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the county court's conclusion that there was not a violation of § 76-2,120, and the county court provided no explanation or rationale for concluding that there was both a negligent misrepresentation and no violation of the statute.

No issue has been presented regarding any failure of proof as to the attorney fees in this case, and affidavits supporting those fees are found in the record. See *Pepitone v. Winn, supra*. Because we conclude that the negligent misrepresentation by the Wardyns was a violation of § 76-2,120, we remand the matter to the district court with directions to remand the matter to the county court to enter an appropriate attorney fee award.

V. CONCLUSION

We reverse the district court's judgment reversing the county court's judgment. The county court was not clearly erroneous in its factual findings on the record in this case. We find that the county court erred in denying attorney fees under § 76-2,120. We remand the matter to the district court with directions to remand the matter to the county court to enter an appropriate attorney fee award.

REVERSED AND REMANDED WITH DIRECTIONS.

MOORE, Judge, participating on briefs.

TRISTAN BONN, APPELLANT, V. CITY OF OMAHA, A POLITICAL SUBDIVISION, ET AL., APPELLEES.

814 N.W.2d 114

Filed May 15, 2012. No. A-11-604.

1. **Appeal and Error.** To be considered by an appellate court, an error must be both specifically assigned and specifically argued in the brief of the party asserting the error.
2. **Summary Judgment.** Summary judgment is proper if the pleadings and admissible evidence offered at the hearing show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law.
3. **Summary Judgment: Appeal and Error.** In reviewing a summary judgment, an appellate court views the evidence in the light most favorable to the party against whom the judgment was granted, giving that party the benefit of all reasonable inferences deducible from the evidence.

4. **Fair Employment Practices: Discrimination.** The Nebraska Fair Employment Practice Act makes it unlawful for an employer to discriminate against its employee on the basis of the employee's opposition to an unlawful practice.
5. **Judgments.** Although an Attorney General's opinion is entitled to substantial weight and is to be respectfully considered, it nonetheless has no controlling authority on the state of the law discussed in it and, standing alone, is not to be regarded as legal precedent or authority of such character as is a judicial decision. An Attorney General's opinion is, simply, not a judicial utterance.
6. **Fair Employment Practices.** The evil addressed by Neb. Rev. Stat. § 48-1114(3) (Reissue 2010) is the exploitation of the employer's power over the employee when used to coerce the employee to endorse, through participation or acquiescence, the unlawful acts of the employer.
7. ____. The text of Neb. Rev. Stat. § 48-1114(3) (Reissue 2010) and reasonable policy dictate that an employee's opposition to any unlawful act of the employer, whether or not the employer pressures the employee to actively join in the illegal activity, is protected under § 48-1114(3).
8. **Fair Employment Practices: Words and Phrases.** The unlawful practices covered by Neb. Rev. Stat. § 48-1114 (Reissue 2010) are activities related to the employment.
9. ____: ____. Seen in the context of the entirety of the Nebraska Fair Employment Practice Act and in light of the apparent purposes the act is meant to serve, the term "practice" in Neb. Rev. Stat. § 48-1114(3) (Reissue 2010) refers to an unlawful practice of the employer, not unlawful or prohibited actions of coemployees.
10. **Fair Employment Practices: Statutes.** The Nebraska Fair Employment Practice Act is not a general bad acts statute, and there are many abuses not proscribed by fair employment legislative acts, including discharge for opposition to racial discrimination by other employees against the public.
11. **Federal Acts: Civil Rights: Fair Employment Practices.** The Nebraska Fair Employment Practice Act is patterned after 42 U.S.C. § 2000e et seq. (2006), and it is appropriate to look to federal court decisions construing similar and parent federal legislation.
12. **Fair Employment Practices.** A violation under Neb. Rev. Stat. § 48-1114(3) (Reissue 2010) must include either the employee's opposition to an unlawful practice of the employer or the employee's refusal to honor an employer's demand that the employee do an unlawful act.

Appeal from the District Court for Douglas County: J. PATRICK MULLEN, Judge. Affirmed.

Brent Nicholls, of Kasaby & Nicholls, L.L.C., for appellant.

Michelle Peters, Assistant Omaha City Attorney, for appellees.

INBODY, Chief Judge, and MOORE and PIRTLE, Judges.

PIRTLE, Judge.

INTRODUCTION

Tristan Bonn appeals an order of the district court for Douglas County, which order granted summary judgment in favor of the City of Omaha; Mike Fahey, in his official capacity as mayor of Omaha; and Paul Landow, in his official capacity as the mayor's chief of staff (collectively the City) on Bonn's retaliation claim under the Nebraska Fair Employment Practice Act (FEPA). Based on the reasons that follow, we affirm.

BACKGROUND

Bonn was hired by the City of Omaha as an independent public safety auditor in June 2001. An Omaha Municipal Code established the public safety auditor position, which was funded by the Omaha City Council. The ordinance created an independent audit and review process for citizen complaints against Omaha firefighters and police officers to increase public confidence in the internal investigations process. The public safety auditor was a "classified employee" for purposes of firing and other personnel actions. A "classified employee" can only be terminated for cause. Shortly after Bonn was hired, the Omaha City Council terminated funding for the position. Fahey secured private funding for the position, which allowed Bonn to continue as public safety auditor through December 2005.

After the private funds were exhausted, Fahey offered to make Bonn a member of his staff. Bonn expressed concern about losing her "classified employee" protection, as she was aware that members of the mayor's staff were at-will employees, but she accepted Fahey's offer. There was no written contract of employment between Bonn and the mayor's office, nor was there any written job description for Bonn, despite Bonn's request for one. Bonn proposed an executive order from Fahey outlining her job description and including a clause that she could not be fired except for cause, but this document was not adopted by the mayor's office. Landow, the mayor's chief of staff, represented to Bonn that she would continue the work she performed as the public safety auditor by evaluating

and reviewing police procedures. Bonn was also made aware, before she began working in the mayor's office, that her hours and pay would be reduced and that she would no longer have an administrative staff.

In August 2006, Bonn notified Landow that she would soon be filing an unfavorable report in regard to the practices of the Omaha Police Department (OPD) regarding traffic stops. In the late afternoon of October 19, Bonn sent her report entitled "Anatomy of Traffic Stops" in an e-mail to Fahey, Landow, and the OPD chief of police and asked them for comments on the report. On October 20, Bonn distributed her report before Fahey, Landow, or the chief of police had a chance to comment on the report. There is no dispute that the report was prepared as part of her official duties with the City of Omaha. Bonn's report stated that it would "describe, by analyzing traffic stop complaints, how [OPD] finds itself currently estranged from many of the communities it serves and [it] offers suggestions about how it can repair those relations." Through accounts of alleged improper traffic stops and other conduct, Bonn concluded that members of OPD acted with discrimination toward minority members of the public. She alleged that a possible result of the harsh and poor policing tactics in minority communities was that young members of those communities did not select policing as a career. She also inferred that improper stops may have resulted in criminal records for potential applicants that excluded them from employment with OPD.

After Bonn's "Anatomy of Traffic Stops" report was distributed, Bonn spoke with media outlets, including one radio station and an Omaha newspaper about her report. On October 24, 2006, the Omaha newspaper printed a story in which quotes attributable to Bonn criticized the mayor's office for ignoring her and her recommendations. On October 30, Fahey sent a letter to Bonn notifying her that she had been terminated from her position with his office for insubordination.

On January 24, 2007, Bonn filed a charge of discrimination with the Nebraska Equal Opportunity Commission and the federal Equal Employment Opportunity Commission. The Nebraska Equal Opportunity Commission determined that

sufficient evidence supported a reasonable cause finding that discrimination occurred. Following this determination, both commissions issued right-to-sue letters.

On October 22, 2008, Bonn filed a complaint against the City alleging that her employment had been wrongfully terminated in retaliation for her "Anatomy of Traffic Stops" report, which discussed discriminatory activities of OPD. Bonn's complaint alleged four causes of action: (1) retaliation and discrimination under 42 U.S.C. § 2000e et seq. (2006) (Title VII); (2) retaliation under FEPA, specifically Neb. Rev. Stat. § 48-1114(1) and (3) (Reissue 2010); (3) violation of the "First Amendment to the United States Constitution, 42 U.S.C. § 1983 [(2006)]"; and (4) wrongful discharge. Thereafter, the City filed a notice of removal of the case to the U.S. District Court for the District of Nebraska. The City subsequently filed a motion for summary judgment before the U.S. District Court. The court granted the City's motion for summary judgment on the first and third causes of action and dismissed those causes of action with prejudice. The U.S. District Court remanded the second and fourth causes of action to the state court for further proceedings. See *Bonn v. City of Omaha*, 2009 WL 3103833 (D. Neb., Sept. 22, 2009).

The decision of the U.S. District Court was appealed to the Eighth Circuit Court of Appeals, which affirmed the decision of the federal district court. See *Bonn v. City of Omaha*, 623 F.3d 587 (8th Cir. 2010).

After Bonn's FEPA and wrongful discharge causes of action were remanded to the district court for Douglas County, the City filed a motion for summary judgment alleging that Bonn did not oppose an unlawful employment practice of the City of Omaha. Following a hearing, the district court granted summary judgment in favor of the City on both causes of action, finding that there were no genuine issues of any material fact and that the City was entitled to judgment as a matter of law. Specifically, the court found that Bonn was not asserting that the City of Omaha was engaging in discriminatory employment practices, nor was she refusing to carry out any unlawful action. It further stated that Bonn was not opposing the policies of the City, since it was part of her job to uncover such

information. The court concluded that Bonn's termination of employment did not come within the ambit of FEPA.

ASSIGNMENT OF ERROR

Bonn assigns that the trial court erred in finding she was not opposing unlawful employment practices of the City of Omaha pursuant to FEPA and that therefore, summary judgment should not have been granted in favor of the City.

[1] Although Bonn assigns six errors in her brief, she argues only the one stated above, and that is the only one we will address. See *Gengenbach v. Hawkins Mfg.*, 18 Neb. App. 488, 785 N.W.2d 853 (2010) (to be considered by appellate court, error must be both specifically assigned and specifically argued in brief of party asserting error).

STANDARD OF REVIEW

[2,3] Summary judgment is proper if the pleadings and admissible evidence offered at the hearing show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law. *Village of Hallam v. L.G. Barcus & Sons*, 281 Neb. 516, 798 N.W.2d 109 (2011). In reviewing a summary judgment, an appellate court views the evidence in the light most favorable to the party against whom the judgment was granted, giving that party the benefit of all reasonable inferences deducible from the evidence. *Id.*

ANALYSIS

[4] Bonn argues that summary judgment should not have been granted in favor of the City because the trial court erred in finding that she was not opposing unlawful employment practices of the City of Omaha pursuant to FEPA. FEPA makes it unlawful for an employer to discriminate against its employee on the basis of the employee's opposition to an unlawful practice. See, § 48-1114; *Helvering v. Union Pacific RR. Co.*, 13 Neb. App. 818, 703 N.W.2d 134 (2005). Section 48-1114, under which Bonn brings her claim, states:

> It shall be an unlawful employment practice for an employer to discriminate against any of his or her

> employees . . . because he or she (1) has opposed any practice made an unlawful employment practice by [FEPA] . . . or (3) has opposed any practice or refused to carry out any action unlawful under federal law or the laws of this state.

Bonn alleged in her complaint that her firing was an unlawful retaliatory act in violation of FEPA, specifically subsections (1) and (3) of § 48-1114. However, Bonn appears to have abandoned her argument under subsection (1). Bonn argues only a violation of subsection (3) in her brief, and in her reply brief, she admits that the federal court's dismissal of her Title VII claim disposes of her identical claim made under § 48-1114(1). Therefore, the only remaining claim is that the City violated subsection (3) of § 48-1114.

Bonn argues that the trial court's finding that she was not opposing unlawful employment practices of the City of Omaha was made in error. Bonn alleges that the release of her "Anatomy of Traffic Stops" report was a protected activity under FEPA because she was opposing unlawful practices used by OPD in conducting traffic stops. She claims that her report cited many examples of actions by police officers which either were in violation of established law or were discriminatory in their application and that the inaction of the City to change such actions was evidence the City approved of such practices.

[5] Bonn's counsel at oral argument cited and relied on Att'y Gen. Op. No. 87033 (Mar. 6, 1987) in support of the contention that the trial court erred in finding that Bonn was not opposing unlawful employment practices of the City of Omaha pursuant to FEPA. The opinion involved a nurse who worked for a hospital and was fired for reporting to the county attorney's office a suspected incident of sexual abuse upon a minor by a patient, which report went against the hospital's policy of reporting such incidents to a designated employee. The Attorney General concluded that the nurse's act of reporting the suspected incident of sexual abuse to the county attorney was a protected act under § 48-1114(3). Although an Attorney General's opinion is entitled to substantial weight and is to be respectfully considered, it nonetheless has no controlling

authority on the state of the law discussed in it and, standing alone, is not to be regarded as legal precedent or authority of such character as is a judicial decision. An Attorney General's opinion is, simply, not a judicial utterance. *State v. Coffman*, 213 Neb. 560, 330 N.W.2d 727 (1983).

[6,7] The evil addressed by § 48-1114(3) is the exploitation of the employer's power over the employee when used to coerce the employee to endorse, through participation or acquiescence, the unlawful acts of the employer. *Wolfe v. Becton Dickinson & Co.*, 266 Neb. 53, 662 N.W.2d 599 (2003). The text of § 48-1114(3) and reasonable policy dictate that an employee's opposition to any unlawful act of the employer, whether or not the employer pressures the employee to actively join in the illegal activity, is protected under § 48-1114(3). *Wolfe v. Becton Dickinson & Co., supra.*

[8-10] As previously stated, FEPA makes it unlawful for an employer to discriminate against its employee on the basis of the employee's opposition to an unlawful practice. See, § 48-1114; *Helvering v. Union Pacific RR. Co.*, 13 Neb. App. 818, 703 N.W.2d 134 (2005). The Nebraska Supreme Court has held that the "unlawful" practices covered by § 48-1114 are activities related to the employment. *Helvering v. Union Pacific RR. Co., supra*, citing *Wolfe v. Becton Dickinson & Co., supra*. As such, seen in the context of the entirety of FEPA and in light of the apparent purposes FEPA is meant to serve, the term "practice" in § 48-1114(3) refers to an unlawful practice of the employer, not unlawful or prohibited actions of coemployees. *Helvering v. Union Pacific RR. Co., supra*, citing *Wolfe v. Becton Dickinson & Co., supra*. FEPA is not a general bad acts statute, and there are many abuses not proscribed by FEPA-type legislative acts, including discharge for opposition to racial discrimination by other employees against the public. *Helvering v. Union Pacific RR. Co., supra*, citing *Wolfe v. Becton Dickinson & Co., supra*. See, also, *Wimmer v. Suffolk County Police Dept.*, 176 F.3d 125 (2d Cir. 1999).

[11] In *Wimmer v. Suffolk County Police Dept., supra*, a Title VII case, the Second Circuit found that the plaintiff failed to show he engaged in a protected activity where he reported racial slurs and causeless traffic stops of minority citizens by

police officers. The *Wimmer* court reasoned that the plaintiff offered evidence only as to the police department's discriminatory conduct toward the public, and presented no evidence as to the department's discrimination regarding the terms and conditions of employment within the department. The Second Circuit concluded that the plaintiff's "claim of retaliation is not cognizable under Title VII because [the plaintiff's] opposition was not directed at an unlawful *employment practice* of his employer." *Wimmer*, 176 F.3d at 135. Although *Wimmer* is a Title VII federal case, FEPA is patterned after 42 U.S.C. § 2000e et seq., and it is appropriate to look to federal court decisions construing similar and parent federal legislation. *Helvering v. Union Pacific RR. Co., supra.*

Bonn's "Anatomy of Traffic Stops" report set out what she perceived as problems with how members of OPD conducted traffic stops, specifically as they related to minority citizens. Similar to the plaintiff in *Wimmer v. Suffolk County Police Dept., supra*, Bonn presented evidence of alleged discriminatory conduct by police officers toward the public and did not present any evidence of discriminatory conduct by the City of Omaha in regard to the terms and conditions of employment within the City of Omaha.

[12] A violation under § 48-1114(3) must include either the employee's opposition to an unlawful practice of the employer or the employee's refusal to honor an employer's demand that the employee do an unlawful act. *Wolfe v. Becton Dickinson & Co., supra*. Bonn has failed to prove either of these. Bonn does not contend that her FEPA claim is based on her refusal to honor a demand by the City of Omaha that she do an unlawful act. Her claim is based on her contention that she was fired for opposing unlawful practices of the City of Omaha. The unlawful practices that Bonn opposed were the alleged discriminatory tactics by some police officers against minority members of the public. Bonn's opposition was to those alleged unlawful practices by police officers, rather than unlawful practices of the City of Omaha. The practices being opposed must be unlawful practices of the employer, here the City of Omaha, and not unlawful actions by individuals or coemployees. See *Helvering v. Union Pacific RR. Co.*, 13 Neb.

App. 818, 703 N.W.2d 134 (2005). Bonn's opposition was not directed at unlawful employment practices of the City of Omaha pursuant to FEPA. Therefore, her assignment of error is without merit.

CONCLUSION

We conclude that the trial court did not err in finding that Bonn was not opposing unlawful employment practices of the City of Omaha. Accordingly, there is no genuine issue of material fact regarding whether Bonn engaged in a protected activity under FEPA and the City is entitled to judgment as a matter of law. The trial court did not err in granting summary judgment in favor of the City. The judgment of the district court is affirmed.

AFFIRMED.

BEL FURY INVESTMENTS GROUP, L.L.C., APPELLEE, V. PALISADES COLLECTION, L.L.C., ET AL., APPELLEES, AND RITA BOWER, APPELLANT.

814 N.W.2d 394

Filed May 22, 2012. No. A-11-598.

1. **Limitations of Actions: Appeal and Error.** The determination of which statute of limitations applies is a question of law, and an appellate court must decide the issue independently of the conclusion reached by the trial court.
2. **Equity: Quiet Title.** A quiet title action sounds in equity.
3. **Equity: Appeal and Error.** On appeal from an equity action, an appellate court tries factual questions de novo on the record and, as to questions of both fact and law, is obligated to reach a conclusion independent of the conclusion reached by the trial court.
4. **Judgments: Appeal and Error.** A correct result will not be set aside even when the lower court applied the wrong reasoning in reaching that result.
5. **Real Estate: Liens.** The purchaser at the sale of property is not responsible for liens that are found to be junior and inferior to the foreclosed lien.
6. **Unjust Enrichment: Proof.** To recover on a claim for unjust enrichment, the plaintiff must show that (1) the defendant received money, (2) the defendant retained possession of the money, and (3) the defendant in justice and fairness ought to pay the money to the plaintiff.
7. **Subrogation.** The doctrine of equitable subrogation applies where a party is compelled to pay the debt of a third person to protect his own rights or interest or to save his own property.