STATE OF MICHIGAN

COURT OF APPEALS

HEALTH CALL OF DETROIT, d/b/a JADELLS, INC.,

Plaintiff-Appellant,

v

ATRIUM HOME & HEALTH CARE SERVICES, INC.; KATRINA JOHNSON, LPN; DWIGHT ROBINSON, LPN, and DAMITA BORNER, LPN,

Defendants-Appellees.

FOR PUBLICATION
September 8, 2005
9:00 a.m.

No. 244633
Wayne Circuit Court
LC No. 01-135282

Official Reported Version

Before: Whitbeck, C.J., and Sawyer, Murphy, Neff, Jansen, Fitzgerald, and Markey, JJ.

SAWYER, J. (*concurring in part and dissenting in part*).

I concur with the result and reasoning contained in Judge Murphy's opinion, especially its conclusion:

> We conclude that a blanket rule limiting recovery to nominal damages as a matter of law in all actions arising out of or related to the termination of at-will contracts is not legally sound. There may exist factual scenarios in which there is a tangible basis on which future damages may be assessed that is not overly speculative despite the at-will nature of the underlying contract. [*Ante* at ___.]

But I write separately to express my view that the factual showing necessary to establish that damages are tangible rather than speculative in an at-will contract case is a high burden to meet. Quite frankly, I am skeptical whether this, or any other, plaintiff can meet that burden. It would, I think, be an exceptional case in which the plaintiff will be able to survive summary disposition and receive a jury verdict that does award more than nominal damages. But that said, I join with the majority in concluding that it is inappropriate to preclude plaintiffs as a matter of law from trying.

Therefore, to the extent that the trial court followed the lead of *Environair, Inc v Steelcase, Inc*[1] and granted summary disposition solely because this case involves an at-will contract, I agree that the trial court erred in so doing. I join with the majority in overruling *Environair* to the extent that it holds that, as a matter of law, damages in at-will contract cases are always speculative and, therefore, only nominal damages may be recovered in every case.

I do not, however, join with the majority in its conclusion that plaintiff in the case at bar has necessarily made a sufficient showing to survive summary disposition. I would merely remand to the trial court to reconsider summary disposition, but this time without the view that *Environair* creates an absolute rule barring more than nominal damages in such cases. The trial court in this, and every other such case, must assess the merits of each individual case to determine if the plaintiff in that case has made a sufficiently tangible showing of damages to warrant allowing the jury to consider an award of more than nominal damages. But I would allow the trial court to make the determination in the first instance.

/s/ David H. Sawyer

[1] 190 Mich App 289; 475 NW2d 366 (1991).