

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES E. TRUTHAN and JOYCE TRUTHAN,

Plaintiffs-Appellants,

v

BUTTERWORTH HEALTH CORPORATION,
d/b/a BUTTERWORTH MED CENTERS,

Defendant-Appellee.

UNPUBLISHED
December 17, 1999

No. 211803
Kent Circuit Court
LC No. 97-001270 NO

CHARLES E. TRUTHAN,

Plaintiff-Appellant,

v

PATIENT CARE SPECIALISTS and
BUTTERWORTH HOSPITAL,

Defendants-Appellees.

No. 212507
Kent Circuit Court
LC No. 97-001271 CK

Before: Murphy, P.J., and Hood and Neff, JJ.

PER CURIAM.

Plaintiff Charles E. Truthan filed two separate cases in the Kent Circuit Court, which were consolidated for all pretrial purposes. By separate orders dated April 29, 1998, the circuit court granted summary disposition in both cases. The two cases were consolidated on appeal. We affirm the circuit court's orders.

In Docket No. 211803, lower court no. 97 01270, plaintiff filed a complaint against Butterworth Hospital asserting a premises liability claim regarding a lower back injury he sustained while at work. By stipulation and order, defendant Butterworth Health Corporation ("defendant

corporation”) substituted as a defendant for Butterworth Hospital because defendant corporation owned the facility in which plaintiff was injured. The circuit court granted summary disposition to defendant corporation, ruling that it was plaintiff’s employer for purposes of the worker’s compensation exclusive remedy provision. Plaintiff appeals from that order. In Docket No. 212507, lower court no. 97 01271, plaintiff filed a three count complaint against defendants Patient Care Specialists (“PCS”) and Butterworth Hospital (“defendant hospital”). Plaintiff asserted breach of contract and handicap discrimination claims against defendant PCS and a tortious interference with a business relationship claim against defendant hospital. The circuit court granted summary disposition to defendant PCS and defendant hospital on all three counts. Plaintiff appeals the dismissal of the breach of contract and tortious interference claims; the handicap discrimination claim is not before us on appeal.

We first address Docket No. 211803, in which plaintiff contends that the trial court erred in ruling that defendant corporation was plaintiff’s employer for purposes of the worker’s compensation exclusive remedy provision.

The Worker’s Disability Compensation Act contains an exclusive remedy provision that prevents an employee from suing his employer for personal injuries sustained during the course of employment. The statute provides: “The right to the recovery of benefits as provided in this act shall be the employee’s exclusive remedy against the employer for a personal injury or occupational disease. The only exception to the exclusive remedy is an intentional tort.” MCL 418.131; MSA 17.237(131). Because the act does not specifically define the term “employer,” the courts have developed the “economic realities test” to determine when a defendant should be deemed a plaintiff’s employer. Under that test, numerous factors are considered, including: (1) control of a worker’s duties; (2) payment of wages; (3) ability to hire and fire; (4) maintenance of discipline; and (5) common employment objective. *Kidder v Miller-Davis Co*, 455 Mich 25, 42; 564 NW2d 872 (1997). The totality of the circumstances are considered, and no one factor is controlling. *Id.* When the evidence concerning the defendant's status is susceptible of but one inference, the question is one of law for the court and not one of fact for the jury. *Nichol v Billot*, 406 Mich 284, 302; 279 NW2d 761 (1979), quoting *Flick v Crouch*, 434 P2d 256 (Okla, 1967).

Contrary to plaintiff’s contention that defendant PCS was the only party that could rightfully be considered his employer, we agree with the circuit court's conclusion that analysis of the factors of the economic realities test supports a finding that defendant corporation was plaintiff’s co-employer. First, although plaintiff was directly controlled only by defendant PCS, he was assigned to work at particular locations as needed by defendant Butterworth Hospital's varying daily requirements. When assigned to a Butterworth location, plaintiff was paid by defendant PCS, which was in turn compensated by defendant corporation on a dollar-for-dollar basis. Moreover, though apparently unable to directly hire or fire plaintiff, defendant corporation could indirectly affect plaintiff’s employment status and discipline by requesting that he not be assigned to particular facilities. Finally, there is no question that defendant PCS and defendant corporation had the common objective of staffing medical facilities and providing appropriate care.

Though not relied on by the trial court, one additional fact supports our conclusion that the principles of the worker's compensation statutory scheme are furthered by holding defendant

corporation to be plaintiff's employer for the purposes of the exclusive remedy provision. The evidence indicated that at the time of plaintiff's injury, defendant PCS was a wholly owned subsidiary of defendant corporation. Pursuant to that status, defendant PCS participated in defendant corporation's self-insured worker's compensation program. Thus, defendant corporation was ultimately responsible for paying plaintiff's worker's compensation benefits. Considering the totality of the circumstances, we hold that defendant corporation was plaintiff's co-employer and we affirm the circuit court's grant of summary disposition on plaintiff's premises liability claim.

Next addressing Docket No. 212507, plaintiff first contends that the circuit court erred in granting summary disposition on his breach of contract claim. We disagree. The circuit court first ruled that plaintiff's allegation that defendant PCS had discharged him in retaliation for his filing a worker's disability compensation claim was improperly pleaded in contract. The court indicated that such a claim appropriately sounded in tort under MCL 418.301(11); MSA 17.237(301)(11). The court then noted that it would have granted plaintiff leave to amend his complaint under MCR 2.116(I)(5), but that to do so would serve no purpose because as a matter of law plaintiff could not prevail on a retaliation claim. The circuit court held that plaintiff "probably meets the burden of establishing a prima facie case" of retaliatory discharge, but that PCS had responded by articulating a legitimate reason for terminating plaintiff. Because plaintiff failed to meet his burden of establishing that defendant's reasons were mere pretext, the circuit court granted summary disposition pursuant to MCR 2.116(C)(8) and 2.116(C)(10).

Initially, we agree that plaintiff's claim for wrongful discharge in retaliation for filing a worker's compensation claim sounds in tort, not in contract; thus, plaintiff's claim was improperly pleaded as a breach of contract claim. *Dunbar v Dep't of Mental Health*, 197 Mich App 1, 10; 495 NW2d 152 (1992). We also agree that as a matter of law, plaintiff was unable to prevail on his claim for retaliatory discharge in response to the filing of a worker's compensation claim.

MCL 418.301(11); MSA 17.237(131)(11) provides:

A person shall not discharge an employee or in any manner discriminate against an employee because the employee filed a complaint or instituted or caused to be instituted a proceeding under this act or because of the exercise by the employee on behalf of himself or herself or others of a right afforded by this act.

A plaintiff who brings a claim for retaliatory discharge under the Worker's Disability Compensation Act must prove that the filing of the worker's compensation claim was a significant factor in defendant's decision to discharge the plaintiff. *Polk v Yellow Freight System, Inc.*, 801 F2d 190, 199 (CA 6, 1986). Whether filing a worker's compensation claim was a significant factor "requires a showing of more than a 'causal link.' A factor can be a 'cause' without being 'significant.' Only the latter is sufficient to show retaliatory discharge." *Id.* Furthermore, where an employer articulates a legitimate reason for the employee's discharge, the plaintiff is required to demonstrate that the employer's reason is a mere pretext for retaliation. *Taylor v General Motors Corp.*, 826 F2d 452, 456 (CA 6, 1987).

In response to plaintiff's retaliatory discharge claim, defendant PCS articulated legitimate reasons for its decision to terminate plaintiff. The employment contract allowed defendant PCS to

terminate plaintiff's employment upon ninety days' notice, or terminate his employment without notice in the event of his permanent disability. Defendant PCS provided plaintiff with ninety days' notice of his discharge, explaining that PCS was reducing the number of its full-time physicians, for business reasons. Defendant PCS argued that it discharged plaintiff as part of a reduction in force due to financial pressures, and also argued that it discharged plaintiff because he was unable to work full-time. Furthermore, plaintiff testified that he knew of at least one other doctor who was fired at the same time and that no one told him he was being fired because he was receiving worker's compensation benefits. Plaintiff testified that the only basis for his claim was that he was fired after filing for worker's compensation benefits.

Because plaintiff merely relied on his own subjective beliefs to support this retaliatory discharge claim, and because he failed to rebut the legitimate reasons presented by defendant PCS for its decision to discharge him, we affirm the circuit court's order granting summary disposition in favor of defendant PCS.

Plaintiff lastly contends that the circuit court erroneously granted defendant hospital's motion for summary disposition on his tortious interference claim. Again, we disagree.

The circuit court granted defendant hospital's motion under MCR 2.116(C)(8) and 2.116(C)(10), holding that plaintiff had failed to present any evidence that defendant hospital had acted through its employees to contact or prevail upon PCS to fire plaintiff. In order to set forth a prima facie tortious interference claim, a plaintiff must prove the following: (1) the existence of a valid business relationship or expectancy; (2) knowledge of the relationship or expectancy on the part of the interferer; (3) an intentional interference; (4) inducing or causing a breach of the relationship or expectancy; and (5) resultant damage to the party whose relationship has been disrupted. *Lakeshore Community Hospital, Inc v Perry*, 212 Mich App 396, 401; 538 NW2d 24 (1995). In addition, a plaintiff is required to demonstrate that a defendant engaged in a wrongful act or a lawful act done with malice. As this Court stated in *Feldman v Green*, 138 Mich App 360, 369-370; 360 NW2d 881 (1984):

We hold, consistently with prior rulings by the Supreme Court of this state, that one who alleges tortious interference with a contractual or business relationship must allege the intentional doing of a per se wrongful act or the intentional doing of a lawful act with malice and unjustified in law for the purpose of invading plaintiff's contractual rights or business relationship. Under the latter instance, plaintiff necessarily must demonstrate, with specificity, affirmative acts by the interferer which corroborate the unlawful purpose of the interference.

Plaintiff based this final claim on bald, unsupported allegations that defendant hospital influenced defendant PCS to terminate plaintiff's favored work assignments, to discontinue plaintiff's supplemental benefits payments, and to ultimately discharge plaintiff following his indication of an intent to file a premises liability suit. As the circuit court stated, however:

[Plaintiff] points to no evidence that I can see that Butterworth Hospital acted, acting through its employees, contacted and prevailed upon the employees of PCS to

terminate his employment. And he is basically asking that we infer it on circumstances.
I think there would have to be some evidence to prove it.

Because plaintiff failed to present documentary evidence establishing an issue of material fact as to a wrongful act or a lawful act committed by defendant hospital with malice and without justification, which caused defendant PCS to discharge plaintiff, we hold that the circuit court properly granted summary disposition in favor of defendant hospital on plaintiff's tortious interference claim.

Affirmed.

/s/ William B. Murphy

/s/ Harold Hood

/s/ Janet T. Neff