Filed 6/11/18 Aram v. Esoterix Genetic Labs LLC CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

JESSICA ARAM, Plaintiff and Appellant, v. ESOTERIX GENETIC LABS LLC et al., Defendants and Respondents.	B276141 (Los Angeles County Super. Ct. No. BC509470)

APPEAL from a judgment of the Superior Court of Los Angeles County, Elizabeth Feffer, Judge. Affirmed.

Doumanian & Associates, Nancy P. Doumanian and Ankineh Zadoorian for Plaintiff and Appellant.

K&L Gates, Christopher J. Kondon and Saman M. Rejali for Defendants and Respondents.

* * * * * *

Plaintiff and appellant Jessica Aram appeals from a grant of summary judgment in favor of defendants and respondents Esoterix Genetic Labs LLC, Laboratory Corporation of America Holdings, Maria D'Addario, Amy Cronister, and Melody Kohan. Aram alleged that respondents had unlawfully terminated her employment as a genetic counselor after she objected to making changes to a patient's case progress notes. We affirm the judgment.

BACKGROUND

1. Facts[1]

Aram worked as a genetic counselor for Laboratory Corporation of America Holdings (LabCorp) and its corporate predecessor beginning in 2002. She provided prenatal genetic counseling to patients at several clinics in Southern California, including followup care and counseling when a genetic test revealed abnormal results.

On July 15, 2011, Aram counseled a patient who earlier had received a positive prenatal serum screening indicating a possibility that her unborn child had Down syndrome. That same day the patient underwent amniocentesis to conclusively determine whether the fetus had the syndrome.

The test results were completed and available for review on July 22, 2011, a day on which Aram happened to be on vacation. The results indicated that the patient's fetus had Down syndrome. Due to an error the parties agree was not attributable to Aram, the results were reported to the patient's obstetrician's office, but not to LabCorp's genetic counseling unit.

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[1] We present the evidence in the light most favorable to Aram as the party opposing summary judgment. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*).)

Aram did not follow up with the patient upon her return to work on July 25, 2011. According to Aram, the protocol was for the patient's perinatologist to inform the patient of any abnormal results, not the genetic counselor. However, the perinatologist did not immediately inform the patient of the results. The patient did not learn of the results until her obstetrician informed her on August 10, 2011. The pregnancy was sufficiently advanced at that point that the options for terminating the pregnancy were limited.

The patient called Aram on August 10, 2011, and told her she had just learned of the test results. Aram and the patient discussed the patient's options over the phone, with Aram warning the patient that at this stage of pregnancy it would be difficult and costly to obtain pregnancy termination. During the following week Aram had additional conversations with the patient and communicated with various health care providers regarding further evaluation of the fetus and possible termination of the pregnancy. Aram also called the lab, who told her the test results had been "called . . . out" to the referring perinatologist's office the day they became available, but there was no note as to who exactly received the information. Aram also spoke to the perinatologist, who said she was aware of the abnormal result and assumed Aram would tell the patient.

Aram memorialized all of these communications in her case progress notes, colloquially referred to as "F10" notes for the computer key used to enter them into LabCorp's electronic system. F10 notes are a means for genetic counselors to place medical information in a patient's electronic chart. Their purpose is to document anything that has to do with a patient's care, including information about test results, conversations the genetic counselor has with the patient or the patient's doctors,

and any decisions made by the patient, including regarding termination of pregnancy.

On August 15, 2011, before Aram had entered her notes into the electronic system, respondent Kohan, one of LabCorp's regional managers, contacted Aram and requested that the notes first be submitted to her as a Microsoft Word document. Aram provided the requested document and followed up with additional notes for August 16 and 18, 2011, also in Microsoft Word format.

On August 29, 2011, Kohan sent Aram an e-mail attaching a modified and shortened version of Aram's notes "without the additional information not needed for . . . documentation" in LabCorp's electronic system. Among other things, the modified version omitted Aram's observation that the test results were reported on July 22, yet there was no indication "that the clinical services was informed regarding the result." The modified notes also omitted the descriptions of Aram's conversations with the lab and the patient's doctor regarding the delay in informing the patient of the test results. Kohan asked Aram to "copy and paste" the modified notes "as is" into the electronic system.

Aram e-mailed Kohan and said she disagreed "with leaving out the details that I had written in my original version" and the modified notes "d[id] not accurately represent what happened in this patient's care." Aram objected that the shortened version "makes no mention of the lab error in reporting, the fact that I was informed that there was no established protocol between the [doctor's office] and the lab for abnormal result reporting, [the patient's perinatologist's] involvement since her office was informed of the abnormal result on the same day the report was issued, or my multiple discussions and offerings of pregnancy termination to the patient prior to 24 weeks gestation." Aram complained that the modified version "could potentially make me

personally liable for possible future lawsuits and it does not accurately reflect all my efforts or what actually happened in this case."

Aram claims respondents Kohan and D'Addario (Aram's direct supervisor) bullied and threatened her to alter her notes, with phone calls "[s]ometimes on a daily basis, reminding me of . . . the instruction to . . . provide the . . . Word document and to alter it the way they had asked me to." On one occasion Kohan yelled at her, telling her she "should feel remorse for what you did to this patient" and intimating that Aram's refusal to alter the notes would factor into the decision whether to terminate her employment. Aram ultimately entered the modified notes into the electronic system.

Respondents terminated Aram's employment on or around October 17, 2011.

2. Proceedings below

On April 2, 2014, Aram filed a complaint against respondents and others asserting causes of action for wrongful termination in violation of public policy, retaliatory discharge in violation of public policy, violation of whistleblower protections under Labor Code section 1102.5, retaliation in violation of Labor Code section 1102.5, breach of the covenant of good faith and fair dealing, and intentional infliction of emotional distress.[2] Aram alleged that the instruction to alter the F10 notes was unlawful and against public policy, and respondents had fired her for objecting to the instruction. Aram further alleged that she and

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[2] Aram also alleged a violation of the California Family Rights Act. Aram dismissed that cause of action before the court ruled on the summary judgment motion and it is not at issue in this appeal.

her employer had entered into an implied or oral agreement that she could only be terminated for cause, and respondents' actions breached the covenant of good faith and fair dealing. Finally, Aram alleged that respondents' bullying and threats constituted intentional infliction of emotional distress.

On March 4, 2016, respondents moved for summary judgment or, in the alternative, summary adjudication. After hearing argument and orally explaining its analysis of the evidence, the court granted the motion. As to the four counts for wrongful termination and retaliation, the court found that Aram "c[ould not] show that [respondents] engaged in unlawful activity, that she protested or refused to participate in unlawful activity, or that she held any actual or reasonable belief that her employer or supervisors were engaging in unlawful activity or directing [Aram] to engage in unlawful activity." The court further found that Aram had not overcome the presumption that she was an at-will employee, which negated her claim for breach of the covenant of good faith and fair dealing. The court also found that respondents' actions did not "constitute extreme or outrageous conduct" to support the claim for intentional infliction for emotional distress, and the claim was "barred by the exclusivity provisions of the California Workers' Compensation Act."

Judgment in favor of respondents was entered June 24, 2016. Aram timely appealed.

DISCUSSION

1. Standard of review

"The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Aguilar, supra,* 25 Cal.4th at p. 843.)

"[T]he party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar, supra,* 25 Cal.4th at p. 850.) "Once the [movant] has met that burden, the burden shifts to the [party opposing the motion] to show that a triable issue of one or more material facts exists as to the cause of action . . . ." (Code Civ. Proc., § 437c, subd. (p)(1) & (2); see *Aguilar, supra*, at p. 850.) A triable issue of material fact exists when "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar, supra,* at p. 850.)

"On appeal from summary judgment, we review the record de novo and must independently determine whether triable issues of material fact exist. [Citations.] We resolve any evidentiary doubts or ambiguities in favor of the party opposing summary judgment." (*Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 370-371.) "We must affirm the judgment if it is correct under any theory of law applicable to the case." (*Modern Development Co. v. Navigators Ins. Co.* (2003) 111 Cal.App.4th 932, 938.)

2. Code of Civil Procedure section 437c

Aram contends that the court's written order granting summary judgment was deficient under Code of Civil Procedure section 437c, subdivision (g). We reject this argument. The subdivision requires that a court granting summary judgment "shall, by written or oral order, specify the reasons for its determination," and "shall specifically refer to the evidence proffered in support of and, if applicable, in opposition to the motion that indicates no triable issue exists." (Code Civ. Proc., § 437c, subd. (g).) Here, the court provided lengthy oral analysis

of the evidence, covering 15 pages of the reporter's transcript, and explained why it was insufficient to raise any triable issues. Aram, who only cites the written order in her argument, does not explain how the oral explanation did not satisfy subdivision (g). Accordingly, we find no error in the court's order under that subdivision.

3. Wrongful termination in violation of public policy

Aram argues there are triable issues of material fact as to her claim for wrongful termination in violation of public policy. We disagree. On this record, Aram has not shown that respondents actually violated any public policy or that Aram reasonably believed respondents had done so.

a. Applicable law

"[W]hen an employer's discharge of an employee violates fundamental principles of public policy, the discharged employee may maintain a tort action and recover damages traditionally available in such actions." (*Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 170.) This type of action "is an exception to the general rule, now codified in Labor Code section 2922, that unless otherwise agreed by the parties, an employment is terminable at will." (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 129, fn. omitted.) "Tort claims for wrongful discharge typically arise when an employer retaliates against an employee for '(1) refusing to violate a statute . . . [,] (2) performing a statutory obligation . . . [,] (3) exercising a statutory right or privilege . . . [, or] (4) reporting an alleged violation of a statute of public importance[. . . .'] " (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1256 (*Turner*).)

"To prevail on a claim for wrongful termination in violation of public policy, a plaintiff must show that (1) the plaintiff was employed by the defendant, (2) the defendant discharged the

plaintiff, (3) a violation of public policy was a motivating reason for the discharge, and (4) the discharge harmed the plaintiff." (*Ferrick v. Santa Clara University* (2014) 231 Cal.App.4th 1337, 1343 (*Ferrick*).) Here the first two elements are undisputed and we can reasonably presume Aram was harmed by losing her job, so our focus is on the third element.

"The public policy supporting a claim of wrongful termination must meet the following four criteria: 'First, the policy must be supported by either constitutional or statutory provisions. Second, the policy must be "public" in the sense that it "inures to the benefit of the public" rather than serving merely the interests of the individual. Third, the policy must have been articulated at the time of the discharge. Fourth, the policy must be "fundamental" and "substantial." ' "[3] (*Ferrick, supra*, 231 Cal.App.4th at p. 1344, quoting *Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 889-890.) To establish a termination in violation of public policy "an employee need not prove an actual violation of law; it suffices if the employer fired him for reporting his 'reasonably based suspicions' of illegal activity." (*Green, supra,* 19 Cal.4th at p. 87.)

b. Analysis

i. Violation of public policy

Aram asserts that she reasonably believed that respondents' instruction to alter the F10 notes was "unlawful criminally and civilly, as well as a violation of public policy, under various grounds of fraud." Although she did not cite it in the trial court, Aram invokes Penal Code section 471.5, which

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[3] Administrative regulations authorized by statute may also be a "source of fundamental public policy." (*Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 71-72 (*Green*).)

states, "Any person who alters or modifies the medical record of any person, with fraudulent intent, or who, with fraudulent intent, creates any false medical record, is guilty of a misdemeanor."[4] Penal Code section 471.5 does not define "medical record," but Aram proposes the definition of "patient records" under Health and Safety Code section 123105, subdivision (d), namely "records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient."[5]

Accepting for the sake of argument that Health and Safety Code section 123105 provides an appropriate definition of "medical record" for Penal Code section 471.5, and that F10 notes can constitute medical records under that definition, we nonetheless agree with the trial court that Aram has failed to show any violation of the law.

As an initial matter, we limit our inquiry to the omissions to which Aram objected in the e-mail to her superiors, namely the omission of information pertaining to the delayed reporting of the test results. In her opposition to summary judgment Aram identified additional changes to her F10 notes that she maintains were false or misleading, specifically a statement that the patient

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[4] Given our holding that Penal Code section 471.5 is unavailing to Aram, we express no opinion as to whether it was properly raised on appeal.

[5] Health and Safety Code section 123105 pertains to a code chapter "establish[ing] procedures for providing access to health care records or summaries of those records by patients and by those persons having responsibility for decisions respecting the health care of others." (Health & Saf. Code, § 123100.)

declined genetic counseling after receiving the test results, and the omission of a note entry summarizing conversations with the patient and a potential health care provider. Regardless of whether these additional changes were unlawful, a question on which we offer no opinion, there is no evidence that Aram ever objected to them or refused to implement them. She did not refer to the changes in her e-mail, nor does the record indicate that she otherwise brought them to respondents' attention during her employment. Thus, they cannot have been the basis for the adverse employment consequences alleged here.

Turning to the alterations to the notes to which Aram objected, we conclude that Aram has failed to show that the changes were unlawful or against public policy under Penal Code section 471.5. Aram complained that the modifications of her F10 notes omitted "mention of the lab error in reporting, the fact that I was informed that there was no established protocol between the [doctor's office] and the lab for abnormal result reporting" and "[the patient's perinatologist's] involvement since her office was informed of the abnormal result on the same day the report was issued." But this information does not pertain to the "health history, diagnosis, or condition of a patient, or relat[e] to treatment provided or proposed to be provided to the patient." (Health & Saf. Code, § 123105, subd. (d).) Instead, it is nonmedical information reflecting Aram's efforts to determine the source of the administrative failure to inform the patient in a timely manner of certain test results. Aram fails to explain how such information belongs in a medical record tracking a patient's health history and treatment; it certainly is not information that a health care provider would need to know in order to properly treat the patient in the future. No reasonable trier of fact could conclude otherwise. Nor will we hold that the mere inclusion of

nonmedical information in a medical record automatically shields it from alteration under Penal Code section 471.5, a proposition for which Aram offers no support.[6]

In addition to Penal Code section 471.5, Aram argues that respondents "could be held civilly liable under a claim of fraud by patients who realize that their records, including F10 notes, have been altered." Aram contends that "she clearly voiced complaints that Respondents altered the F10 Notes . . . with the intent to hide and/or mislead the fact that there was a reporting error of the amniocentesis results. Also, [Aram] complained of what she believed to be public policy violations as the disclosures she made related to patient care and maintenance of accurate records." In her reply brief, Aram suggests respondents' actions violated the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. § 1320d et seq., inter alia) "and other provisions relating to preserving the sanctity of a patient's medical record," although she cites to no specific authority.

These unspecific references to purportedly unlawful conduct cannot save Aram's claims. Our Supreme Court has held that "vague charge[s]" of public policy violations "largely unaccompanied by citations to specific statutory or constitutional provisions" are "plainly insufficient to create an issue of *material*

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[6] In her e-mail to her superiors objecting to the modified notes, Aram also complained of the omission of her "multiple discussions and offerings of pregnancy termination to the patient prior to 24 weeks gestation." However, Aram does not discuss this purported omission in her opposition below or in her briefing on appeal and has not asserted it as a basis for her various claims of wrongful discharge and retaliation. We therefore need not decide whether such an omission, if it occurred, would be unlawful or otherwise violate public policy.

fact." (*Turner, supra*, 7 Cal.4th at p. 1257.) Such charges put defendants and the court "in the position of having to guess at the nature of the public policies involved, if any." (*Ibid.*) Here, apart from Penal Code section 471.5, Aram does not cite to any "specific statutory or constitutional provisions" supporting her claims of public policy violations, and we decline to speculate further as to what laws or regulations she claims have been violated.

ii. Reasonably based suspicions

Aram correctly notes that she does not have to prove an actual violation of the law so long as she was terminated "for reporting [her] 'reasonably based suspicions' of illegal activity." (*Green, supra*, 19 Cal.4th at p. 87.) But there is no evidence that her objection to the modified F10 notes was based on suspicion of illegal activity, "reasonably based" or otherwise. The sole piece of evidence in the record of Aram's objection to respondents' purportedly unlawful instructions is the e-mail to her supervisors discussed above. Again, Aram has not shown that the omissions to which she objected were actually unlawful, as respondents were simply instructing Aram to remove nonmedical information concerning an administrative issue from a patient's case progress notes. Nor did Aram's e-mail suggest she believed the omissions to be unlawful; instead, her objection was that the modified notes "could potentially make me personally liable for possible future lawsuits" and "d[id] not accurately reflect all my efforts or what actually happened in this case." This does not indicate that Aram was notifying respondents of her belief that altering the notes was unlawful; instead, she was expressing her concern that absent certain information in her notes she might be exposed to personal liability for failing to notify the patient of the test results. No reasonable trier of fact could conclude otherwise.

Although in her declaration in support of her opposition to the motion for summary judgment Aram characterized the e-mail as "complain[ing] to Ms. Kohan that I did not agree to . . . falsifying [the patient's] file and that omitting such information from her file . . . was wrong and unlawful," this assertion is flatly contradicted by the text of the e-mail itself. Aram cannot create a triable issue through an "uncorroborated and self-serving" declaration that is not supported by admissible evidence. (*King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 433; see *Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 529 [In summary judgment proceedings, affidavits " 'must cite evidentiary facts, not legal conclusions or "ultimate" facts.' "].) And the record is devoid of any other support for Aram's claim that she believed her superiors' instructions were unlawful and she complained or refused to comply on that basis.

Aram argues that her motive in reporting the unlawful activity is irrelevant, citing *Mize-Kurzman v. Marin Community College Dist.* (2012) 202 Cal.App.4th 832, 852 (*Mize-Kurzman*). Thus, Aram asserts, it did not matter if her intention in objecting to modifying her notes was to shield herself from liability. According to Aram, "[a]ll that matters is that [Aram] disclosed what she reasonably believed to be unlawful activity and put the Respondents on notice that she refused to engage in the omitting and falsifying of the F10 Notes because she believed it to be unlawful." But, again, Aram has presented no evidence that she put respondents on such notice, given that the conduct to which she objected was not in fact illegal and there is no indication she actually or reasonably believed it to be. While *Mize-Kurzman* held that " '[a] whistleblower's motivation is irrelevant to the consideration of whether his or her activity is protected,' " the employee must still " 'voice a reasonable suspicion that a

violation of a constitutional, statutory, or regulatory provision has occurred.' " (*Id.* at p. 850.) In other words, motive is irrelevant so long as there is a reasonable suspicion of wrongdoing: "[I]t may often be the case that a personal agenda or animus towards a supervisor or other employees will be one of several considerations motivating the employee whistleblower to make a disclosure regarding conduct that the employee *also* reasonably believes violates a statute or rule or constitutes misconduct." (*Id.* at p. 852, italics added.) Here, in the absence of any evidence that Aram actually or reasonably believed the alteration of her notes was unlawful, *Mize-Kurzman* is inapplicable.

Aram further argues that a whistleblower "does not need to expressly state that an activity is unlawful, so long as she puts the employer on notice of the unlawful activity." She asserts that "an employee need not protest the unlawful conduct; it is sufficient if the employee makes the employer aware of it and the need to take corrective action." Aram cites *Holmes v. General Dynamics Corp.* (1993) 17 Cal.App.4th 1418 (*Holmes*). In *Holmes*, an employee was fired after bringing to the attention of his employer various breaches of government regulations and contracts in violation of title18 of the United States Code section 1001, including improper billing, excessive overtime and repair charges, and cost overruns. (*Holmes, supra*, at pp. 1427-1429, 1432.) On appeal, the employer challenged a jury instruction that the plaintiff could recover on a violation of public policy theory if he *disclosed* illegal conduct; instead, the employer argued, the instruction should have required the employee to *protest* the illegal conduct. (*Id.* at pp. 1432-1433.) The court disagreed, stating that an employer also violates public policy by

firing an employee for " 'expos[ing] to view' or 'mak[ing] known' an employer's illegal conduct." (*Id.* at p. 1433.)

Holmes is inapplicable. In that case, the plaintiff was reporting conduct that was actually unlawful in a manner that "reasonably alert[ed] [the] employer of the nature of the problem and the need to take corrective action." (*Holmes, supra*, 17 Cal.App.4th at p. 1434.) Here, Aram has not shown that the conduct to which she objected was unlawful. Her e-mail, which focused on her concerns regarding personal liability, did not "reasonably alert" respondents that there was reason to believe their conduct was unlawful, or that Aram believed the conduct was unlawful. Thus, there was no disclosure of unlawful activity or any reasonable suspicion of unlawful activity, and summary judgment was proper.[7]

4. Other claims for wrongful termination and retaliation

The trial court also correctly granted summary judgment on Aram's claims for retaliatory discharge in violation of public policy, violation of whistleblower protections under Labor Code section 1102.5, and retaliation in violation of Labor Code section 1102.5. With no evidence of a violation of public policy, there can be no showing of a retaliatory discharge on that basis. And a

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[7] Aram points to handwritten notes produced by respondents in discovery as evidence of respondents' attempts to compel her to alter the F10 notes and their uncertainty about terminating Aram. Even accepting this characterization of the evidence, at best it creates a triable issue as to whether Aram's refusal to modify the F10 notes led to her termination. The handwritten notes do not, however, establish that modifying the F10 notes was unlawful or that either Aram or respondents believed it was. And neither the notes nor anything else in the record indicate that respondents "perceived" Aram "to be a whistleblower," as Aram claims.

claim based on a violation of Labor Code section 1102.5 requires a showing that an employee has either "disclos[ed] information" regarding or "refus[ed] to participate in" activity that the employee has "reasonable cause" to believe is "a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation . . . ." (Lab. Code, § 1102.5, subds. (b), (c).) Aram's failure to create a triable issue that she disclosed or refused to participate in activity she reasonably suspected was unlawful is fatal to her claims under Labor Code section 1102.5 as well.

5. Covenant of good faith and fair dealing

Aram claims that ". . . Respondents acted in bad faith and without probable cause when they terminated . . . her for whistleblowing." But Aram offers no argument challenging the trial court's finding that she could not overcome the statutory presumption of at-will employment. (Lab. Code, § 2922.)[8] Nor have we found any evidence in the record that would overcome that presumption; there is no evidence of a written employment contract, and Aram testified in deposition that she did not recall ever being told that she could be terminated only for cause. In the absence of an express or implied employment contract limiting respondents' ability to terminate at will, Aram cannot assert a claim based on the covenant of good faith and fair dealing: "If an employment is at will, and thus allows either party to terminate for *any or no reason,* the implied covenant

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[8] Labor Code section 2922 states, "An employment, having no specified term, may be terminated at the will of either party on notice to the other. Employment for a specified term means an employment for a period greater than one month."

cannot decree otherwise." (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 327.)

6. Intentional infliction of emotional distress

Aram claims the trial court erred in concluding that her claim for intentional infliction of emotional distress was barred by the exclusivity provisions of the California Workers' Compensation Act. We disagree.

"Where the provisions of the workers' compensation system apply, an employer is liable without regard to negligence for any injury sustained by its employees arising out of and in the course of their employment. (Lab. Code, § 3600, subd. (a)(1).) The employee, in turn, is generally prohibited from pursuing any tort remedies against the employer or its agents that would otherwise apply. (*Id.*, § 3602, subd. (a).)" (*Light v. Department of Parks and Recreation* (2017) 14 Cal.App.5th 75, 96.) When a claim of intentional infliction of emotional distress is based on allegedly wrongful conduct that "occurred at the worksite, in the normal course of the employer-employee relationship" then "workers' compensation is [a plaintiff's] exclusive remedy for any injury that may have resulted." (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 902 (*Miklosy*).) This is so even when the alleged emotional distress arose from conduct that would support whistleblower claims such as those alleged by Aram. (*Id.* at pp. 902-903.)

Aram argues that her claims are based on workplace discrimination, and such claims are not barred by workers' compensation exclusivity. We presume Aram is suggesting that she was discriminated against because of her refusal to participate in unlawful conduct, as she has not asserted discrimination on any other basis. Aram does not distinguish, discuss, or cite *Miklosy*, the holding of which negates her

argument. Even if it did not, Aram has failed to show any whistleblower violations or other violations of public policy. Thus, to the extent she suffered emotional distress, any remedy would be through the workers' compensation system, not this tort action.

Given our holding, we do not address the trial court's conclusion that respondents' conduct did not constitute "extreme or outrageous conduct."

DISPOSITION

The judgment is affirmed. Respondents are entitled to costs on appeal.

ROGAN, J.*

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.

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* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.