff., ¶¶8-9. Glenny, however, was not alone in her desire for reassignment. Around that same period, Nurses Mary Christensen (Christensen Aff., ¶7), Cheryl Bores (Bores Aff., ¶8), Ivi Biggs (Biggs Aff., ¶4), and Assistant Clinical Manager Sandra Jozefczyk (Jozefczyk Aff., ¶5), among others, were all seeking transfers or searching for new jobs because of the work environment on the floor ostensibly because of Lewis's actions.

As a result, Fairview decided to terminate Lewis because her actions threatened patient care.[1] *See* Murphy Aff., ¶8.[2] While all of this was occurring, Lewis, who was off duty from August 1 through August 15, filed a retaliation charge with the OCRC on August 6, 1999. *See* Meldrum Aff., ¶6; Plaintiff's Opposition, Ex. 6.

Fairview received the charge (which was sent on August 10, 1999)[3] on or around August 12, 1999, but Fairview had made the decision to terminate Lewis prior to receiving notice that she had filed a claim for retaliation. *See* Murphy Aff., ¶9. Upon

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[1] It is important to recall that patient care was the primary duty expected of Lewis. *Supra*, p.2.

[2] Plaintiff's counsel's argument that he was not permitted to reopen discovery is misleading. First, a case management conference was held on June 12, 2002, at which time Plaintiff's attorney indicated to the Court that he would not need to do any additional discovery. As a result, a date was set for Plaintiff to respond to the then outstanding Motion for Summary Judgment. Second, the Court called a scheduling conference for March 3, 2003. Due to an illness, the conference was reset in the presence of both attorneys for the following day at 9:00 a.m. Plaintiff's counsel, however, failed to appear by 9:45 a.m. (if Plaintiff's counsel is correct in his assertion that he drove "45 minutes," *see* Plaintiff's Opposition, fn. 3, then he did not leave his office *until 9:00 a.m.*, the time the scheduling conference was to begin). Pursuant to Local Rule 21, Part III, (H)(2), the Court set dates *ex parte*. Finally, Plaintiff's counsel argues that he "was not afforded an opportunity to argue his motion to reopen discovery." *See* Plaintiff's Opposition, fn. 3. First, that motion was filed on March 10, 2003, so if Plaintiff's lawyer is arguing that he should have been allowed to argue in support of the motion at the March 4 conference, then that is a physical impossibility as the motion had not yet been filed. Second, Plaintiff's counsel did not make an application for an oral hearing. Pursuant to Local Rule 11, therefore, the Court considered and made its decision "upon the motion papers."

[3] *See* Plaintiff's Opposition, Ex. 6.

Lewis's return, on August 16, Fairview terminated Lewis's employment. *See* Lewis Depo., p. 279.

Subsequently, Lewis filed with the OCRC another retaliation charge against Fairview. Lewis Depo., Ex. T. On March 6, 2000, Lewis received notice from the U.S. Equal Employment Opportunity Commission ("EEOC") concerning both of her retaliation charges that the EEOC could not conclude that Fairview violated Title VII. *See* Lewis Depo., Exs. S & U.

Included in the letter from the EEOC was Lewis's notice of her right to sue. The language explicitly stated that Lewis "may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS from your receipt of this Notice;** otherwise, your right to sue based on this charge will be lost." (emphasis in the original)

Lewis did file suit with the Court on April 17, 2000. Lewis's Complaint, however, was not based on a Title VII retaliation claim. That matter ultimately was dismissed without prejudice on April 3, 2001. Lewis then re-filed the case on January 28, 2002. Again, however, the Complaint was not based on Title VII.

On January 13, 2003, the Court granted Lewis's Second Motion for Leave to File an Amended Complaint. This was the first instance of Lewis having any Title VII claims against Fairview in front of the Court.

I. Summary Judgment Standard

When ruling on motions for summary judgment, Rule 56 (C) of the Ohio Rules of Civil Procedure guides the Court. Rule 56(C) permits the Court to grant summary judgment when (1) there are no genuine issues of material fact; (2) reasonable minds can

come to only one conclusion, and the conclusion adversely affects the non-moving party; and (3) the moving party is entitled to judgment as a matter of law. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 65-66, 365 N.E.2d 46; see also Civ.R. 56(C); *Holliman v. All State Ins. Co.* (1998), 86 Ohio St.3d 414, 715 N.E.2d 532; *Bostic v. Connor* (1988), 37 Ohio St.3d 144, 524 N.E.2d 881.

Since summary judgment is such a drastic measure, cutting off a party's right to present its case at trial, courts should grant summary judgment motions sparingly. *Dupler v. Mansfield Journal* (1980), 64 Ohio St.2d 116, 120, 413 N.E.2d 1187; see also *Viock v. Stowe-Woodward Co.* (Erie App. 1983), 13 Ohio App.3d 7, 14-15, 467 N.E.2d 1378. By the same token, however, courts can, and should, grant summary judgment motions when the case has been fully developed by discovery and the record demonstrates that, construing all the facts and inferences in the non-movant's favor, the non-moving party would not be entitled to judgment as a matter of law. *Dupler*, 64 Ohio St.2d at 120.

In order for the Court to grant summary judgment, the moving party has the burden of demonstrating through the evidence detailed in Civ.R. 56(C) that the opposing party cannot establish any elements of its claims.[4] *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293, 662 N.E.2d 264. If the movant fulfills its burden, the burden will then shift to the non-moving party to produce evidence to establish the elements of its claims. *Id.*, 75 Ohio St.3d at 282. If the non-movant fails to satisfy its burden, a court's granting of summary judgment is not only proper- it is mandated. *Celotex Corp. v. Catrett* (1986), 477 U.S. 317.

[4] The evidence to be used includes the pleadings, depositions, interrogatory answers, admissions, affidavits, transcripts of evidence, and written fact stipulations. Civ.R. 56(C).

II. Lewis's Title VII Claim

A. Statute of Limitations on Title VII charges

Title VII is quite explicit that a plaintiff, if it chooses to do so, must file suit in court within ninety days of the issuance of the notice of right-to-sue. 42 U.S.C. §2000e-5(f)(1). Various courts have consistently upheld the express language used in the statute and have dismissed claims where the plaintiff has brought suit after the ninety day time period. See *Peete v. American Standard Graphic* (6th Cir. 1989), 885 F.2d 331; see also *Bennett v. School Directors of Dist. 204* (N.D.Ill.1996), 941 F.Supp. 763; *Philippeaux v. County of Nassau* (E.D.N.Y.1996), 921 F.Supp. 1000; *Patton v. United Parcel Service, Inc.* (S.D.Tex.1995), 910 F.Supp. 1250. Moreover, based upon the clear language, courts are reluctant to extend that deadline, even by one day. *Burzynski v. Cohen* (6th Cir. 2001), 264 F.3d 611; *Wilson v. Doctors Hosp. of Hyde Park* (N.D.Ill.1996), 909 F.Supp. 580.

Nevertheless, courts have allowed plaintiffs to bring Title VII claims after the ninety-day deadline has run by permitting the plaintiffs to file amended complaints. By filing an amended complaint, the Title VII claims may be deemed timely, so long as the original filing of the complaint was done within the statutory period. *Cornwell v. Robinson* (2nd Cir. 1994), 23 F.3d 694; *Salazar v. Furr's, Inc.* (D.N.M.1986), 629 F.Supp. 1403.

In the case before the Court, Lewis originally filed suit in April 2000. Her Complaint, however, did not contain any claims that Fairview violated Title VII. Lewis then dismissed the case nearly a year later.[5]

[5] Lewis's argument that the Title VII claim is not time barred because it is part of a continuing action belies logic. Disregarding the fact that the Title VII claim is clearly time barred, there was

In January 2002, Lewis re-filed her action. The re-filing occurred more than twenty-two months after Lewis received her notice of right-to-sue. While the Court did grant her motion for leave to file an amended complaint, thereby allowing Lewis to include a Title VII claim, that cause of action relates back to the January 28, 2002 Complaint, not the Complaint filed back in April 2000.

Lewis's original case was dismissed without prejudice. As such, under Ohio's saving statute, the matter is treated as if it had *never* been filed.[6] Lewis, therefore, did not bring forth her Title VII claims against Fairview until January 2002. There is no question that this date falls outside of the ninety-day limitation period mandated in Title VII.

The law in Ohio is well settled with respect to this issue. In a recent U.S. District Court case, the federal court held that a plaintiff could not avail himself of the court's powers of equitable tolling when a case is re-filed after ninety days of receipt of the notice to sue. *Sain v. American Red Cross* (S.D. Ohio 2002), 233 F.Supp.2d 923; see also *Howell v. General Motors Corp.* (6th Cir. 2001), 2001 WL 856953; *Clark v. Nissan*

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a discrete act in this case, i.e. Fairview firing Lewis. The continuing violation doctrine, therefore, is inapplicable. Moreover, even if the Court were to apply this doctrine, the continuing violation doctrine does not "excuse failure to file suit in a timely manner where discrete acts…are concerned." *Sain v. American Red Cross* (S.D. Ohio 2002), 233 F.Supp.2d 923, 929. This position is supported by the U.S. Supreme Court. As Justice Thomas wrote in *National R.R. Passenger Corp. v. Morgan* (2002), 122 S.Ct. 2061, 2071, "…discrete discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges."

[6] Since the case is treated as having never been filed, the Complaint in the original case cannot be considered as having been filed. So while Lewis is correct that "all amended pleadings relate back to the original," the original Complaint is *not* the April 2000 case that was dismissed without prejudice. Throughout the history of the re-filed case, Plaintiff's counsel has consistently argued that he is entitled to litigate the case as if it had never been filed (although as mentioned in footnote 3, *supra*, he indicated to the Court in June 2002 that he would not need to conduct any new discovery). Now, faced with this pending summary judgment, he sings another tune in an attempt to persuade the Court that the amended Complaint relates back to the April 2000 pleading, which, because of the voluntary dismissal without prejudice, must be treated as if it never existed. It is impossible, therefore, for the amended Complaint to relate back to a document that no longer legally exists. Surely, Plaintiff's counsel cannot expect this Court to let Plaintiff have her cake and eat it too (especially when there is no legal basis for overlooking the established precedents in this area).

Motor Mfg. Corp. U.S.A. (6th Cir. 1998), 1998 WL 786892; *Wilson v. Grumman Ohio Corp.* (6th Cir. 1987), 815 F.2d 26.

In *Wilson*, for example, the plaintiff brought a Title VII claim within the statutory period. The plaintiff, however, dismissed the case without prejudice due to failure to perfect service. The plaintiff then re-filed the case eighty-five days after the dismissal without prejudice. The 6th Circuit, however, affirmed the district court's dismissal of the Title VII claim because the re-filed complaint was filed outside the window provided for in Title VII.

If anything, the case before this Court is even less deserving of equitable tolling than those cases cited above in which the courts denied the tolling of the statute. First, at no time in her previously filed case did Lewis ever amend her complaint to include a Title VII violation, unlike the plaintiff in *Wilson* who did include a Title VII claim. Secondly, Lewis re-filed her complaint more than 22 months after receiving her notice of her right-to-sue, and it is only because Lewis *finally* amended her complaint, nearly a year after she re-filed it, that this is even at issue. Third, Lewis received notice from the EEOC on September 18, 2001, that her right to seek relief from the courts under Title VII had expired. *See* Fairview's Motion for Summary Judgment, Appendix Ex. L. Finally, in another matter pending in Cuyahoga County Common Pleas Court, Lewis asserted in the complaint for that case that her Title VII action "was forever prevented from recovery." *See* Fairview's Reply Brief, Ex. B. In light of the above, there is no justification for this Court to toll the ninety-day statutory deadline.[7]

[7] Plaintiff's novel argument of using the Court's granting of the motion for leave to file the amended complaint as the basis for *res judicata* is non-persuasive. *Res judicata* is applicable only when a decision is made on a case's merits. *State ex. rel. Landis v. Morrow County Bd. of Election* (2000), 88 Ohio St.3d 187, 189. Ruling on a motion for leave to file any sort of pleading

B. Prima Facie Case for Title VII Retaliation Claims

Assuming *arguendo* that Plaintiff could avoid having her Title VII barred due to the time limitation, Lewis still has to establish the elements of a Title VII retaliation claim. The elements Lewis would need to prove are (1) that she engaged in a protected activity under Title VII; (2) Fairview knew of Lewis's activities; (3) Fairview took an adverse employment action against Lewis; and (4) a causal connection between the protected activity and the adverse employment action exists. *Ford v. GMC* (6th Cir. 2002), 305 F.3d 545; *Beene v. St. Vincent Mercy Medical Center* (N.D. Ohio 2000), 111 F.Supp.2d 931. If Lewis can establish her prima facie case, the burden shifts to Fairview to articulate a legitimate reason for its actions. If Fairview articulates such a reason, Lewis then has the burden of showing that the proffered reason is merely a pretext for retaliatory acts. *Beene*, 111 F.Supp.2d at 940.

It is undisputed that Lewis engaged in a protected activity, that Fairview had knowledge of Lewis's actions[8], and that Fairview terminated Lewis. For purposes of this summary judgment only, Lewis can show that reasonable minds could conclude that a causal connection exists as well due to the timing of her termination.

Fairview, however, has met its burden in proffering a legitimate business reason for its actions. Lewis had a history of poor communication and teamwork skills, and in 1999 those problems appeared to be increasing in their scope and severity. *See* Murray Aff., ¶3; Christensen Aff.. ¶5; Bores Aff., ¶4; Biggs Aff., ¶¶3-4; Jozefczyk Aff., ¶3. This issue came to a head at the July 28 meeting between Lewis and Glenny. After that

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is not an order that reaches the merits of a case. If that were the case, granting leave to file a reply brief for summary judgment, for example, could be construed as the Court agreeing with the party filing the reply brief. Simply because the Court granted Lewis leave to file her amended answer does not mean that the Court held that she has a valid Title VII claim.

[8] The protected activity considered here is the first charge filed against Fairview.

meeting, in early August 2000, Fairview made the decision to terminate Lewis because it faced a staffing shortage that ultimately would prove disruptive to patient care, which was the hospital's primary concern. Certainly, reasonable minds would reach the conclusion that ensuring that Fairview's patients continued to receive an appropriate level of care is a legitimate business decision.

With the burden now shifted back to Lewis, she cannot demonstrate that reasonable minds could reach a conclusion that Fairview's actions were merely a pretext for a retaliatory action. Lewis's position is supported by nothing more than conclusory, self-serving, race-baiting statements. *See e.g.*, Plaintiff's Opposition, p.31. Perhaps this tactic is a result of even Lewis realizing that a staffing crisis would result in a decrease in the quality of patient care (e.g., "Lack of staff, always, undercare.") *See* Lewis Depo., pp.131-32. Without anything more, Lewis falls short of proving pretext on behalf of Fairview.

In addition, the fact that Fairview notified Lewis of its decision the day she returned from vacation is nothing more than a red herring. The evidence shows that Fairview had already made its decision to terminate Lewis's employment, and Lewis has failed to supply any evidence to the contrary. Fairview did not have to rescind its decision simply because it knew Lewis had filed one charge with the OCRC, and later filed a second charge.[9] See e.g., *Clark County School District v. Breeden* (2002) 532 U.S. 268.

C. The After-Acquired Evidence Regarding Lewis's Removal of Patient Records

[9] If this were the case, any employee could save their job in the face of an impending firing merely by filing a charge with the OCRC or EEOC. Clearly, this was not Congress's intent when enacting Title VII.

When considering what damages a plaintiff can recover, the after acquired evidence doctrine can serve as a bar to recovery. It is the defendant's burden in such cases to demonstrate that the evidence of wrongdoing that is acquired after the adverse employment action was of such severity that the employee would have been fired regardless if the employer had known of it at the time it took its actions.[10] *McKennon v. Nashville Banner Pub. Co.* (1995), 513 U.S. 352.

When courts utilize this theory, courts can deny reinstatement, front pay, and limit back pay. Furthermore, while the after acquired evidence doctrine does not serve as an absolute bar to recovering monetary damages, courts are permitted to limit remedies as the equities in the case call for. *Id.*, 513 U.S. at 362.

In the case before this Court, Fairview has stated that Lewis removed copies of medical records that are the property of Fairview. It is undisputed that Lewis received those medical records in order to give care to her patients.[11] *See* Lewis Depo., p.458.

In light of the fact that Fairview has a confidentiality policy that Lewis had to abide by (*see* Meldrum Aff., Ex. A), and the laws and regulations of the State of Ohio (*see e.g.* O.R.C. §4723.28; O.A.C. §4723-4-03) impose a duty on nurses to keep patient

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[10] Simply because "[t]he typical application" is in those cases where a person has "has falsified [an] employment application," *see* Plaintiff's Opposition, p.20, jurisprudence in this area reveals cases where courts have applied the doctrine in other scenarios. See e.g., *San v. Scherer* (Franklin 1998), 1998 WL 53934 (employee taped conversations); *Castle Nursing Homes, Inc. v. Sullivan* (Holmes 1996), 1996 WL 752789 (employee neglect in day-to-day operations); *Cron v. Chandler* (6th Cir. 1994) 1994 WL 256704 (deputy sheriff permitting civilians to ride in sheriff's car while on duty).

[11] By virtue of the fact that Lewis received these medical records in the course and scope of her work, it necessarily follows that she took and kept copies of the records while still an employee of Fairview. *See e.g.*, Lewis Depo., p. 459 ("Q. You kept copies of the order? A. I – yes, I did.") Plaintiff's argument, therefore, that Fairview does not have evidence that Lewis removed the records while an employee is not meritorious. Likewise, the fact that Lewis has never admitted to violating Fairview's policy or Ohio law is not dispositive on this issue. The fact that Lewis admitted at her deposition to taking, keeping, and disclosing the copies is sufficient to establish the wrongfulness of her actions.

information confidential, there is little question that Lewis's actions in keeping copies of patients' medical records constitutes egregious conduct on her part. *See* Lewis Depo., p. 459.

After considering the evidence supplied by both parties, it is unquestionable that Lewis's actions, if discovered by Fairview during Lewis's employment, would have resulted in Lewis's termination. *See e.g.,* O.R.C. §4723.28(B)(16). Moreover, Lewis's flagrant disregard for her patient's interests and the regulations established by the Ohio Board of Nursing leads this Court to believe that in the interest of justice and equity, that even if Lewis could prove her case of retaliatory discharge, that she would be barred from recovering damages from Fairview.

III. Lewis's Wrongful Discharge in Violation of Public Policy Claim

Lewis's second claim against Fairview is for wrongful discharge in violation of public policy, which is a common law action.[12] To prevail on this claim, Lewis has to identify a clear public policy upon which her complaint is grounded. *Greeley v. Miami Valley Contractors, Inc.* (1990), 49 Ohio St.3d 228. Since *Greeley*, the Ohio Supreme Court has refined the prima facie case for establishing this type of claim.

First, a clear public policy must exist and be present in the law (referred to as the "clarity element"). Second, firing the employee must jeopardize that public policy (referred to as the "jeopardy element"). Third, the plaintiff's termination has to be motivated by actions related to that public policy. Finally, the employer must lack an overriding legitimate business reason for its decision. *Wiles v. Medina Auto Parts* (2002), 96 Ohio St.3d 240, 242. The first two of these elements are questions of law for

[12] As an initial matter, Plaintiff's argument concerning the amended pleading and *res judicata* are a non-factor for the reasons previously discussed. *See* footnote 6, *supra*.

the Court to decide, while the latter two are questions for the trier of fact. *Id.*, 96 Ohio St.2d at 242.

In the case before the Court, Lewis cites Title VII and Chapter 4112 of the Ohio Revised Code as her source for the public policy violated by Fairview. Without commenting on whether Fairview is liable for violating that policy, it is axiomatic that a clear public policy exists. Employees must be allowed to engage in protected activities without fear of retaliatory actions from their employers. Title VII and Chapter 4112 are evidence that both Congress and the Ohio General Assembly have recognized and codified this public policy. The clarity element, therefore, is satisfied easily in this case.

The Court now turns its attention to the jeopardy element of the wrongful discharge claim. *Wiles* is instructive as to how the Court is to proceed in this area. As mentioned above, Lewis's Complaint states that O.R.C. Section 4112 and Title VII provide the source of public policy Fairview purportedly violated. *See* Amended Complaint, ¶15. Therefore, when

> the sole source of the public policy opposing the discharge is a statute that provides the substantive right *and* remedies for its breach, 'the issue of adequacy of remedies' becomes a particularly important component of the jeopardy analysis… Simply put, there is no need to recognize a common-law action for wrongful discharge if there already exists a statutory remedy that adequately protects society's interests.

Wiles, 96 Ohio St.3d at 244.

An examination of Section 4112.99 demonstrates that a plaintiff may recover "damages, injunctive relief, or any other appropriate relief." This statute seemingly provides a plaintiff a "full panoply of relief." *Wiles*, 96 Ohio St.3d at 247. The legal and

equitable relief that a plaintiff may recover, therefore, is indicative of the fact that the jeopardy element is not satisfied in this case.

The case of *Collins v. Rizkana* (1995), 73 Ohio St.3d 65, relied upon heavily by Lewis, is distinguishable from the case before the Court. First, *Collins* itself relied upon the holding of *Helmick v. Cincinnati Word Processing* (1989), 45 Ohio St.3d 131. The latter case was decided at a time when Chapter 4112 did not provide a plaintiff with complete remedies.[13] The Ohio legislature has since amended the Ohio Revised Code so that a party is entitled to full relief. Second, the plaintiff in *Collins* could not avail herself to the remedies detailed in 4112 because those laws were inapplicable to the plaintiff's employer by virtue of the fact that the employer only had four employees.

In light of the adequacy of the relief detailed in Chapter 4112, and available to Lewis, the Court finds that Lewis is not entitled to a common law claim for wrongful discharge that is based on that same chapter. As Justice Cook succinctly stated, "…statutory remedies provide an effective vehicle for vindicating the statute's policy, obviating recognition of a wrongful discharge claim based on the same statute." *Wiles*, 96 Ohio St.3d at 249.

IV. Conclusion

It is, therefore, ORDERED, ADJUDGED, and DECREED:

For the reasons previously stated, Fairview's Motion for Summary Judgment is well taken. After construing the facts in the light most favorable to the non-moving party, there are no genuine issues of material facts. Reasonable minds, therefore, can

[13] Similarly, the case of *Kulch v. Structural Fibers, Inc.* (1997), 78 Ohio St.3d 134, and its progeny, is distinguishable because the statutes involved did not provide a plaintiff with the opportunity to make himself whole.

reach only one conclusion in this matter. For good cause shown, Fairview is entitled to judgment as a matter of law.

The Court finds that there is no just cause for delay.

Costs to Plaintiff. FINAL.

DATE: June ____, 2003

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KATHLEEN ANN SUTULA, JUDGE

CERTIFICATE OF SERVICE

A copy of the foregoing Journal Entry and Opinion has been sent via regular U.S. mail on this _____ day of June, 2003, to the following:

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