

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-003234-MR

DAVID WADLEY, M.D.

APPELLANT

V. APPEAL FROM McCRACKEN CIRCUIT COURT
HONORABLE JEFFREY HINES, JUDGE
ACTION NO. 97-CI-00893

PADUCAH AREA PHYSICIANS, INC.

APPELLEE

OPINION

VACATING AND REMANDING

** ** * * * * *

BEFORE: HUDDLESTON, KNOX and SCHRODER, Judges.

HUDDLESTON, Judge. This appeal is from a judgment dismissing, under Ky. R. Civ. Proc. (CR) 12.02(f), Dr. David Wadley's complaint against Paducah Area Physicians, Inc. (Physicians) for breach of contract and misallocation of funds.

For the purpose of the reviewing the circuit court's decision to grant Physicians' motion to dismiss, the following facts are relevant. On November 4, 1994, Wadley entered into an employment contract with Physicians which became effective on

December 30, 1994. Paragraph 4.01 of the contract provides that its term shall be two years from the date Wadley began his employment unless terminated upon the occurrence of certain listed events. Thus, the contract was to expire on December 30, 1996.

The evidence is in dispute as to whether Wayne Shelton, Chief Executive Officer of Physicians, made statements in December 1996 to Wadley regarding the renewal of his contract. Wadley alleges that Shelton gave assurances that the contract was to be renewed and that he relied on those statements in continuing his employment with Physicians. Taking a contrary position, Physicians contends that Shelton informed Wadley that his contract would not be renewed.¹ Also apparently in dispute is the date and circumstances surrounding Wadley's separation from Physicians. Wadley asserts that his employment was terminated in violation of the terms of the employment contract on August 11, 1997. Conversely, Physicians maintains that Wadley voluntarily left its employment on November 14, 1997.

Paragraph 2.01 of the employment contract provides the method used to calculate Wadley's compensation. Wadley alleges that Physicians miscalculated his compensation from 1995 to 1996.² Wadley contends that he did not participate in the allocation of

¹ Physicians has not filed an answer or other responsive pleading, but did file a memorandum of law setting forth its position. The only "facts" of record are those properly pled in Wadley's complaint.

² Wadley alleges that he was entitled to a bonus equal to ten percent of the net profits (gross revenue minus expenses) of the Department of Radiology and that Physicians allocated expenses to the Department of Radiology above and beyond those that were just, fair and equitable.

expenses to the Department of Radiology during which certain expenses were calculated in excess of those authorized under the contract thereby reducing his bonus. Physicians insists that Wadley agreed to the amounts and accepted the payments.

Wadley sued Physicians alleging breach of contract and misallocation of funds. Physicians' only response thus far has been its CR 12.02(f) motion to dismiss the complaint for failure to state a claim upon which relief can be granted. Physicians argues that Wadley's employment contract expired and he had no right to enforce the terms of the contract beyond December 30, 1996. It also says that because Wadley accepted his compensation he cannot now claim any additional sum. The trial court dismissed the complaint in a one-sentence order that does not state the grounds for its action nor cite the rule under which it acted.

Wadley attached the employment contract to his complaint as an exhibit. This inclusion of matters outside the pleadings transformed Physicians' motion to dismiss into a motion for summary judgment. CR 12.03;³ McCray v. City of Lake Louisville, Ky., 332 S.W.2d 837, 840 (1960); Craft v. Simmons, Ky. App., 777 S.W.2d 618, 620 (1989). On appeal, we must determine whether the pleadings and supportive document presented a genuine issue of material fact and,

³ CR 12.03 provides that "If . . . matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56"

if not, whether Physicians was "entitled to a judgment as a matter of law." CR 56.03.⁴

Physicians' first argument is that Wadley was an employee-at-will since the employment contract expired. In support of this argument, Physicians, Inc. relies on Meyers v. Brown-Foreman Distillery Co., 289 Ky. 185, 158 S.W.2d 407 (1942), in which Kentucky's highest court held that an employee who knew that his employment contract had terminated and knew of the terms of a new contract (which had been agreed upon, but not actually signed and received by the employee) was bound by the terms of the new contract. Physicians contends that Wadley was bound by the new contract term, thus becoming an employee-at-will following the written contract's expiration. This argument is confusing and without merit.

We believe that Stewart Dry Goods Co. v. Hutchison, 177 Ky. 757, 198 S.W. 17 (1917), is on point. There the Court said that:

[W]here one enters the service of another for a definite period, and continues in the employment after the expiration of that period without a new contract, it is presumed that the old contract continues; and this

⁴ Summary judgment is to be granted cautiously, and as long as there is an issue of material fact summary judgment is not proper even if the trial judge believes the party opposing the motion will not prevail at trial. Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476, 480 (1991). The trial judge is to view the record in a light favorable to the opposing party and must resolve all doubts in favor of the opposing party. Id. In deciding whether summary judgment is proper, the trial court may not resolve issues of fact. Id.

presumption must prevail, unless overcome by a new agreement or facts sufficient to show that a different hiring was intended by the parties.

Id. at 17. See also Hamilton Carhartt Overall Co. v. Short, 303 Ky. 423, 197 S.W.2d 792 (1946); and see generally 17A Am. Jur 2d. Contracts §605 (1991). Wadley alleges in his complaint that "both Wadley and Physicians continued to operate under the terms of the written contract, thus extending the terms of said contract." There are clearly genuine issues of material fact on this issue which preclude summary judgment.

The trial court also dismissed Wadley's claim based on Physicians' alleged misallocation of funds. Physicians argues that Wadley's acceptance of his bonus payment estopped him from making a claim that the bonus was miscalculated. In support of its argument Physicians cites Meyers, supra. In Meyers, a whiskey salesman accepted commission payments in full settlement of amounts due him under a written contract. After accepting the payments, the salesman brought an action against his employer arguing that the commission should have been calculated out of gross sales and not on another basis. The Court held that the salesman's participation in calculating his commission based upon the other basis and his satisfaction with those results during his employment estopped him from later arguing for recalculation on a gross sale basis.

In the present case, Wadley contends that he did not participate in the calculation of his bonus payments. It was not until his termination, Wadley says, that he knew of the actual

expenses allocated to the Department of Radiology. These allegations raise genuine issues of material fact which preclude summary judgment.

For the foregoing reasons, the order dismissing Wadley's complaint is vacated and this case is remanded for further proceedings.

ALL CONCUR.

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