

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-001289-MR

DEBBIE CASSETTY

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT  
HONORABLE JOHN D. MINTON, JR., JUDGE  
ACTION NO. 00-CI-01066

HARRY LEACHMAN MOTORS, INC.

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \*\*

BEFORE: EMBERTON, CHIEF JUDGE; GUIDUGLI AND MILLER, JUDGES.

GUIDUGLI, JUDGE. Debbie Cassetty (hereinafter "Cassetty"), as next friend of Adam Cassetty (hereinafter "Adam"), has appealed from the Warren Circuit Court's summary judgment in favor of Harry Leachman Motors, Inc. (hereinafter "Leachman Motors"). On her son's behalf, Cassetty filed a complaint alleging retaliatory discharge in the termination of his position with Leachman Motors. Having considered the parties' briefs, the record<sup>1</sup>, and the applicable case law, we affirm.

---

<sup>1</sup>The certified record does not contain the videotape of the May 14, 2001, hearing on the motion for summary judgment.

A brief recitation of the facts is necessary for a full understanding of this case. Cassetty purchased a used car for her son, Adam, from Leachman Motors in 1999. At the same time, Adam began working for the dealership as lot attendant. He continued to work for the dealership in varying hours per week until June 30, 2000. Adam began work that day at 11:53 a.m., and later requested permission from Walker Ahmed, a supervisor, to take a lunch break at around 4:30. Ahmed made some type of gesture, and Adam proceeded to clock out at 4:21 p.m. Before leaving the lot, Cougar Rogers, the used car manager, paged Adam and requested that he return and prepare three vehicles. The two talked back and forth, and Adam proceeded to take a forty minute lunch break. Upon his return, Rogers fired Adam for insubordination because he failed to prepare the three vehicles as requested.

On August 17, 2000, Cassetty, as Adam's next friend, filed a civil action in Warren Circuit Court alleging retaliatory discharge as Adam had been terminated when he exercised his statutory right to take a lunch break after five hours of work pursuant to KRS 339.270. Leachman Motors moved the circuit court for summary judgment on March 21, 2001, arguing that no employment contract existed between Adam and Leachman Motors<sup>2</sup> and that its actions did not violate KRS 339.270 because Adam did not work for a period of five hours continuously prior to taking his lunch break. In her response, Cassetty essentially argues that

---

<sup>2</sup>In her response, Cassetty stated that there was no dispute that Adam was an at-will employee. Therefore, we will not address whether an employment contract was in place.

had Adam stayed to prepare the three vehicles, he would have been required to work more than the permitted five hours before being allowed to take a lunch break. Following a hearing, the circuit court granted the motion for summary judgment. This appeal followed.

The standard of review applicable to summary judgment appeals is well settled in the Commonwealth.

The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56.03. There is no requirement that the appellate court defer to the trial court since factual findings are not at issue. Goldsmith v. Allied Building Components, Inc., Ky., 833 S.W.2d 378, 381 (1992). "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476, 480 (1991). Summary "judgment is only proper where the movant shows that the adverse party could not prevail under any circumstances." Steelvest, 807 S.W.2d at 480, citing Paintsville Hospital Co. v. Rose, Ky., 683 S.W.2d 255 (1985). Consequently, summary judgment must be granted "only when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor. . ." Huddleston v. Hughes, Ky.App., 843 S.W.2d 901, 903 (1992), citing Steelvest, supra (citations omitted).

Scifres v. Kraft, Ky.App., 916 S.W.2d 779, 781 (1996). "Because summary judgment involves only legal questions and the existence of any disputed material issues of fact, an appellate court need not defer to the trial court's decision and will review the issue de novo." Lewis v. B&R Corporation, Ky.App., 56 S.W.3d 432, 436 (2001).

In Firestone Textile Co. v. Meadows, Ky., 666 S.W.2d 730, 731 (1983), the Supreme Court stated that "ordinarily an employer may discharge his at-will employee for good cause, for no cause, or for a cause that some might view as morally indefensible. Production Oil Co. v. Johnson, Ky., 313 S.W.2d 411 (1958); Scroghan v. Kraftco Corp., Ky.App., 551 S.W.2d 811 (1977)." In Willoughby v. Gencorp, Inc., Ky.App., 809 S.W.2d 858 (1990), the Court of Appeals set out the cause of action for retaliatory discharge, an exception to the usual rule. In order to establish this cause of action, an employee must show that "he was engaged in a statutorily protected activity, that he was discharged, and that there was a connection between the 'protected activity' and the discharge." Id., at 861.

Cassetty argues that Adam was engaged in the statutorily protected activity of engaging in a lunch break. Pursuant to KRS 339.270 of the Child Labor code, "[n]o minor under eighteen (18) years of age shall be permitted to work for more than five (5) hours continuously without an interval of at least thirty (30) minutes for a lunch period, and no period of less than thirty (30) minutes shall be deemed to interrupt a continuous period of work." However, it is undisputed that Adam had not yet worked for five continuous hours before taking his lunch break. The record reveals that he had been clocked in for only four hours and twenty-eight minutes when he clocked out for his break. Therefore, Cassetty cannot establish that Leachman Motors discharged Adam for engaging in a statutorily protected activity, and the claim of retaliatory discharge must fail.

Leachman Motors was not precluded from terminating Adam for the claimed reason of insubordination.

Cassetty urges this Court to engage in speculation in order to defeat the motion for summary judgment, arguing that had Adam stayed to prepare the three vehicles, he would have been required to work over five hours without a break in violation of the statute. We decline to do so because, as pointed out by Leachman Motors, there is no way to determine what might have happened had Adam decided to stay rather than continue on his break. We will not attempt to speculate as to the many possibilities as to what might have occurred, but rather we address only that which actually did take place.

Because there are no genuine issues as to any material fact, Leachman Motors is entitled to a judgment as a matter of law. Therefore, the Warren Circuit Court properly granted a summary judgment in Leachman Motor's favor.

For the foregoing reasons, the summary judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Dennis Hardin  
Bowling Green, KY

BRIEF FOR APPELLEE:

David F. Broderick  
P. Kevin Hackworth  
Bowling Green, KY