While this Court utterly disapproves of any adulterous relationship, it is our conclusion that in the case at bar a balancing of the equities requires the petition of the plaintiff to be dismissed for:

1. She commenced her relationship months before the defendant commenced his relationship.

2. She has persisted in the relationship while claiming support from the defendant.

3. She declined to reconcile with the defendant and move to his home near his place of employment.

ORDER OF COURT

NOW, this 21st day of November, 1980, the petition of Patti Lissefeld for support is dismissed.

Exceptions are granted the plaintiff.

Costs to be paid by the County of Franklin.

WALIZER v. GLARE CONTROL OF WAYNESBORO, INC., C.P. Franklin County Branch, A.D. 1980 - 274

Assumpsit - Oral Employment Contract - Permanent Employment

1. In the absence of a specific restriction, either statutory or contractual, an "at will" contract of employment may be terminated at any time by either party to the contract for any reason or for no reason.

2. The burden is on the plaintiff to overcome the presumption that a contract was terminable at will in the absence of a specific agreement as to tenture of employment.

3. The term "permanent employment" in an oral contract of employment does not show an intention of the parties to create anything more than "at will" contract of employment.

William S. Dick, Esq., Counsel for Plaintiff

Robert P. Shoemaker, Esq., Counsel for Defendant

OPINION AND ORDER

KELLER, J., November 28, 1980:

This action in assumpsit was commenced by the filing of a complaint on September 18, 1980, and service upon the defendant on September 23, 1980. The plaintiff inter alia alleges in his complaint:

1. In paragraph 3 that the plaintiff and defendant's President on August 27, 1979 agreed to an oral contract of employment under which the plaintiff agreed to discontinue his then existing employment at an hourly rate of $6.25 per hour, and come to work for the defendant at defendant's place of business "as a permanent employee and the Defendant agreed to guarantee to the Plaintiff a 40-hour work week at the hourly rate of $6.25 per hour and provide full Blue Cross/Blue Shield medical insurance."

2. The plaintiff discontinued his prior employment on September 3, 1979; commenced his work for the defendant on September 10, 1979; and performed all work required of him.

3. On January 2, 1980 the President of the defendant informed the plaintiff that he was "laid off."

4. The plaintiff informed the President of the defendant on January 2, 1980 and numerous times thereafter that he was ready and willing to perform under the employment contract, but the defendant prevented him from doing so until the date of the filing of the complaint.

5. The plaintiff claims $9,958.00 to be due him consisting of $250.00 per week from January 2, 1980 until the date of the filing of the complaint (37 weeks), plus the cost to him of Blue Cross/Blue Shield medical insurance premiums.

On October 13, 1980 defendant filed preliminary objections in the nature of a demurrer on the grounds that the plaintiff failed to allege in his complaint that the plaintiff's employment by the defendant was for any specific period of time.

Briefs were submitted and arguments heard on November 6, 1980, and the matter is now ripe for disposition.

The only allegation concerning the terms of the contract of employment alleged by the plaintiff appears in paragraph 3:

"On August 27, 1979, the Plaintiff and the Defendant by its

President, Irvin Price, agreed to an oral contract of employment, by which the Plaintiff agreed to discontinue his then existing employment at John R. Oliver Co., Hagerstown, Maryland at the hourly rate of $6.25 per hour and to come to work for the Defendant at the Defendant's place of business at West Third Street and Cleveland Avenue, Waynesboro, Pennsylvania as a permanent employee and the Defendant agreed to guarantee to the Plaintiff a 40-hour work week at the hourly rate of $6.25 per hour and provide full Blue Cross/ Blue Shield medical insurance."

Counsel for the parties agreed that the basic rule of law in Pennsylvania is that in the absence of a specific restriction, either statutory or contractual, an "at will" contract of employment may be terminated at any time by either party to the contract for any reason or for no reason.

In *Cummings v. Kelling Nut Co.*, 368 Pa. 448, 451, 452 (1951), the Supreme Court held:

> "The general rule is that when a contract provides that one party shall render services to another, or shall act as an agent, or shall have exclusive sales rights within certain territory, but does not specify a definite time or prescribe conditions which shall determine the duration of the relation, the contract may be terminated by either party at will: *Coffin v. Landis*, 46 Pa. 426; *Weidman v. United Cigar Stores Company*, 223 Pa. 160, 72 A. 377; *Jones v. Pittsburgh Mercantile Co.*, 295 Pa. 219, 145 A. 80; *Slonaker v. P. G. Publishing Company*, 338 Pa. 292, 13 A. 2d 48; *Price v. Confair*, 366 Pa. 538, 79 A. 2d 224; *Lucacher v. Kerson*, 158 Pa. Superior Ct. 437, 45 A. 2d 245. The burden is on the plaintiff in such cases to overcome the presumption by showing facts and circumstances establishing some tenure of employment; *Jones v. Pittsburgh Mercantile Co.*, supra. The intention of the parties governs. One relying on the contract as providing for a reasonable length of time must establish something in the nature and circumstances of the undertaking which would create the inference that a definite or reasonable period of employment was actually contemplated by the parties."

In *Reuther v. Fowler & Williams, Inc.*, 225 Pa. Super 28, 31 (1978), the Superior Court held:

> "In general, there is no non-statutory cause of action for an employer's termination of an at-will employment relationship. *Geary v. United States Steel Corp.*, 456 Pa. 171, 319 A. 2d 174 (1974). However, our Supreme Court has indicated that where a clear mandate of public policy is violated by the

termination, the employer's right to discharge may be circumscribed:

> It may be granted that there are areas of an employee's life in which his employer has no legitimate interest. An intrusion into one of these areas by virtue of the employer's power of discharge might plausibly give rise to a cause of action, particularly where some recognized facet of public policy is threatened. The notion that substantive due process elevates an employer's privilege of hiring and discharging his employees to an absolute constitutional right has long since been discredited." (We note this was an action in trespass for wrongful discharge from employment.)

In *Lubrecht v. Laurel Stripping Co.*, 387 Pa. 393, 396 (1956), the Supreme Court held:

> "...Mr. Justice (now Chief Justric) Stern said, in speaking for this court in *Slonaker v. P. G. Publishing Company*, 338 Pa. 292, 296, 13 A. 2d 48 as follows: 'The general rule is that when a contract provides that one party shall render service to another, or shall act as his agent, or shall have exclusive sales rights within certain territory, but does not specify a definite time or prescribe conditions which shall determine the duration of the relation, the contract may be terminated by either party at will: *Coffin v. Landis*, 46 Pa. 426; *Trainer v. Laird*, 320 Pa. 414; *Press Publishing Co. v. Reading News Agency*, 44 Pa. Superior Ct. 428, 433; *Willcox & Gibbs Co. v. Ewing*, 141 U.S. 627. It is true that such a result does not follow in every instance, because it is the intention of the parties which is the ultimate guide, and, in order to ascertain that intention the court may take into consideration the surrounding circumstances, the situation of the parties, the objects they apparently have in view, and the nature of the subject-matter of the agreement.'
>
> "The burden was, of course, upon the plaintiff, who was asserting to the contrary, to overcome the presumption that the contract was terminable at will: *Jones v. Pittsburgh Mercantile Co.*, 295 Pa. 219, 221, 145 A. 80. This, he could do by providing the circumstances surrounding the execution of the contract, the situation of the parties, the objects they apparently had in view and the nature of the subject-matter of the agreement from which the jury could infer that the contractual relationship contemplated by the agreement was to endure for a reasonable time or for some particular period: *Slonaker v. P. G. Publishing Company*, supra; *Nolle v.*

Mutual Union Brewing Company, 264 Pa. 534, 541, 108 A. 23; and *Weidman v. United Cigar Stores Company*, 223 Pa. 160, 161, 72 A. 377. See also, Williston on Contracts (Revised Ed.), Vol. 4, Sec.1027A (3), p. 2852."

The defendant contends that the terms of the contract of employment as alleged by the plaintiff in paragraph 3, which must be taken as true for the purpose of the demurrer, nevertheless establishes nothing more than an at will employment contract. This being true and this being an action in assumpsit as distinguished from a trespass action for wrongful discharge; the employer acted within its rights in terminating the plaintiff's employment and it has no further liability to the plaintiff.

To the contrary, the plaintiff contends in the alternative that the contract he pleaded is not an at will contract because he was to be employed "as a permanent employee" or that the facts he has pleaded placed his claim within the exceptions to the general rule applicable to at will employment agreements. He argues that under the Rules of Civil Procedrure he is not permitted to plead evidence in his complaint, but that the evidence he will offer at trial will establish the facts necessary to place his case within the exceptions recognized in the case law of Pennsylvania.

Pa. R.C.P. 1019(a) states: "The material facts on which a cause of action or defense is based shall be stated in a concise and summary form." Therefore, the plaintiff is correct in his general argument that it is improper under the rules to plead evidence. However, his argument that he may not, therefore, plead the facts establishing an exception or exceptions to the general rule is erroneous for absent the pleading of such facts the general rule must apply to an at will employment agreement and will not overcome a demurrer. This being true the facts perceived by the plaintiff as establishing the exception or exceptions are necessarily "material facts" which under Rule 1019 must be pleaded to state a cause of action.

In the present posture of the pleadings the only facts known to the Court are that the plaintiff, a resident of the Waynesboro area, left his employment with a Hagerstown firm to work for the defendant in Waynesboro at the same hourly rate he had previously been receiving, plus Blue Cross/Blue Shield medical insurance on a 40-hour work week basis, which is the normal work week; and after working for the defendant for approximately four months was discharged without cause and while willing to continue to work. In the judgment of this Court those facts do not constitute an exception to the general rule. Plaintiff should understand that this decision is at this

the Prothonotary:

A. Each arbitrator who has signed the Award of Arbitrators or filed a minority report shall receive a fee of $50.00 for all cases involving two hours or less, plus $15.00 per one-half hour or part thereof over two hours of hearing time and less than six hours, plus $20.00 per one-half hour or part thereof over six hours of hearing time.

B. The Chairperson of the Board of Arbitrators shall receive additional compensation of $25.00 notwithstanding that a case be settled or discontinued.

C. The Chairperson shall certify as an appendix to the Award the respective times engaged in hearing of the case by each arbitrator with computation of the compensation, which certification shall constitute a voucher for payment of compensation to the Prothonotary who shall forthwith present the same to the county for payment.

D. In cases involving unusual complexity, the Court, on petition by members of the Board and for cause shown, may allow additional compensation.

E. Companion cases heard together shall count as one case for purposes of this Rule.

stage a purely procedural one having nothing to do with the substantive law applicable at the time of the trial of the case.

Webster's Third New International Dictionary Unabridged defines "permanent" as "continuing or enduring (as in the same state, status, place) without fundamental or marked change: not subject to flucuation or alteration: fixed or intended to be fixed." In Black's Law Dictionary Revised Fourth Edition "permanent employment" is defined as "provided for by contract, means only that employment is to continue indefinitely and until either party wishes to sever relation for some good reason. *Speegle v. Board of Fire Underwriters of Pacific*, Cal. App., 158 P. 2d 426, 429; *Alabama Mills v. Smith*, 237 Ala. 296, 186 So. 699, 701." It is evident from an examination of these definitions that the word "permanent" when applied to employment has a vastly different meaning than a lay interpretation would give it. In discussing a somewhat similar open-end employment agreement in *Slonaker v. P. G. Publishing Company*, 338 Pa. 292, the Supreme Court observed,

> "According to plaintiff's interpretation Foudray contractually obligated defendant company to vest in plaintiff, who was then 25 years of age, an exclusive agency as long as he cared to exercise it, - even for life is he so desired...To constitute a unilateral commitment of that magnitude there would be required language of far more precise and unmistakeable character." (p. 295, 296)

In the case at bar to adopt the plaintiff's argument that he and the defendant had agreed to his permanent employment would lead to equally unreasonable and unrealistic results. In the absence of a far more precise and formal agreement we are unwilling to believe that plaintiff intended to limit his hourly earning permanently to $6.25 or that defendant intended to hire plaintiff for life or until retirement. We, therefore, conclude that the word "permanent" as used in paragraph 3 does not in and of itself establish any term of employment agreed upon between the parties.

Counsel for the plaintiff indicated at the argument on this matter that if the Court concluded that the defendant's demurrer must be sustained, the plaintiff desired the opportunity to file an amended complaint. This request, of course, will be granted.

ORDER OF COURT

NOW, this 28th day of November, 1980, the defendant's

preliminary objection in the nature of a demurrer is sustained. The plaintiff is granted twenty (20) days from this date to file an amended complaint.

FICKES v. SIPES, C.P. Franklin County Branch, A.D. 1979-281, Action for Declaratory Judgment; KAUFFMAN v. SIPES, C.P. Franklin County Branch, A.D. 1979-282, Action for Declaratory Judgment

Declaratory Judgment - Auto Insurance Coverage

1. A car owner's insurance carrier does not owe coverage to the driver of the car where there is no connection between the car owner and the driver from which permission to use the car could be implied.

George F. Douglas, Jr., Esq., Attorney for Defendants

David C. Cleaver, Esq., Attorney for Plaintiffs

OPINION AND ORDER

EPPINGER, P.J., December 17, 1980:

Paul F. Sipes owned an automobile insured with State Farm Mutual Automobile Insurance Company. The liability of anyone driving the auto with the owner's permission was covered by the policy.

Sipes lived with his wife and family at Route 1, Fayetteville. In a separate garage building there was a sort of second floor apartment and, with Sipes' wife's permission, Mary Ann Weitry and Sherry Nicholson lived there. Sipes' son Mark had been dating Mary Ann. Early on the evening of November 25, 1977, Mark got his mother's permission to use the automobile. His father had told him not to let anyone else drive it.

That night Mark drove to a parking lot. Mary Ann and Sherry were along with him. He decided that he wanted to go off with some friends and, giving the keys to Mary Ann, told her to be back at such and such a time. Paul had let her drive some other times but never when he wasn't in the car.

First Mary Ann and Barbara drove around Chambersburg, then to St. Thomas. On their way back to Chambersburg they picked up William C. Kauffman. Mary Ann then announced

she was going to pick up Leonard Painter. She was dating Leonard without Mark's knowing it; neither Mark nor his father knew Leonard.

When Mary Ann got to the Hitching Post Inn where Leonard lived, Leonard was drunk. The evidence in the depositions was slightly conflicting, but, according to Mary Ann, Leonard insisted on driving, took the keys from her and started driving away, with Mary Ann protesting all the while that because it was not her car she couldn't let him drive. Painter said he was driving and told Mary Ann that she shouldn't because she was too drunk. He contended Mary Ann gave him the keys.

Leonard Painter had only driven a few blocks when, on Grant Street in Chambersburg at a speed of 70 miles per hour, he ran into a utility pole, seriously injuring the two plaintiffs who were in the rear seat. State Farm Mutual denies coverage and in this Petition for Declaratory Judgment asks us to confirm its position. We do.

In *Insurance Company of North America v. State Farm Mutual Insurance Company*, Pa. Super. , 403 A.2d 611 (1979), Feehery owned a vehicle insured with State Farm. He permitted his daughter Virginia to take the car to college for short periods. Virginia's college roommate was Brenda Sexton. Now and then Virginia let Brenda drive the car. In the summer the two girls roomed together at a resort. On one of the two occasions Virginia had the car there, she let Brenda drive without Feehery's permission. There as an accident. The court held State Farm did not owe coverage to Brenda Sexton because there was no connection between Feehery and Brenda from which permission to use the automobile could be implied. Brenda was obliged to seek coverage from I.N.A.

To the same effect is *Belas v. Melanovich*, 247 Pa. Super. 313, 372 A.2d 478 (1977), where an aunt who was in the hospital gave her nephew permission to drive her car for a social event provided he return home by midnight, as he had a junior operator's license. He loaned the car to one of his friends, requiring that it be returned to him by midnight. The friend had an accident. The court held the aunt's insurance carrier did not owe coverage. In *Belas* there is a thorough review of the law on this subject.

ORDER OF COURT

December 17, 1980, the Court finds and declares that