COURT OF APPEALS
DECISION
DATED AND FILED

December 4, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP652 **Cir. Ct. No. 2006SC31142**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

SANDRA MURRAY,

PLAINTIFF-APPELLANT,

V.

BARBARA DAMMAN,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL B. BRENNAN, Judge. *Affirmed.*

¶1 CURLEY, P.J.[1] Sandra Murray, *pro se*, appeals from the judgment in a small claims action dismissing her complaint claiming she was wrongfully discharged from her employment at the Milwaukee Center for Independence

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2005-06).

(MCFI).[2] Murray argues that the trial court erred in its conclusion that she was not wrongfully discharged. Because Murray was an at-will employee and the trial court found that MCFI accurately assessed the altercation Murray was involved in, her termination was proper. Thus, this court affirms the trial court's decision.

I. BACKGROUND.

¶2 Murray filed a complaint in small claims court against Barbara Damman, MCFI site supervisor, for wrongful discharge, seeking lost wages in the amount of $500. According to evidence submitted at trial, an incident at the Milwaukee Academy of Science cafeteria occurred between Murray, an MCFI employee at the time, and Diane Fowlkes, an MCFI client, while the two were working. Murray entered the kitchen area of the cafeteria and encountered Fowlkes. An altercation ensued. Murray claims that Fowlkes threatened to knock her teeth out; however, neither Fowlkes nor any of the witnesses to the confrontation substantiated Murray's claim. Fowlkes and a witness indicated that Murray struck Fowlkes's face with a cloth potholder. Fowlkes became angry and told another worker to get a supervisor. Fowlkes and Murray were separated. Damman arrived at the cafeteria shortly thereafter. After speaking with Fowlkes and Murray, Damman sent each home, took statements from the witnesses, and wrote an incident report. According to the report, Murray initially admitted hitting Fowlkes with a potholder. Murray was subsequently terminated, at which point

[2] This court takes judicial notice that the Milwaukee Center for Independence is a nonprofit organization whose purpose is to provide training and employment services to clients in order to help them live independently. *See* Milwaukee Center for Independence Home Page, http://www.mcfi.net. Over 75% of MCFI clients are low-income individuals, and all of MCFI's clients have special needs. ***Id.*** MCFI also retains nonclient employees, some of whom also are individuals with special needs.

she filed a complaint against Damman demanding lost wages due to her alleged wrongful discharge.

¶3 During the trial, Murray testified that Fowlkes pushed her earlier in the day and that Fowlkes later said she was going to knock Murray's teeth out for no reason.[3] Murray also disclaimed her previous admission that she struck Fowlkes across the face with a potholder; instead, Murray indicated that she had only fanned the potholder in front of Fowlkes's face. Murray did not offer any evidence of discrimination on the part of MCFI; however, her testimony suggests that she believed she was discriminated against.

¶4 Damman testified that she did not personally terminate Murray; rather, a representative from MCFI's human resource department testified that he and Damman's supervisor made the decision to terminate Murray. The human resources representative explained that MCFI distinguishes between clients and employees who work at its facilities. At-will employees can be discharged for any reason that is not discriminatory, while clients are dependent on MCFI for assistance. The trial court concluded that Murray was an at-will employee and that MCFI acted rationally and within its right in discharging Murray over the incident with Fowlkes.

[3] The record does not include the transcript from the bench trial. The respondent included the transcript in the appendix to her brief. However, it is the appellant's duty to see that the record is sufficient to review the issues raised on appeal. ***State Bank of Hartland v. Arndt***, 129 Wis. 2d 411, 423, 385 N.W.2d 219 (Ct. App. 1986). When an incomplete record is presented to the appellate court, the court assumes that every fact essential to sustain the trial court's decision is substantiated by the record. ***Suburban State Bank v. Squires***, 145 Wis. 2d 445, 451, 427 N.W.2d 393 (Ct. App. 1988). Nevertheless, because the respondent included the trial transcript, this court will consider it even though it is not part of the record.

¶5 The trial court indicated that the question before it was whether there was some type of breach of contract or breach of employment relationship. The court found that no such breach occurred and concluded that MCFI acted within its authority in terminating Murray. The court explained that it found no discriminatory reason for Murray's discharge. Moreover, the court echoed testimony about the distinction between clients and at-will employees that was inherent in MCFI's purpose. The court found that MCFI did not act in an arbitrary manner in making its decision to terminate Murray. Rather, the initial admission by Murray that she hit Fowlkes with the potholder and the witness accounts suggested that MCFI had good reason to terminate Murray and that a good faith effort was made to determine the facts which prompted the decision to terminate Murray.

II. ANALYSIS.

¶6 "The employment-at-will doctrine is an established general tenet of workplace relations in [Wisconsin]." ***Hausman v. St. Croix Care Ctr.***, 214 Wis. 2d 655, 663, 571 N.W.2d 393 (1997). "Where applicable, the doctrine generally allows an employer to discharge an employee 'for good cause, for no cause, or even for cause morally wrong, without being thereby guilty of legal wrong.'" ***Id.*** (citation omitted). "Courts will not second guess employment or business decisions, even when those decisions appear ill-advised or unfortunate." ***Strozinsky v. School Dist. of Brown Deer***, 2000 WI 97, ¶33, 237 Wis. 2d 19, 614 N.W.2d 443. Murray challenges the trial court's conclusion that she was not wrongfully terminated. Because Murray has not raised an argument pertaining to Wisconsin's public policy exception, the issue in this case is whether a breach of an employment contract occurred. *See* ***Brockmeyer v. Dun & Bradstreet***, 113 Wis. 2d 561, 572-73, 335 N.W.2d 834 (1983) (there is a narrow public policy

exception to the employment-at-will doctrine that can be claimed by an employee if the employee demonstrates that the employer's termination of the at-will employee violated established public policy as evidenced by a statutory or constitutional provision).

¶7 Murray challenges the trial court's conclusion that she struck Fowlkes in the face with a potholder. Following a bench trial, "[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." WIS. STAT. § 805.17(2) (2005-06).[4] A trial court's findings of fact "will not be upset on appeal unless contrary 'to the great weight and clear preponderance of the evidence.'" ***Amoco Oil Co. v. Capitol Indem. Corp.***, 95 Wis. 2d 530, 542, 291 N.W.2d 883 (Ct. App. 1980) (citation omitted). When more than one reasonable inference can be drawn from conflicting testimony, the reviewing court must give deference to the finder of fact as "the ultimate arbiter of the credibility of the witnesses." ***Bank of Sun Prairie v. Opstein***, 86 Wis. 2d 669, 676, 273 N.W.2d 279 (1979).

¶8 This court is satisfied that the trial court's findings are not clearly erroneous. Based on the evidence presented, the trial court found that MCFI did not act in an arbitrary or discriminatory manner when it terminated Murray. Rather, the trial court found that the prior admission by Murray that she hit Fowlkes with the potholder and the witness accounts of the incident suggested that MCFI had reason to terminate Murray. Furthermore, the court found that the

[4] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

documented procedure that was followed by MCFI demonstrated that a good faith effort was made to determine the facts which led to the decision to terminate Murray. Consequently, the trial court's finding that MCFI acted within its discretion in terminating Murray is not clearly erroneous and is representative of the evidence presented at trial.

¶9 There is no support in the record for Murray's argument that Damman "took the word of new clients" or for her allegations that she was "written up," her hours were cut, she failed to receive a raise, and she was "forced out." Much of what she claims in her briefs was never mentioned at trial. Although Murray claimed that she was threatened, the trial court's decision implicitly suggests that Murray's version of the events was not believed. Rather, the record reflects that MCFI terminated Murray due to the altercation with Fowlkes, which resulted in Murray striking Fowlkes in the face with a potholder. Consequently, there was just cause to terminate her. Discharging an at-will employee due to a physical alteration with another employee, or a client, is within the discretion of an employer. *See* ***Lopez v. LIRC***, 2002 WI App 63, ¶19, 252 Wis. 2d 476, 642 N.W.2d 561 (employee discharge for physical altercation is at the discretion of the employer and verbal provocation is not sufficient to excuse an act of violence). Moreover, Murray presented no evidence of a contractual employment relationship, and thus, was an at-will employee. *See* ***Ferraro v. Koelsch***, 124 Wis. 2d 154, 163-65, 368 N.W.2d 666 (1985) (a contractual employment relationship is demonstrated by a written agreement or evidence that an employee relied on a company's written policy for discharging employees). As a result, MCFI was not required to demonstrate a cause for its decision to discharge Murray. *See* ***Hausman***, 214 Wis. 2d at 663. Therefore, the trial court

appropriately found that MCFI acted within its discretion in discharging Murray. Accordingly, this court affirms.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.