

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEITH D. LIMEHOUSE,	§
	§
Plaintiff Below-	§ No. 86, 2004
Appellant,	§
	§
v.	§
	§ Court Below—Superior Court
STEAK & ALE RESTAURANT	§ of the State of Delaware,
CORPORATION, METROMEDIA	§ in and for New Castle County
RESTAURANT GROUP,	§ C.A. No. 03C-03-299
BENNIGAN’S GRILL & TAVERN,	§
	§
Defendants Below-	§
Appellees.	§

Submitted: April 30, 2004

Decided: June 7, 2004

Before **STEELE**, Chief Justice, **HOLLAND**, and **BERGER**, Justices.

**ORDER**

This 7<sup>th</sup> day of June 2004, upon consideration of the opening brief, the appellee’s motion to dismiss or, in the alternative, to affirm, and the appellant’s response to the motion to dismiss, it appears to the Court that:

(1) The plaintiff below, Keith D. Limehouse, filed this appeal from a decision of the Superior Court dated February 5, 2004. The Superior Court’s order granted, in part, the defendants’ (collectively referred to as “Steak & Ale”) motion to dismiss Limehouse’s complaint for intentional infliction of emotional distress on the ground that Limehouse’s personal injury complaint

was barred by the exclusivity provision of the Workers' Compensation Act.<sup>1</sup> The Superior Court's order denied, in part, Steak & Ale's motion to dismiss to the extent Limehouse's complaint asserted a claim for wrongful termination.

(2) Steak & Ale filed a motion to dismiss this appeal on the ground that the Superior Court's order is interlocutory and Limehouse has failed to comply with the requirements of Supreme Court Rule 42 in seeking to take an appeal from an interlocutory order. Steak & Ale asserts that Limehouse's claim for wrongful termination is still pending before the Superior Court, therefore, the February 5<sup>th</sup> order was not the trial court's final act in the case. Limehouse filed a response to the motion to dismiss. He contends that his complaint did not assert a claim for wrongful termination and, therefore, there is nothing pending before the Superior Court for further consideration.

(3) The record reflects that Limehouse, without the aid of legal counsel, filed his amended complaint in the Superior Court on August 29, 2003. The complaint specifies only one count, namely, a claim for intentional infliction of emotional distress. In construing Limehouse's complaint to also set forth a claim for wrongful termination, it appears that the Superior Court was attempting to afford the pro se plaintiff some degree of leniency in

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<sup>1</sup> DEL. CODE ANN. tit. 19, § 2304 (2003).

permitting his complaint to move forward. Given Limehouse's unequivocal expression of his intent neither to plead nor pursue a claim for wrongful termination, however, we can only conclude that the Superior Court's dismissal of Limehouse's complaint for intentional infliction of emotional distress resolved the only claim pending before it and, therefore, constitutes a final, appealable order. Steak & Ale's motion to dismiss on the ground that the appeal is interlocutory, therefore, is denied.

(4) We now consider the merits of Steak & Ale's motion to affirm the Superior Court's judgment on the ground that it is manifest on the face of Limehouse's opening brief that the appeal is without merit. In his opening brief, Limehouse raises three issues: (a) the trial judge was biased; (b) the Superior Court erred in dismissing his claim because it fell within the personal dispute exception to the exclusivity provision of the Worker's Compensation Act; and (c) the Superior Court erred in dismissing his claim because he was entitled to pursue the claim as a matter of law under 10 Del. C. §§ 541, 541 and 3704. We find no merit to any of these claims. Accordingly, we affirm the Superior Court's judgment.

(5) The record reflects that Limehouse filed a motion for default judgment on his complaint, which the Superior Court denied. After his motion was denied, Limehouse filed a federal lawsuit against Steak & Ale's

counsel and the trial judge, as well as other State employees, alleging a conspiracy against Limehouse to violate his civil rights, which purportedly related to the denial of Limehouse's motion for default judgment. After filing his federal lawsuit, Limehouse filed a motion in the Superior Court to disqualify the trial judge, which the trial judge denied. Limehouse asserts that the trial judge's denial of the motion for default judgment and the federal lawsuit both establish the trial judge's bias.

(6) On appeal of a trial judge's recusal decision, this Court must determine: (i) whether, as a matter of subjective belief, the judge was satisfied that he or she could proceed to hear the case free of bias or prejudice concerning a party; and (ii) whether objectively there is an appearance of personal bias.<sup>2</sup> The standard of review is abuse of discretion.<sup>3</sup> Canon 3C(1) of The Delaware Judges' Code of Judicial Conduct states, in part, that disqualification due to personal bias or prejudice is required when the impartiality of the judge might reasonably be questioned.<sup>4</sup> This Court previously has held a trial judge's rulings alone almost never constitute a valid

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<sup>2</sup> *Jackson v. State*, 684 A.2d 745, 752-53 (Del. 1996) (citing *Los v. Los*, 595 A.2d 381, 384-85 (Del. 1991)).

<sup>3</sup> *Id.*

<sup>4</sup> DEL. JUDGES' CODE OF JUDICIAL CONDUCT Canon 3C(1) (1993).

per se basis for disqualification on the ground of bias.<sup>5</sup> In this case, the trial judge's denial of Limehouse's motion for default judgment and Limehouse's subsequent filing of a federal lawsuit<sup>6</sup> did not create an appearance of personal bias. Thus, we find no abuse of discretion in the Superior Court's denial of Limehouse's motion for disqualification.

(7) Limehouse next asserts that the Superior Court erred in dismissing his complaint because his claim fell within the personal dispute exception to the exclusivity provision of the Workers' Compensation Act.<sup>7</sup> We disagree. In *Konstantopoulos v. Westvaco Corp.*,<sup>8</sup> this Court concluded that the plaintiff's tort claims for sexual harassment did not fall within the personal dispute exception and were thus barred by the exclusivity provision of the Workers' Compensation Act. We noted that the willful action of a third party that causes injury, including mental injury, to an employee is compensable under Workers' Compensation so long as the injurious action is "not completely unrelated to the conditions existing in, or created by, the

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<sup>5</sup> *Weber v. State*, 547 A.2d 948, 952 (Del. 1988); *Liteky v. United States*, 510 U.S. 540 (1994).

<sup>6</sup> We note that Limehouse's federal lawsuit ultimately was dismissed. See *Limehouse v. State of Delaware*, Civ. No. 03-844-SLR, Robinson, C.J. (Mar. 3, 2004).

<sup>7</sup> 19 Del. C. § 2301(15)(b) provides that a "personal injury" under the Workers' Compensation Act "[s]hall not include any injury caused by the wilful act of another employee directed against the employee by reasons personal to such employee and not directed against the employee as an employee or because of the employee's employment."

<sup>8</sup> 690 A.2d 936 (Del. 1996).

workplace.”<sup>9</sup> Limehouse’s complaint contains allegations of conduct that are directly related to the conditions existing in, or created by, his employment with Steak & Ale. Accordingly, we find no error in the Superior Court’s conclusion that Limehouse’s claim for intentional infliction of emotional distress was barred by the exclusivity provision of the Workers’ Compensation Act.

(8) Limehouse’s final argument is that the Superior Court erred in dismissing his claim because the claim was statutorily authorized by 10 Del. C. §§ 541, 542, and 3704(a). This claim is clearly without merit. Sections 541 and 542 are general statutes defining the jurisdiction of the Superior Court. Section 3704(a) addresses the survival of a personal injury action after the death of the plaintiff. This statute clearly has no applicability in Limehouse’s case. To the extent Limehouse reasserts his contention that his claim is authorized under the personal dispute exception of 19 Del. C. § 2301(15)(b), we already have rejected that argument.

(9) After careful consideration of the parties’ respective positions and the record below, we find it manifest on the face of Limehouse’s opening brief that the appeal is without merit. The Superior Court’s denial of Limehouse’s motion to disqualify was a matter of judicial discretion and

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<sup>9</sup> *Id.* at 939.

clearly there was no abuse of discretion in this case. Moreover, the Superior Court did not err in concluding that Limehouse's claim for intentional infliction of emotional distress was barred by the Workers' Compensation Act.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice