TURNER V. LETTERKENNY FEDERAL CREDIT UNION, C.P. Franklin County Branch, No. 1982 - 66

Summary Judgment - Defamation by Method of Discharge - Employee-at-Will - Discharge of Employee - Interference With Prospective Contract

1. In considering a motion for summary judgment, the Court must view the evidence in a light most favorable to the non-moving party.

2. A claim based on defamatory method of discharging plaintiff requires a communication by the defendant, no cause of action exists merely because defendant does not take affirmative action to quiet rumors concerning plaintiff's discharge.

3. The State has a policy interest in assuring that an employer does not act abusively in firing an employee, so as to interfere with the employee making a living.

4. An employer's failure to respond to rumors concerning an employee discharged does not create a cause of action of intentional interference with prospective contractual relations.

Frederic C. Antoun, Jr., Esquire, Counsel for Plaintiff

George F. Douglas, Jr., Esquire, Counsel for Defendants

OPINION AND ORDER

KELLER, J., October 14, 1983:

These proceedings were initiated on March 4, 1982 when plaintiff, Elton C. Turner, filed his complaint against the Letterkenny Federal Credit Union (hereinafter LFCU) and its Board of Directors. Defendants' Answer and New Matter were filed on May 11, 1982 and plaintiff followed with the filing of his Answer to New Matter on June 2, 1982. Defendants' Motion for Summary Judgment was filed on February 28, 1983. After discovery was completed by both sides and the appropriate affidavits and depositions were filed, argument was heard by this Court on June 27, 1983. The Motion for Summary Judgment is now ripe for disposition.

The principles to be applied in deciding whether to grant a motion for summary judgment are as set forth in *Yaindl v. Ingersoll-Rand Co.,* 281 Pa. Super. 560, 565, 422 A. 2d 611, 613 (1980):

> "Summary judgment is made available by Pa. R.C.P. 1035, 12 P.S. Appendix when the pleadings, depositions, answers to interrogatories, admissions on file and supporting affidavits considered together reveal no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. This severe disposition should only be granted in cases where the right is clear and free from doubt. To determine the absence of genuine issue of fact, the court must take the view of the evidence most favorable to the non-moving party, and any doubts must be resolved against the entry of the judgment. (Citations omitted). The moving party bears the burden of demonstrating clearly that there is no genuine issue of material fact. (Citations omitted)."

Considering these guidelines, the facts are purposes of ruling on the summary judgment motion are as follows:

The plaintiff, Elton C. Turner, began his term of employment at the Letterkenny Federal Credit Union on September 1, 1976, pursuant to an offer made by correspondence. The offer stated that a contract ". . . is open and can be discussed later." Plaintiff alleges that he entered into an oral agreement with the Board President that at the end of a year, on or by September 1, 1977, a multiple year contract and salary increases would be discussed. On December 8, 1977, plaintiff forwarded a proposed three year written contract to LFCU which was not acceptable. A counter-proposal was submitted by the Board which was not acceptable to the plaintiff. The plaintiff admits in his deposition that the Board told him they did not want a contract in June of 1978.

In August of 1978, plaintiff was granted a salary increase retroactive to January 1, 1978, according to the deposition of plaintiff himself which contradicts the allegation made in the complaint that the increase was retroactive to September 1, 1977. Again during 1979 and 1980, the plaintiff was given salary increases retroactive to January 1. On April 10, 1981, the Board gave the plaintiff their written "Managers Performance Appraisal." The appraisal rated 17 specific areas as follows; two were rated very disappointing, two were rated below desired levels, four were rated average, eight were rated above average and one was rated outstanding.

Plaintiff went on vacation after Christmas, 1981, and returned to work the morning of January 4, 1982, around 7:15 a.m. He was met by the President of the Board who handed plaintiff a letter stating that he was terminated effective that date at 7:30 a.m. The President of the Board told plaintiff, "After you read it (the letter), you can turn in your badge, your keys, clean out your desk and leave the credit union." The termination letter did not state

any cause or reason for the discharge. When terminating the plaintiff, the Board President gave two possible reasons for Mr. Turner's termination: (1) accounting problems and/or (2) a deteriorating Manager/Board relationship, Defendants in their pleadings have advanced an additional reason for the termination which wsa not made known to the plaintiff at the time of discharge - personnel relation problems.

According to plaintiff's complaint, while the Board President was presenting the termination letter, another Board member gathered all of the employees into the lounge area, informed them that effective immediately plaintiff was no longer the Manager, and said, "That's all I can say." Plaintiff makes no allegation that the Credit Union, or any of its Board members, published the dismissal.

Plaintiff's Complaint consists of five Counts, the basis of each having been discussed and included in the Court's Pre-Trial Conference Memorandum filed on January 25, 1983. Each count will be addressed individually in the disposition of defendant's Motion for Summary Judgment lodged against all five counts.

Plaintiff's Count I, In Assumpsit, is predicated on the theory that the defendants terminated an oral year to year employment contract with eight months of the contract year remaining. While It may have been Mr. Turner's understanding when he was hired that he had a one-year contract running from September 1, 1976 to September 1, 1977, it is quite clear from all the documents which the Court may consider in disposing of a motion for summary judgment, according to Pa. R.C.P. 1035(b), that the plaintiff was well aware of the fact that the Board did not want a contract as early as June of 1978. A proposed contract was submitted by Mr. Turner to the Board and unequivocally rejected as was the counterproposal drafted by the Board. There was no "meeting of the minds" concerning any type of employment contract, be it oral or written. The facts reveal that Mr. Turner was no more than an at-will employee. Therefore, defendant's motion for summary judgment as to Count I of plaintiff's Complaint is granted.

Plaintiff's Count II, In Assumpsit, is grounded on the theory that the implied conditions of plaintiff's employment required that he be given notice of grounds for termination and an opportunity to respond before termination became effective. The only document of record that supports this theory is the affidavit of Val J. McGrogan, the Assistant Manager at the Credit

Union at the time of plaintiff's termination. His statements on this subject consist of the following:

> "While I was employed by Letterkenny Federal Credit Union, I was always under the impression that if the Credit Union wanted to fire somebody you have to have a case against them. I really don't know of anybody from the Letterkenny Credit Union who was fired without just cause."
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> . . .
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> "There was someone at the Credit Union who was involved in mishandling of funds some time ago. Before firing that person, the Board met with him and gave him a chance to defend himself. This is the procedure I would expect. I don't know why the Board didn't give Al the same opportunity."

These comments are hardly persuasive evidence of an implied condition of employment for all employees at Letterkenny Federal Credit Union. A single instance of permitting an employee to defend himself hardly qualifies as company policy requiring notice of grounds for termination and an opportunity for the employee to respond before the termination becomes effective. The expectations of an employee do not in and of themselves create a company policy. Therefore, defendant's motion for summary judgment as to Count II of plaintiff's Complaint is granted.

Count III of plaintiff's Complaint is based on the wrongful termination by reason of the intentionally damaging and defamatory method selected by the defendants for discharging plaintiff. A recent Superior Court case, *Spain v. Vicente,* Pa. Super. , 461 A. 2d 833 (1983), discussed the averments needed in a complaint to properly set forth an action in defamation. There the court affirmed the lower court's order granting a motion for summary judgment since the requisite particularity regarding the alleged defamatory statements was not only missing from the complaint but also absent from the plaintiff's deposition.

Plaintiff in the case at bar is in an even worse predicament than the plaintiff in *Spain v. Vicente,* supra. Here, Mr. Turner has failed to allege any type of publication of defamatory remarks by the defendants. On the contrary, plaintiff bases his claim on the fact that defendants chose to remain officially silent and refused to take affirmative action to quiet rumors. No case law is cited by plaintiff in support of this novel claim, and we have found none.

Since the starting point of every defamation action is an

alleged communication and in this case there was no communication whosoever concerning the reasons for plaintiff's termination, we must also grant defendant's motion for summary judgment as to Count III of plaintiff's complaint.

Count IV of plaintiff's complaint is based on the violation of public policy against discharging an employee in an abusive manner so as to harm or damage his professional reputation. This count is based on case law that has developed in the past decade and began with *Geary v. United States Steel Corporation,* 456 Pa. 171, 319 A. 2d 174 (1974). The *Geary* court held that "where the complaint itself discloses a plausible and legitimate reason for terminating an at-will employment relationship and no clear mandate of public policy is violated thereby, an employee at will has no right of action against his employer for wrongful discharge." *Geary,* supra, at 184-185 and 180.

One of the most recent Superior Court cases on this subject is *Yaindl v. Ingersoll-Rand Co.,* supra. There the court discussed the development of a cause of action in Pennsylvania, based on the *Geary* case, which provides a remedy for an employee-at-will when he is discharged in a manner that threatens public policy. This cause of action was further expounded upon by the court in *Yaindl* as follows:

> "The basis of this limited, nonstatutory cause of action is an appreciation of the fact that the employer's interest in running his business efficiently, profitably, and as he sees fit is not absolute; important as it is, it exists in the context of, and must sometimes yield to, other interests, including the interest of the employee in making a living and the interest of the public in seeing to it that the employer does not act abusively and a proper balance between the employer's and the employee's interests is preserved."

Yaindl, supra, at 571-572 and 617.

Viewing the evidence in the light most favorable to the plaintiff as we are required to do in this summary judgment proceeding, we are not able to conclude that there is no genuine issue of fact as to whether the defendants' manner of discharging plaintiff was abusive and thus violative of public policy. This is a question that must be resolved by a fact-finder and thus, summary judgment cannot be granted. Therefore, defendants' Motion for Summary Judgment as to Count IV of plaintiff's Complaint is denied.

The final count of plaintiff's Complaint, Count V, is based on the alleged intentional interference of defendants with plaintiff's prospective contractual relationship. Similar to Count III, this claim once again attempts to hold the defendants liable for their failure to act. Plaintiff contends that the defendants intentionally interfered with plaintiff's prospective employment by not responding to rumors concerning the reasons behind plaintiff's discharge. Again, no case law is cited for this novel proposition that defendants are under an affirmative duty to dispel rumors.

The court in *Yaindl* discussed the tort of intentional interference with a prospective contractual relation and said that it arises:

> ". . . (w)hen a person intentionally and improperly interferes with another's prospective contractual relation . . . whether the interference consists of
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> (a) inducing or otherwise causing a third person not to enter into or continue the prospective relation or
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> (b) preventing the other from acquiring or continuing the prospective relation. Restatement (Second) of Torts Sec. 766B (1979)."

Yaindl v. Ingersoll-Rand Co., 281 Pa. Super. 560 at 581, 422 A. 2d 611 at 621-622 (1980). The Superior Court reversed the dismissal by the lower court of plaintiff's count concerning defendant's intentional interference with a prospective contractual relation since it found that defendants had intentionally misrepresented plaintiff's employment status; they told plaintiff's prospective employer that plaintiff was still employed by them although they knew that plaintiff had been discharged.

That case certainly differs from the one presently before this Court. Plaintiff states in his deposition that a prospective employer became less interested in him due to the rumors surrounding his discharge at Letterkenny Federal Credit Union. However, nowhere is it even alleged that the defendants took any action whatsoever to discredit plaintiff in the eyes of potential employers.

Plaintiff also alleges in support of his claim for intentional interference with a prospective contractual relation that defendants attempted to discredit him in the eyes of area colleagues and by employers, contacting the Pennsylvania Credit Union League and requesting the plaintiff not be allowed to speak at the Cumberland Valley Chapter meeting. The affidavits and depositions filed by the defense indicate to the contrary, and no persuasive evidence was presented by plaintiff to support these allegations in

his complaint. We fail to see how plaintiff can support his claim against defendants for intentional interference with a prospective contractual relation. Therefore, defendants' Motion for Summary Judgment as to Count V of plaintiff's Complaint is also granted.

ORDER OF COURT

NOW, this 14th day of October, 1983, Motion for Summary Judgment on Count IV is denied. All other motions are granted.

Exceptions are granted all parties.

ZERVOS V. FRANKLIN COUNTY BOARD OF ELECTION, C.P. Franklin County Branch, A.D. 1983 No. 284

Mandamus - Write-in Candidate - Failure to File Loyalty Oath - Notice to Plead on Complaint

1. For the name of a write-in candidate in a primary election to appear on the ballot he must file a loyalty oath 85 days prior to the general election.

2. While the Election Code may raise an ambiguity when it excuses school directors from certain acts, the Loyalty Act, 65 P.S. Sec. 224 is a separate law and will prevail.

3. The Election Board has no duty to seek out and determine whether a write-in candidate wants to be on the ballot.

4. Pa. R.C.P. 1098 gives the Court power to enter judgment after a complaint is filed without proper notice to all parties when the exigency of the case requires it.

Richard Lewis Bushman, Esquire, Attorney for the Plaintiff

Thomas H. Humelsine, Esquire, Attorney for the Defendant

OPINION

EPPINGER, P.J., November 2, 1983:

Nicholas Zervos received enough write-in votes in the Democratic primary May 17, 1983, to be a candidate for school director in the Fannett-Metal School District. The district is composed of two Franklin County Townships and one Perry County Township.

On October 26, 1983, Mr. Zervos filed an action in Mandamus to compel the Franklin County Election Board (board) to print his name on the ballot as a candidate for school director at the municipal election to be held November 8, 1983. The board declined to place his name on the ballot saying he had failed to file the loyalty oath under the act requiring write-in candidates for public office to file a loyalty oath within sixty days after the Primary Election in which he is nominated, Pennsylvania Loyalty Act, 65 P.S. Sec. 224. Under the Election Code, 25 P.S. Sec. 2938.1, every person nominated other than a candidate for school director, among others, who has not paid the filing fee, nor filed the loyalty oath, shall pay the amount of such fee and file such oath with the County Board of Elections at least eighty-five days previous to the day of the General Election, which would have been August 15, 1983.

Zervos knew that he was nominated to the office, but didn't file his loyalty oath until October 20, 1983. He learned that he was not to be included among the candidates for school director sometime before that. On the 20th he appeared at the board's office with a written request that his name be placed on the ballot. The board met the next day and denied the request. He filed this action in Mandamus asking us to compel the election board to place his name on the Democratic ballot in the two districts in Franklin County that are within the school district.[1] We set a hearing for October 28 which was the first convenient time.

At the hearing Zervos appeared with his lawyer. The three members of the election board appeared with the Chief Clerk and the County Solicitor. The solicitor's first objection was that the matter was not properly before the court. Pa. R.C.P. 1091 provides that actions in mandamus must conform to the rules of assumpsit. The complaint filed did not contain a notice to plead. Under Pa. R.C.P. 1026 no pleading need be filed unless the

[1]Zervos has taken no similar action to compel the placement of his name on the ballot in the Perry County District.