STATE OF MICHIGAN

COURT OF APPEALS

DR. JACK H. KAUFMAN,

Plaintiff-Appellant,

v

DETROIT-MACOMB HOSPITAL CORPORATION and LUIS CAMERO,

Defendants-Appellees,

and

SHYAM MISHRA,

Defendant.

UNPUBLISHED
February 8, 2002

No. 221873
Macomb Circuit Court
LC No. 98-003910-NO

Before: Owens, P.J., and Holbrook, Jr., and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendants. We affirm.

On April 1, 1998, plaintiff, a physician with his own private practice, began working as a physician-reviewer under a thirty-day contract for defendant Detroit-Macomb Hospital Corporation (DMHC). The contract specified that plaintiff was an independent contractor. Plaintiff worked six hours per week for DMHC. Plaintiff was informed that if his performance was satisfactory, he could expect at least a one-year contract from DMHC.

After plaintiff began working for DMHC, members of the hospital staff expressed concern that plaintiff had testified on behalf of the plaintiffs in medical malpractice cases. One of the individuals expressing concern was defendant Luis Camero, who complained to Dr. Seymour Gordan, the hospital Chief of Staff, who in turn passed on the concerns to Cynthia Nicholas, the hospital's manager of quality management. There were also some complaints that plaintiff was recommending the premature discharge of patients. Plaintiff alleges that he was unaware of any complaints about his work performance, but was informed about the physicians' concerns about his legal testimony.

Plaintiff remained a physician reviewer for DMHC past April 30, 1998, when his probationary contract expired. On May 12, 1998, Nicolas requested that plaintiff submit a list of his "Plaintiff and Defendant activities" by May 20, 1998, in order to "facilitate further contract discussions." Plaintiff replied in writing, explaining that he has reviewed medical negligence cases for law firms for fifteen years. He did not provide a list of the work he did for medical malpractice plaintiffs versus the work he did for defendants as Nicholas wanted. Plaintiff was later notified that his services were no longer needed and that his contract would not be renewed.

On July 17, 1998, plaintiff filed suit against defendants, alleging that he was terminated in retaliation for testifying in medical malpractice cases contrary to MCL 333.20176a, that the hospital breached its employment agreement, and that Camero's complaints constituted tortious interference with plaintiff's contract with the hospital. On July 1, 1999, defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(4), (8) and (10).[1] Defendants argued that the trial court lacked subject matter jurisdiction over plaintiff's claims, that plaintiff failed to assert proper claims of tortious interference and wrongful termination in violation of public policy, and that there was no genuine issue of material fact. The trial court granted summary disposition for defendants.

Plaintiff first argues that the trial court had subject matter jurisdiction to hear his claims against defendants. Based on the trial court's statements during the hearing on defendants' motion for summary disposition, it appears that the trial court implicitly concluded that it had jurisdiction over plaintiff's claims. Accordingly, plaintiff was not aggrieved by the trial court's action. In any event, we agree with plaintiff that the trial court did have jurisdiction.

Plaintiff next contends that the trial court erred when it dismissed his claims of wrongful termination and tortious interference. We disagree. Although the motion was premised on MCR 2.116(C)(4), (8) and (10), because the trial court did not indicate on which grounds it granted summary disposition, and because the court examined evidence outside the pleadings when rendering its decision, the issue will be reviewed under the standard of review applicable to (C)(10) motions. *Kubisz v Cadillac Gage Textron, Inc*, 236 Mich App 629, 633 n 4; 601 NW2d 160 (1999). This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

> A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to damages as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).]

When plaintiff was terminated, his contract with DMHC had expired. Accordingly, plaintiff was then an at-will employee. An at-will employee can be discharged "at any time for

---

[1] The trial court had denied an earlier motion for summary disposition without prejudice.

any, or no, reason." *Edelberg v Leco Corp*, 236 Mich App 177, 179; 599 NW2d 785 (1999). However, an at-will employee may have an action for wrongful discharge if the discharge was contrary to public policy. *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich 692, 694-696; 316 NW2d 710 (1982).

> The three public policy exceptions to the at-will doctrine apply when (1) the employee is discharged in violation of an explicit legislative statement prohibiting discharge of employees who act in accordance with a statutory right or duty, (2) the employee is discharged for the failure or refusal to violate the law in the course of employment, and (3) the employee is discharged for exercising a right conferred by a well-established legislative enactment. [*Edelberg*, *supra* at 180.]

Plaintiff claims that the first of the *Suchodolski* exceptions applies in the case at hand. Specifically, plaintiff cites MCL 333.20176a, which states in pertinent part:

> (1) A health facility or agency shall not discharge . . . an employee . . . because the employee or an individual acting on behalf of the employee . . . :
>
> ***
>
> (b) Acts as an expert witness in a civil action involving medical malpractice or in an administrative action.

While § 20176a prohibits a health facility from discharging an employee who acts as an expert witness, it does not provide the discharged employee with a cause of action or remedy. Instead, the statute allows for various administrative sanctions against the hospital. In other words, the statute falls short of providing the discharged employee with a statutory right to testify as an expert witness. In addition, plaintiff does not claim that he ever testified while an employee of defendant hospital. Thus, we do not believe that the aforementioned *Suchodolski* exception is applicable. Accordingly, we conclude that the trial court correctly dismissed plaintiff's claim of wrongful discharge.

Plaintiff also contends that his claims for tortious interference with his contract or business relationship with DMHC should not have been dismissed. Again, we disagree. An at-will employee has an "interest in the freedom of the employer to exercise its judgment without illegal interference or compulsion, and . . . unjustified interference by third persons . . . is actionable" in an action for tortious interference with an at-will employment contract. *Patillo v Equitable Life Assurance Soc*, 199 Mich App 450, 457; 502 NW2d 696 (1992).

After reviewing the record in the appropriate light, we conclude that plaintiff has not presented sufficient evidence to sustain his claim of tortious interference. Plaintiff has not presented sufficient evidence to create a genuine issue of material fact as to whether Camero's actions induced or caused a breach or termination of plaintiff's business relationship with DMHC. See *Winiemko v Valenti*, 203 Mich App 411, 416; 513 NW2d 181 (1994).

Affirmed.

/s/ Donald S. Owens
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Talbot