[Cite as *Meminger v. Ohio State Univ.*, 2017-Ohio-5781.]

SHERRI MEMINGER Plaintiff v. OHIO STATE UNIVERSITY Defendant	Case No. 2016-00808 Judge Patrick M. McGrath Magistrate Holly True Shaver DECISION

{¶1} On April 20, 2017, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B), and a motion to stay discovery. On May 17, 2017, plaintiff filed an untimely response to both motions. *See* L.C.C.R. 4(C). On May 19, 2017, defendant filed a motion for leave to file a reply. Upon review, defendant's motion for leave to file a reply is GRANTED. The motion for summary judgment is now before the court for a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." *See also Gilbert v. Summit Cty.,* 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.,* 50 Ohio St.2d 317 (1977).

{¶4} In her complaint, plaintiff asserts that she had been employed by defendant as an Emergency Room Secretary at OSU East Hospital for approximately 15 years. According to plaintiff, in August or September 2014, Dr. Thomas Terndrup repeatedly threw paperwork on her work area rather than hand it to her. After several such incidents, plaintiff asked Dr. Terndrup to stop throwing paperwork at her, stating that it was rude. Plaintiff asserts that the doctor became angry and complained to her supervisor, Ken Groves, and another doctor. According to plaintiff, from that time on, defendant was waiting for an opportunity to terminate her in retaliation for "standing up to" Dr. Terndrup.

{¶5} Plaintiff asserts that on September 26, 2014, she discussed with a coworker an incident of workplace violence that had been reported in the news. The coworker reported the conversation to Groves. On October 6, 2014, plaintiff was placed on administrative leave. On October 31, 2014, plaintiff was charged with engaging in inappropriate, threatening, and retaliatory behavior towards staff members. On December 3, 2014, plaintiff's employment was terminated.

{¶6} Plaintiff alleges a claim of wrongful termination in violation of public policy.[1]

{¶7} As a general rule, the common law doctrine of employment-at-will governs employment relationships in Ohio. *Wiles v. Medina Auto Parts,* 96 Ohio St.3d 240, 2002-Ohio-3994. In an at-will employment relationship, either an employer or an employee may legally terminate the employment relationship at any time and for any reason. *Mers v. Dispatch Printing* Co., 19 Ohio St.3d 100, 103 (1985). A public policy exception to the employment-at-will doctrine was first recognized by the Supreme Court of Ohio in *Greeley v. Miami Valley Maintenance Contrs., Inc.,* 49 Ohio St.3d 228 (1990). In *Greeley,* the court held that "public policy warrants an exception to the employment-at-will doctrine when an employee is discharged or disciplined for a reason which is

[1]Plaintiff's claim for intentional infliction of emotional distress was dismissed by the court on April 17, 2017.

prohibited by statute." *Id.* at 234. The public policy exception to the employment-at-will doctrine "is not limited to public policy expressed by the General Assembly in the form of statutory enactments" but "may [also] be discerned by the Ohio judiciary based on sources such as the Constitutions of Ohio and the United States, legislation, administrative rules and regulations, and the common law." *Painter v. Graley,* 70 Ohio St.3d 377, 383-384 (1994).

{¶8} However, in order to state a cause of action pursuant to *Greeley, supra*, the employee must have been an employee at will. *Haynes v. Zoological Society of Cincinnati,* 73 Ohio St.3d 254, syllabus (1995). Defendant asserts that plaintiff was a member of the classified civil service who was a member of a collective bargaining unit, and, as such, she was not an employee at will. To support its motion, defendant filed the affidavit of Colleen Rupp, who avers, in part, as follows:

{¶9} "2. I am employed by The Ohio State University Wexner Medical Center as a Human Resources Consultant, and have held that position since September 5, 2006.

{¶10} "3. I am familiar with Sherri Meminger's employment and termination from employment. As part of my duties, I help maintain employment files including that of Ms. Meminger. I also conducted an investigation regarding the allegations that lead to Ms. Meminger's termination.

{¶11} "4. Ms. Meminger was a Unit Clerical Associate, which is part of the Classified Civil Service at the Medical Center.

{¶12} "5. Exhibit A to this affidavit is a true and accurate copy of the letter sent to Ms. Meminger on November 26, 2014, notifying her that her employment would be terminated effective December 3, 2014, the [R.C.] 124.34 Order of Removal for Ms. Meminger, and the Certified Mail receipt for both documents.

{¶13} "6. Exhibit B to this affidavit is a true and accurate copy of the Classification Specification for Classified Civil Service for Ms. Meminger's position, Unit Clerical Associate.

{¶14} "7. Exhibit C to this affidavit is a true and accurate copy of the Position Description for Ms. Meminger's position, Unit Clerical Associate. The category 'CCS' means Classified Civil Service.

{¶15} "8. Exhibit D to this affidavit is a true and accurate copy of the Corrective Action Request Checklist for the incident that lead to Ms. Meminger's termination. 'CWA' means Communication Workers of America, and 'CCS' means Classified Civil Service.

{¶16} "9. Exhibit E to this affidavit is a true and accurate copy of three grievances filed by Ms. Meminger, in 2014, 2007, and 2005." (Defendant's Exhibit 1.)

{¶17} Included with her untimely response, plaintiff filed her own affidavit, wherein she states that although she was initially hired in 1998 as a Unit Clerical Associate, which was a union position, in 2011 she "requested that her union membership be terminated, and that the deduction of union dues from [her] paycheck cease." (Affidavit of plaintiff, ¶ 2.) Plaintiff further avers that "[a]fter terminating my union membership and ceasing payment of union dues in 2011, to my knowledge I never resumed union membership and the payment of union dues." (*Id.,* ¶ 5.) Plaintiff further avers that after her termination in November 2014, she "attempted to grieve [her] removal, but OSU Human Resources refused to accept and process that grievance because [she] was not a union member." (*Id*., ¶ 9.) Plaintiff further alleges that when she was terminated, she held two positions: Unit Clerical Associate and Patient Sitter, and that she also performed some nurse responsibilities, and responsibilities as a Patient Care Associate. (*Id.,* ¶12-17.)

{¶18} In its reply, defendant filed an affidavit of David Simpson, its Labor Relations Manager, who avers that the correct title for the position that plaintiff refers to

as a "Patient Sitter" is Patient Care Companion, which is also a classified civil service position. (Defendant's Exhibit 1 to reply.) In addition, defendant filed an affidavit of Kim McKee, Human Resources Assistant, who stated that plaintiff's title at the time of her termination was Unit Clerical Associate; that plaintiff was paying union dues at the time that her final paycheck was issued; and that plaintiff was not removed from the list of dues-paying Communication Workers of America members until after her termination in December 2014. (Defendant's Exhibit 2 to reply.) Attached to McKee's affidavit is a copy of plaintiff's paycheck, for the pay period ending December 13, 2014, which shows a deduction in the amount of $33.21 for union dues for Communication Workers of America. (Defendant's Exhibit A.)

{¶19} Construing the evidence most strongly in favor of plaintiff, the only reasonable conclusion is that she was a member of a collective bargaining unit at the time of her termination. Despite her assertion to the contrary, the evidence shows that plaintiff's position was classified as a Unit Clerical Associate, that she was a member of the Communication Workers of America, and that union dues were deducted from her final paycheck. Accordingly, plaintiff was not an employee at will, and, as such, she cannot state a claim for wrongful termination in violation of public policy as a matter of law. Accordingly, summary judgment shall be rendered in favor of defendant.

PATRICK M. MCGRATH
Judge

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{¶20} A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. All previously scheduled events are VACATED. Defendant's April 20, 2017 motion to stay discovery is DENIED as moot. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge

cc:

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