CASENOTES

Morgan Drive Away, Inc. v. Brant: Indiana Topples a Milestone in the Law of Retaliatory Discharge

I. Introduction

Omission of a specific period of hire from an employment contract still provides a simple, effective means of dismissing unacceptable employees.[1] Blind application of this employment at will rule, however, permits wrongful termination of many acceptable employees as well.[2] Thus, a majority of courts have carved various exceptions from the rule and in certain situations have allowed former employees to maintain actions against former employers for retaliatory or wrongful discharge.[3]

Indiana courts have recognized a limited public policy exception to the employment at will rule since 1973, when the Indiana Supreme Court handed down its landmark decision in *Frampton v. Central Indiana Gas Co.*[4] In *Frampton*, the supreme court apparently established a cause of action for retaliatory discharge based upon an employee's exercise of a statutorily conferred right, such as a claim for workmen's compensation.[5]

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[1]American courts agree that generally an employment contract containing no specific termination date is terminable by either the employer or the employee at any time for any or no reason. *See, e.g.*, Meeks v. Opp Cotton Mills, Inc., 459 So. 2d 814 (Ala. 1984); Wagenseller v. Scottsdale Memorial Hosp., 147 Ariz. 370, 710 P.2d 1025 (1985); Tameny v. Atlantic Richfield Co., 27 Cal. 3d 167, 610 P.2d 1330, 164 Cal. Rptr. 839 (1980); Parnar v. Americana Hotels, Inc., 65 Hawaii 370, 652 P.2d 625 (1982); Barr v. Kelso-Burnett Co., 106 Ill. 2d 520, 478 N.E.2d 1354 (1985); Frampton v. Central Ind. Gas Co., 260 Ind. 249, 297 N.E.2d 425 (1973); Clifford v. Cactus Drilling Corp., 419 Mich. 356, 353 N.W.2d 469 (1984); Mueller v. Union Pac. R.R., 220 Neb. 742, 371 N.W.2d 732 (1985); Monge v. Beebe Rubber Co., 114 N.H. 130, 316 A.2d 549 (1974); Mers v. Dispatch Printing Co., 19 Ohio St. 3d 100, 483 N.E.2d 150 (1985); Clanton v. Cain-Sloan Co., 677 S.W.2d 441 (Tenn. 1984); Bowman v. State Bank of Keysville, 229 Va. 534, 331 S.E.2d 797 (1985). Indiana courts have long adhered to the employment at will rule. *See, e.g.*, Speeder Cycle Co. v. Teeter, 18 Ind. App. 474, 48 N.E. 595 (1897).

[2]*See generally* Lopatka, *The Emerging Law of Wrongful Discharge—A Quadrennial Assessment of the Labor Law Issue of the 80s*, 40 Bus. Law 1 (1984); Note, *Protecting Employees at Will Against Wrongful Discharge: The Public Policy Exception*, 96 Harv. L. Rev. 1931 (1983).

[3]*See generally* Lopatka, *supra* note 2; Note, *supra* note 2. These observers have noted that at least three-fifths of the states have recognized some type of exception to the employment at will rule. Actions for retaliatory discharge fall into three general categories: (1) breach of implied contractual terms, (2) breach of an implied duty of good faith and fair dealing, and (3) violation of public policy. The latter category has three sub-categories: (a) wrongful dismissal for refusal to commit an unlawful act, (b) wrongful dismissal for performance of an important public obligation, and (c) wrongful dismissal for the exercise of a statutory right or privilege.

[4]260 Ind. 249, 297 N.E.2d 425 (1973).

[5]*Id.* at 253, 297 N.E.2d at 428.

Subsequently, many courts throughout the nation turned to the *Frampton* decision for guidance in evaluating the continued propriety of the employment at will doctrine in their jurisdictions.[6]

In *Morgan Drive Away, Inc. v. Brant*,[7] a 1986 decision, the Indiana Supreme Court had the opportunity to build upon its earlier precedent in this developing area of labor law[8] by expanding upon the *Frampton* decision. Instead, the supreme court may have toppled the *Frampton* milestone.[9] In so doing, the *Morgan* court disregarded the national movement to limit the employment at will rule.[10] Moreover, the supreme court provided little justification for its decision and, in fact, acted inconsistently with the reasoning in *Frampton* and its progeny.[11] Consequently, confusion and dissent have overshadowed the well-reasoned body of Indiana law regarding retaliatory discharge.[12] This Casenote will examine the deficiencies and effects of the supreme court's decision in *Morgan*.[13]

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[6]*See, e.g.*, Wagenseller v. Scottsdale Memorial Hosp., 147 Ariz. 370, 710 P.2d 1025 (1985) (dismissal for refusal to violate indecent exposure statute may provide basis for retaliatory discharge action); Tameny v. Atlantic Richfield Co., 27 Cal. 3d 167, 610 P.2d 1330, 164 Cal. Rptr. 839 (1980) (dismissal for refusal to participate in illegal price fixing scheme provides basis for retaliatory discharge action); Parnar v. Americana Hotels, Inc., 65 Hawaii 370, 652 P.2d 625 (1982) (dismissal to induce employee to leave the state and not testify in grand jury proceeding would present grounds for retaliatory discharge action); Kelsay v. Motorola, Inc., 74 Ill. 2d 172, 384 N.E.2d 353 (1978) (dismissal for filing workmen's compensation claim provides basis for retaliatory discharge action); Monge v. Beebe Rubber Co., 114 N.H. 130, 316 A.2d 549 (1974) (dismissal for reporting sexual harassment presents basis for retaliatory discharge action); Clanton v. Cain-Sloan Co., 677 S.W.2d 441 (Tenn. 1984) (dismissal for filing workmen's compensation claim presents grounds for retaliatory discharge action). *But cf.* Meeks v. Opp Cotton Mills, Inc., 459 So. 2d 814 (Ala. 1984) (refusal to allow exception to employment at will rule for filing workmen's compensation claim). *See also* Bowman v. State Bank of Keysville, 229 Va. 534, 331 S.E.2d 797 (1985) (although there was no citation to *Frampton*, the court allowed an action for retaliatory discharge where an employee exercised a statutory right to vote stock rights). *But cf.* Becket v. Welton Becket & Assoc., 39 Cal. App. 3d 815, 114 Cal. Rptr. 531 (1974) (employment at will rule applied despite employee's bringing of private lawsuit against employer); Campbell v. Ford Indus., Inc., 274 Or. 243, 546 P.2d 141 (1976) (statute allowing stockholders to inspect corporate records could not circumvent employment at will rule).

[7]489 N.E.2d 933 (Ind. 1986).

[8]Labor law scholars have characterized the status of the employment at will rule as "the labor law issue of the 80s." *See* Lopatka, *supra* note 2, at 1; *see also* Address by Edward J. Murphy, John N. Matthews Professor of Law, University of Notre Dame, in Indianapolis, Ind. (January 12, 1987); Address by Thomas Scharnhart, Professor of Law, Indiana University - Bloomington, in Indianapolis, Ind. (January 27, 1987).

[9]The *Morgan* court recognized *Frampton* as "a milestone in the march of Indiana common law." 489 N.E.2d at 934.

[10]*See infra* notes 21-35 and accompanying text.

[11]*See infra* notes 36-63 and accompanying text.

[12]*See infra* notes 64-69 and accompanying text.

[13]It should be noted that besides vindication or retribution, the potential award of punitive damages is a most appealing feature of retaliatory discharge actions for plaintiffs. Punitive damages are possible because the employer's action in firing an employee is intentional. *See Frampton*, 260 Ind. at 253, 297 N.E.2d at 428.

Another consideration is that the employee might prefer to continue working under a strained relationship with the employer rather than face the uncertainty of today's constricted job market. *See, e.g.*, Lopatka, *supra* note 2, at 2-3.

II. A Lawsuit for Wages Due Leads to Discharge

In *Morgan*, Marion Brant, an apparent at-will employee,[14] claimed that his employer wrongfully discharged him for seeking back pay in a small claims action pursuant to an Indiana wage statute.[15] Over the objection of defendant Morgan Drive Away, Inc., the trial court instructed the jury that Indiana law prohibits the discharge of an employee "in retaliation for the filing of a lawsuit . . . over a wage or payment dispute."[16] The jury found in Brant's favor and awarded compensatory and punitive damages.[17]

On appeal, the Third District panel agreed with the trial court's interpretation of Indiana law regarding retaliatory discharge.[18] Assuming Brant was an employee, the court said, "Brant would have had a statutory right to sue Morgan for payment of his wages . . . . Consequently, termination of Brant solely for filing the small claims action would violate the *Frampton* rule."[19] In a terse 4-1 decision, however, the Indiana Supreme Court disagreed.[20]

III. Disregarding the Status of the Employment at Will Rule: Termination for Any Reason or No Reason—Sometimes

In declining to extend the *Frampton* rule, the *Morgan* court made no mention of the growing national disfavor of the employment at will rule.[21] Judges and other legal scholars have traced the beginnings of the employment at will rule to a nineteenth century treatise on master-servant law.[22] Apparently, the employment at will rule was premised upon theories

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[14]In *Morgan*, there was an issue of whether the plaintiff was an employee or an independent contractor. In the latter case, a retaliatory discharge theory would not fly because there would have been no contract in effect, and thus no discharge. The court remanded the case for a determination of Brant's status and whether he might be entitled to other contract damages. 489 N.E.2d at 934.

[15]*Id.* at 933. Ind. Code § 22-2-4-4(4) (Supp. 1986) provides:

> Every corporation, company, association, firm, or person who shall fail for ten (10) days after demand of payment has been made to pay employees for their labor, in conformity with the provisions of this chapter, shall be liable to such employee for the full value of his labor, to which shall be added a penalty of one dollar ($1) for each succeeding day, not exceeding double the amount of wages due, and a reasonable attorney's fee, to be recovered in a civil action and collectable without relief.

[16]*See Morgan*, 479 N.E.2d 1336, 1337 (Ind. Ct. App. 1985), *vacated*, 489 N.E.2d 933 (Ind. 1986).

[17]*Id.*

[18]*Id.* at 1338.

[19]*Id.*

[20]*Morgan*, 489 N.E.2d at 934. In all, the majority opinion by Justice Dickson and lone dissent by Justice DeBruler in *Morgan* occupied two pages in the reporter. Of the five justices on the court, only Chief Justice Givan and Justice DeBruler were on the court when it decided *Frampton*, and both sided with the majority in that case.

[21]*See* Lopatka, *supra* note 2; Note, *supra* note 2.

[22]H. Wood, A Treatise on the Law of Master and Servant (1877).

of free enterprise and contract, as well as a societal need for industrial expansion.[23] The rule may have served society well during the Industrial Revolution, but conditions and attitudes have since changed.[24] The primary criticism today is the unnecessary hardship created by the employment at will rule.[25]

Although modern society shields many employees from wrongful discharge via collective bargaining agreements or civil service statutes, as many as seventy million employees are not afforded such protection.[26] Legal scholars have estimated that approximately 200,000 at-will employees wrongfully lose their jobs each year as employers retaliate for employee conduct of which they disapprove.[27] Faced with cases where employers had fired at-will employees for refusing to testify falsely on behalf of employers,[28] for pointing out employers' violations of public health codes,[29] for resisting the sexual advances of superiors,[30] for voting shares of stock independently of the wishes of employers,[31] for refusing to cooperate in illegal schemes,[32] and for filing workmen's compensation claims,[33] courts began to limit the broad reach of the employment at will rule in favor of public policy considerations raised by these situations. As one state supreme court reasoned, "It is difficult to justify this court's further adherence to a rule which permits an employer to fire someone for 'cause morally wrong.' "[34] By disregarding the national

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[23]*See generally* Note, *supra* note 2, at 1933. The modern employment at will rule deviates from its predecessor under the English common law, which presumed employment to last for at least one year unless the contract provided differently, thus providing some relief from sudden dismissal. *Id.*

[24]*See* Palmateer v. International Harvester Co., 85 Ill. 2d 124, 129, 421 N.E.2d 876, 878 (1981) ("With the rise of large corporations conducting specialized operations and employing relatively immobile workers who often have no other place to market their skills, recognition that the employer and employee do not stand on equal footing is realistic.").

[25]*See supra* note 2.

[26]*See* Note, *supra* note 2, at 1934.

[27]*See* Lopatka, *supra* note 2, at 2.

[28]*See, e.g.*, Petermann v. International Bhd. of Teamsters, 174 Cal. App. 2d 184, 344 P.2d 25 (1959); *cf.* Parnar v. Americana Hotels, Inc., 65 Hawaii 370, 652 P.2d 625 (1982) (Parnar was fired to induce her to leave the jurisdiction and not testify before the grand jury).

[29]*See, e.g.*, Sheets v. Teddy's Frosted Foods, Inc., 179 Conn. 471, 427 A.2d 385 (1980).

[30]*See, e.g.*, Monge v. Beebe Rubber Co., 114 N.H. 130, 316 A.2d 549 (1974); *see also* Wagenseller v. Scottsdale Memorial Hosp., 147 Ariz. 370, 710 P.2d 1025 (1985) (where employee refused to participate in indecent exposure, heavy drinking, and "grouping up," discharged employee stated cause of action for retaliatory discharge).

[31]*See* Bowman v. State Bank of Keysville, 331 S.E.2d 797 (Va. 1985).

[32]*See* Tameny v. Atlantic Richfield Co., 27 Cal. 3d 167, 610 P.2d 1330, 164 Cal. Rptr. 839 (1980).

[33]*See, e.g.*, Kelsay v. Motorola, Inc., 74 Ill. 2d 172, 384 N.E.2d 353 (1978); Frampton v. Central Ind. Gas. Co., 260 Ind. 249, 297 N.E.2d 425 (1973).

[34]*Wagenseller*, 147 Ariz. at 378, 710 P.2d at 1033.

movement to limit the reach of the employment at will rule, the Indiana Supreme Court has abdicated its leading role in the area.[35]

IV. Replacing Law with Inconsistency and Confusion

A. Toppling the Frampton *Milestone*

The *Morgan* court recognized *Frampton* as "a milestone in the march of Indiana common law."[36] In *Frampton*, an employee claimed that she was fired in retaliation for her filing a workmen's compensation claim.[37] Relying upon the employment at will rule, the trial court dismissed the case and the court of appeals affirmed.[38] Although it agreed with the lower courts' interpretation of the role of the employment at will rule in Indiana law, the supreme court reversed in a 4-1 decision.[39]

The *Frampton* court based its decision on a finding that workmen's compensation legislation provides rights designed to protect employees and that retaliatory discharge would substantially chill the exercise of those rights.[40] The supreme court also said that permitting retaliatory discharge for exercising statutory rights would promote coercive, duress-provoking acts by employers in contravention of public policy.[41] Consequently, the court concluded that "when an employee is discharged solely for exercising a statutorily conferred right an exception to the general [employment at will] rule must be recognized."[42]

One flaw in *Frampton* is that it lends itself to two readings because of an unfortunate choice of words by the court.[43] Read most broadly, *Frampton* stands for the proposition that employers may not fire at-will employees "solely for exercising a statutorily conferred right."[44] Read most narrowly, the landmark case says only that "an employee who alleges he or she was retaliatorily discharged for filing a claim pursuant to the Indiana Workmen's Compensation Act or the Indiana

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[35]*See supra* note 6.

[36]*Morgan*, 489 N.E.2d at 934.

[37]260 Ind. 249, 250, 297 N.E.2d 425, 426 (1973).

[38]*Id.* at 249-50, 297 N.E.2d at 426.

[39]*Id.* at 253, 297 N.E.2d at 428. Justice Hunter wrote the opinion for the court, with which Chief Justice Arterburn and Justices DeBruler and Givan concurred. Justice Prentice dissented without opinion.

[40]*Id.* at 251-52, 297 N.E.2d at 427.

[41]*Id.* at 252, 297 N.E.2d at 428.

[42]*Id.* at 253, 297 N.E.2d at 428.

[43]The difficulty manifests itself in current cases. *See, e.g.*, McClanahan v. Remington Freight Lines, Inc., 498 N.E.2d 1336, 1340 (Ind. Ct. App. 1986) ("We are necessarily troubled by an arguable implication in *Morgan Drive Away* that the *Frampton* exception may be available only in cases involving workmen's compensation claims. . . . [W]e can only conclude that the possible implication is not . . . controlling.").

[44]*Frampton*, 260 Ind. at 253, 297 N.E.2d at 428.

Workmen's Occupational Diseases Act has stated a claim upon which relief can be granted."[45]

The *Morgan* court pointed out this discrepancy but opted for the narrow reading rather than what it termed the embellishment of the broader language.[46] The *Morgan* court attributed the *Frampton* court's holding to the purpose and particular language of the workmen's compensation statute.[47] The *Frampton* court did base its decision in part on the fact that the General Assembly specifically prohibited the use of any "device" that might thwart the statute's application and that threats of discharge amount to a "device."[48] But, the General Assembly's specific prohibitions are little more than an embellishment of the overall statutory scheme of workmen's compensation because certainly all laws are drafted with the intent that they not be thwarted by devices or by any other means.[49] At the heart of *Frampton* was the theory that employers should not be able to inhibit through coercion the exercise of statutory rights, a likely result absent an employee cause of action for retaliatory discharge.[50] Although *Morgan* adheres to the strict holding of *Frampton* under the latter's facts, the *Morgan* decision fails to embody the spirit of *Frampton* inherent in the broader reading.

Limiting the statutory rights that an employee may exercise without fear of discharge to those found in workmen's compensation legislation makes no sense.[51] The *Frampton* court's comments regarding the legislative intent behind the workmen's compensation statute apply equally well to the underlying wage statute in *Morgan*.[52] Just as in *Frampton*, the employee in *Morgan* asserted a statutory right—a right particularly designed to protect employees.[53] Just as in *Frampton*, the employer in *Morgan* could easily thwart the remedial goal of the statute through coercion and threats of discharge.[54] As the *Frampton* court suggested, "If employers are permitted to penalize employees for filing workmen's compensation claims . . . employees will not file claims for justly deserved

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[45]*Id.*

[46]489 N.E.2d at 934.

[47]*Id.* at 933-34. The statute involved in *Frampton* provided in pertinent part: "No contract or agreement, written or implied, no rule, regulation or other device shall, in any manner, operate to relieve any employer in whole or in part of any obligation created by chapters 2 through 6 of this article [involving the providing of compensation to injured workers]." IND. CODE § 22-3-2-15 (1981).

[48]260 Ind. at 252, 297 N.E.2d at 427-28.

[49]"[W]here laws end, tyranny begins." William Pitt, Earl of Chatham, Speech in the House of Lords in defense of John Wilkes, January 9, 1770, *quoted in* BARTLETT'S FAMILIAR QUOTATIONS 426 (14th ed. 1968).

[50]*See supra* notes 40-42 and accompanying test.

[51]As noted in McClanahan v. Remington Freight Lines, Inc., 498 N.E.2d 1336, 1341 n.3 (Ind. Ct. App. 1986), there is no "logical reason for granting the right to workmen's compensation benefits" the "exalted status" of being the only statutory right actionable under a retaliatory discharge theory.

[52]*See supra* note 15.

[53]*Id.*

[54]*See Frampton*, 260 Ind. at 252, 297 N.E.2d at 428.

compensation—opting, instead, to continue their employment without incident."[55] The same reasoning is true with regard to the wage statute relied upon in *Morgan*.[56] As Justice DeBruler explained in his lone dissent in *Morgan*, "The right of workers to access to courts to recover wages due from employers for work done is . . . every bit the equivalent of the right of injured workers to access to the workmen's compensation board . . . ."[57] By reading the *Frampton* decision too narrowly, the *Morgan* court abandoned the logic of that "milestone" case.

B. Misapplying Decisions by Indiana Appellate Courts

In an effort to justify its decision, the *Morgan* court cited several cases for the proposition that Indiana appellate courts have refused to recognize retaliatory discharge actions in cases not involving workmen's compensation claims.[58] The problem with this approach is that in no other Indiana case involving retaliatory discharge has an employee claimed wrongful termination for asserting a valid statutory right.[59] In each of the cases cited by the *Morgan* court, the employee-plaintiff claimed that his or her discharge violated some broad notion of public policy, such as reporting illegal activities by a superior[60] or exercising freedom of association by marrying a person of her choice.[61] Even Indiana cases not cited by the *Morgan* court do not include facts where an employee-plaintiff has asserted a statutorily conferred right,[62] as in *Frampton*. In fact, the cases suggest that Indiana appellate courts would rule favorably for a plaintiff who brought his or her claim pursuant to a valid statutory right.[63] Thus, the *Morgan* court misapplied and acted inconsistently with the developing Indiana case law of retaliatory discharge.

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[55]*Id.* at 252, 297 N.E.2d at 427.

[56]*See supra* note 15.

[57]489 N.E.2d at 934 (DeBruler, J., dissenting).

[58]*Id.*

[59]*See* McClanahan v. Remington Freight Lines, Inc., 498 N.E.2d 1336, 1340 (Ind. Ct. App. 1986).

[60]Martin v. Platt, 179 Ind. App. 688, 386 N.E.2d 1026 (1979).

[61]McQueeney v. Glenn, 400 N.E.2d 806 (Ind. Ct. App. 1980).

[62]*See, e.g.*, Romack v. Public Serv. Co., 499 N.E.2d 768 (Ind. Ct. App. 1986) (plaintiff's reliance upon federal safety guidelines failed to sustain action for retaliatory discharge because guidelines did not confer personal right upon plaintiff); Rice v. Grant County Bd. of Comm'rs, 472 N.E.2d 213 (Ind. Ct. App. 1984) (where employee drove truck outside county limits and it became stuck, forcing a tow back to the department, alleged reasonableness of employee's action provided no basis for claim of retaliatory discharge).

[63]Certainly the Third District Court of Appeals was receptive to the theory of retaliatory discharge because it ruled in Morgan's favor on appeal. And in the recent case of Tri-City Comprehensive Community Mental Health Center, Inc. v. Franklin, 498 N.E.2d 1303, 1306 (Ind. Ct. App. 1986), the Third District continued to use the broad language from *Frampton* and cited *Morgan* only for the proposition that the General Assembly, rather than the courts, must revise the rule. *Tri-City* involved a flawed public policy argument founded upon the due process clause of the United States Constitution.

In Campbell v. Eli Lilly & Co., 413 N.E.2d 1054 (Ind. Ct. App. 1980), *aff'd*, 421

Consequently, confusion reigns in Indiana as to how to interpret the law of retaliatory discharge. In *Reeder-Baker v. Lincoln National Corp.*,[64] the United States District Court for the Northern District of Indiana recently interpreted *Morgan* for the narrow proposition that retaliatory discharge actions lie only when an employer fires an employee for filing a workmen's compensation claim.[65] In so holding, the *Reeder-Baker* court overturned a line of cases that recognized an action for retaliatory discharge when an employer had fired an employee for filing a Title VII discrimination claim.[66] But recently in *McClanahan v. Remington Freight Lines, Inc.*,[67] the Indiana Court of Appeals for the Second District questioned whether the supreme court meant what it said in *Morgan*:

> The language in *Frampton* indicates that the court did not intend its holding to be limited to cases involving workmen's compensation claims. . . . We cannot believe that the Supreme Court intended for *Morgan Drive Away* to have such effect, especially in light of the court's reference in *Morgan Drive Away* to *Frampton* as "a milestone in the march of Indiana Common law." Surely the court did not intend for the march to halt and become a full-fledged retreat.[68]

Thus, the *McClanahan* court held that a truck driver did have an action for retaliatory discharge when he was fired for refusing to drive a truck in violation of road weight limits.[69]

V. Conclusion

The employment at will rule has long influenced labor law.[70] But societal conditions no longer justify blanket application of the rule.[71] Thus, various exceptions are leading to the abandonment of the rule in certain situations.[72] One of those situations is where an employer uses

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N.E.2d 1099 (Ind. 1981), the First District Court of Appeals pointed out that the fatal error in the plaintiff's case was a failure to demonstrate a personal right conferred by statute; thus, the court focused upon the broader language of *Frampton*. In Rice v. Grant County Bd. of Comm'rs, 472 N.E.2d 213 (Ind. Ct. App. 1984), the Second District Court of Appeals, in discussing *Frampton*, also focused upon the broad language regarding the exercise of a statutory right rather than the narrow holding of *Frampton*. *See also* Buethe v. Britt Airlines, 787 F.2d 1194 (7th Cir. 1986), where the court noted the supreme court's decision in *Morgan*, but still focused on the broad language of exercising a statutory right.

[64]644 F. Supp. 983 (N.D. Ind. 1986).

[65]*Id.* at 985.

[66]*Id.* at 986.

[67]498 N.E.2d 1336 (Ind. Ct. App. 1986).

[68]*Id.* at 1341.

[69]*Id.* at 1343.

[70]*See supra* note 22.

[71]*See supra* notes 24-34.

[72]*See supra* note 3.

the rule to retaliate for an employee's exercise of a statutorily conferred right.[73]

The Indiana Supreme Court developed this particular exception and had the opportunity to expand upon it in *Morgan Drive Away, Inc. v. Brant*.[74] But in an opinion marred by insufficient analysis, the court declined to do so.[75] The *Morgan* court adhered to a narrow reading of *Frampton v. Central Indiana Gas Co.*[76] and ignored the sound policy reasons and logic underlying that landmark case.[77] Moreover, the *Morgan* court disregarded the emerging national disfavor for the employment at will rule[78] and misread the attitude toward that rule in Indiana.[79] Thus, the Indiana Supreme Court certainly tipped, if not toppled, a milestone case in the law of retaliatory discharge.

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[73]*See supra* note 5.
[74]489 N.E.2d 933 (Ind. 1986).
[75]*Id.* at 934.
[76]*See supra* notes 40-50.
[77]*See supra* notes 51-57.
[78]*See supra* notes 21-35.
[79]*See supra* notes 58-69.