Pennsylvania Guardian for Esther McNeal Hess, of Washington Township, Franklin County, Pennsylvania, an Incompetent.

Glenn E. Shadle
Clerk of Orphans' Court of
Franklin County, Pennsylvania

6-22, 6-29, 7-7

IN THE COURT OF COMMON PLEAS OF THE 39th JUDICIAL DISTRICT OF FRANKLIN COUNTY, PENNSYLVANIA ORPHANS' COURT DIVISION

The following list of Executors, Administrators and Guardian Accounts, Proposed Schedules of Distribution and Notice to Creditors and Reasons Why Distribution cannot be Proposed will be presented to the Court of Common Pleas of Franklin County, Pennsylvania, Orphans' Court Division for CONFIRMATION: July 5, 1984.

PISLE First and final account, statement of proposed distribution and notice to the creditors of The Valley Bank & Trust Company, Eugene G. Pisle and Doris E. Pisle, Executors of the estate of Eber H. Pisle late of Antrim Township, Franklin County, Pennsylvania deceased.

SMITH First and final account, statement of proposed distribution and notice to the creditors of Eleanora M. Smith, Executrix of the Estate of Mildred K. Smith late of the Borough of Waynesboro, Franklin County, Pennsylvania, deceased.

Glenn E. Shadle
Clerk of Orphans' Court of

6-15, 6-22, 6-29, 7-6

DECREE

NOW, this 17th day of February, 1984, the Executor is directed to make an advance distribution of $15,000 to Rosalie S. Geyer, widow, from the assets of the Estate of George W. Geyer, Deceased, on the condition that the said Rosalie S. Geyer shall execute a bond in favor of the estate in the amount of $15,000 payable on the condition that she is required to reimburse the estate for expenses and counsel fees as the Court may determine.

Exceptions are granted the Petitioner and Respondent.

HALL V. BLUE RIDGE ENERGY, INC., C.P. Franklin County Branch, No. A.D. 1983) 322

Assumpsit - Employment Agreement - Breach by Employer

1. When one party breaches part of a contract, it cannot later demand compliance by the non-breaching party to other terms of the same contract.

2. Where employer terminated a contract without giving the required 90 day notice, employee isnot bound to provisions allowing the company 180 days to repurchase his stock.

J. Dennis Guyer, Esquire, Attorney for Plaintiff

Jan G. Sulcove, Esquire, Attorney for Defendant

Joseph L. Doyle, Esquire, Attorney for Defendant

OPINION AND ORDER

EPPINGER, P.J., February 21, 1984:

J. Michael Hall was employed by Blue Ridge Energy, Inc. for a period of five years fron December 1, 1981, under a written agreement.

Blue Ridge fired Hall effective August 19, 1983, before the five-year term expired, and Hall sued. Among other things he asks that Blue Ridge pay him the agreed price for the sale-back of his stock and medical expenses he incurred for his daughter at a time when he

maintains she should have been covered by a medical insurance policy issued at the expense of the company to cover him and his family. Blue Ridge filed a demurrer to the stock repurchase claim and a motion to strike the medical expense demand.

Under the employment agreement, Hall was to have 90 days written notice of his discharge. Upon termination Blue Ridge agreed to redeem his stock at 65% of the purchase price, payable within 180 days. Another provision entitled him to fringe benefits equivalent to those enjoyed by the President of the corporation.

The question raised by the demurrer is whether, despite the fact 180 days had not run on December 5, 1983, the date when this action was filed, Hall's claim states a cause of action. We find it does.

In the early case of *Allen v. Colliery Engineers' Co.*, 196 Pa. 512, 518-519, 46 A. 899 (1900), it was said that an employee for a fixed period who was wrongfully discharged could treat the employment contract as existing and sue for benefits as they became due, or sue for breach of the contract at once or at the end of the contract period. In this case, Hall has elected to sue at once.

Furthermore, when one party breaches part of a contract, it cannot later demand compliance by the non-breaching party to other terms of the same contract. *U.S. v. Curtis T. Bedwell & Son, Inc.*, 506 F. Supp. 1324, 1327 (E.D.Pa. 1981). See also Restatement (Second) of Contracts, Sec. 253(2); *Camenisch v. Allen,* 158 Pa. Super. 174, 177 44A.2d 309, 310 (1945). Terminating Hall's employment without giving 90 days notice was a breach of the contract so Hall is not bound by the provisions allowing the company 180 days to repurchase his stock.

The demurrer will be overruled.

The next is a measure of damages question. Hall says his daughter was injured, and since Blue Ridge provided him no medical coverage, Blue Ridge is responsible for the medical expenses. Blue Ridge counters that Hall's claim should be only for the cost of equivalent medical coverage. When there is a breach of contract, the plaintiff in a suit is entitled to recover for the losses sustained in order to be placed in the same position he would have occupied had there been no breach. *Lambert v. Durallium Products Corp.,* 364 Pa. 284, 287, 72 A.2d 66, 67 (1950); *Ready v. Motor Sport, Inc.,* 201 Pa. Super. 528, 531, 193 A.2d 766, 768 (1963).

What the plaintiff is asking for here is consequential damages. Whether Hall is entitled to these damages depends on whether the losses, the cost of medical care for his daughter, were foreseeable by the employer at the time it entered into the contract. *Frank B. Bozzo, Inc. v. Elecric Weld Division of Ft. Pitt Bridge Division of Sprang Industries, Inc.,* 283 Pa. Super. 35, 51, 423 A.2d 702, 709, (1980), affd. 495 Pa. 616, 435 A.2d 176 (1981). See Corpus Juris Secondum, Damages Sec. 24(a) pp. 662-668. This is a jury question, *Bozzo,* Id., at 35, 709.

However, there can be no recovery for damages which by the exercise of reasonable care, Hall could have avoided. *Thompson v. DeLong,* 267 Pa. 212, 217, 110 A.2d 251, 253 (1920). He must mitigate the damages. So if he knew or should have known that his medical policy was not continued, he had a duty to take out a policy, pay the premium and sue for the amount of the premium. Again, this is a jury question.

Finally, however, where both plaintiff and defendant have an equal opportunity to reduce the damages by some act and it is equally reasonable to expect the defendant to minimize the damages, the defendant is in no position to contend that the plaintiff failed to do so. *S. J. Grove & Sons Co. v. Warner Co.,* 576 F.2d 524, 530 (3rd Cir. 1978).

Considering all of the above, the defendant's motion to strike will be denied.

ORDER OF COURT

February 21, 1984, defendant's pretrial motions in the nature of a demurrer and motion to strike are denied.

BRADY V. GOLDEN, C.P. Franklin County Branch, No. A.D. 1983-288

Trespass - Separate Counts - Allegation of negligence - Allegation of Injuries - Loss of Earnings

1. Plaintiffs, as husband and wife, are permitted to join their claim, in one action but they must plead their damages in separate counts.