

Gray v. Town of Northfield, No. 227-4-04 Wncv (Teachout, J., Mar. 14, 2007)

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**STATE OF VERMONT
WASHINGTON COUNTY**

Terry Gray,)	
Plaintiff,)	Washington Superior Court
)	Docket No. 227-4-04 Wncv
v.)	
)	
Town of Northfield,)	
Defendant.)	

**DECISION
Cross-Motions for Partial Summary Judgment**

Plaintiff Terry Gray alleges that the Town of Northfield wrongfully terminated her employment as Town assessor without cause in violation of her employment agreement. She also alleges that Town officials defamed her by making statements to the effect that she was responsible for the disappearance of Town records related to a Town-wide reappraisal.¹ The Town seeks summary judgment on the wrongful termination claim. Ms. Gray seeks summary judgment on the defamation claim.²

Wrongful Termination

The facts material to the wrongful termination claim are undisputed. In a two-page “Assessor’s Contract,” the Town hired Ms. Gray to perform “all duties required by the listers” for a one-year term ending on September 26, 2001. According to its terms, the contract could be “extended by mutual agreement of the parties,” but otherwise there was “no expectancy or right of continued employment under this agreement or any extension or renewal of this Agreement.” The Contract includes an integration clause, which states:

¹ The complaint also includes a claim ostensibly based on a violation of Vermont’s Common Benefits Clause, Vt. Const., ch. I, art. 7. See Plaintiff’s Motion to Amend Complaint (filed July 8, 2004). The Town briefed this claim in detail in its summary judgment motion. In her opposition to summary judgment, Plaintiff did not respond to the Town’s argument on this claim. In its June 28, 2006 memorandum, at page 14, the Town suggests that, by her silence, Plaintiff impliedly agrees that summary judgment is appropriate on this claim. In her subsequent filing, Plaintiff did not take issue with the Town’s characterization of her silence. In these circumstances, the court concludes that Plaintiff assents to summary judgment on the Common Benefits claim, and the court so rules.

² The Town argues that Plaintiff’s May 19, 2006 Statement of Material Facts should be struck as untimely. Plaintiff seeks an enlargement of time under Rule 6(b). Plaintiff has made an adequate showing of excusable neglect for Rule 6(b) purposes. The Town’s request to strike is denied.

This Agreement constitutes the entire agreement and understanding between the parties and any prior understandings or representation of any kind preceding the date of this Agreement. Any modification of the Agreement of additional obligation assumed by either [party in] connection with the Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

The written contract ended by its terms on September 26, 2001. Afterwards, the Town consistently declined to enter into a new written contract with Ms. Gray, who continued to provide her services and be paid for them. Several times, she attempted to have Charles Morse, Municipal Manager, sign a new agreement with her, but each time he refused, allegedly making statements to the effect that she was still being paid and not to worry. Later, Ms. Gray became embroiled in a protracted dispute with a representative of the firm hired to conduct a Town-wide reappraisal. Mr. Morse eventually fired her, finding her performance unacceptable.

Ms. Gray argues that Mr. Morse's statements about being paid and not worrying manifested the Town's assent to an additional one-year period of employment. The Town argues that, under the contract, any such assent had to be in writing and, in any event, the circumstances suggest no such assent.

The written contract is not ambiguous. Any modifications were required to be reduced to writing. Ms. Gray's efforts at having Mr. Morse sign a new agreement were unsuccessful. The circumstances do not reasonably support an inference that the Town assented to a new one-year term of employment merely because—while specifically refusing to sign a new contract—Mr. Morse orally made statements about being paid and not worrying. Alone, those statements are insufficient to demonstrate assent to a definite term of employment, a just-cause termination requirement, or any other modification to an “at-will” relationship. Ms. Gray has not cited any other circumstances that would affect this conclusion. After September 26, 2001, Ms. Green's employment was at-will.

“It is the law in this jurisdiction that ‘an employment contract for an indefinite term is an at will agreement, terminable at any time, for any reason or for none at all.’” *Larose v. Agway, Inc.*, 147 Vt. 1, 3 (1986) (quoting *Sherman v. Rutland Hospital, Inc.*, 146 Vt. 204, 207 (1985)). Because Ms. Gray's employment at the time of termination was “at-will,” it could not have been wrongful in the legal sense.

Defamation

Ms. Gray seeks summary judgment on her claim that the Town, through two Town officials (Mr. Morse and Mr. Wallace) defamed her by making statements to the effect that Ms. Gray stole or otherwise was responsible for the disappearance of Town records related to the reappraisal. The Town argues that this claim must be limited to statements made by Mr. Morse because the complaint is so limited, and, in any event, argues that summary judgment should be denied because the facts are disputed.

The claim is against the Town, and as described in the complaint, it is sufficient for notice pleading purposes to encompass statements made by Mr. Wallace as well as Mr. Morse. The court declines to treat the claim as limited, as requested by the Town, to statements by Mr. Morse.

The record leaves little doubt that the material facts with regard to defamation are disputed. Summary judgment is predicated on an undisputed record, and therefore is inappropriate.

ORDER

For the foregoing reasons,

1. The Town's motion for partial summary judgment filed March 13, 2006 is *granted*,
2. Plaintiff's motion for partial summary judgment filed May 8, 2006 is *denied*, and
3. A pretrial status conference will be scheduled.

Dated at Montpelier, Vermont this 14th day of March 2007.

Mary Miles Teachout
Superior Court Judge