

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000698-MR

GLEN MANSON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS B. WINE, JUDGE
ACTION NO. 00-CI-006147

BROWN-FORMAN CORPORATION,
DBA BLUE GRASS COOPERAGE COMPANY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER, McANULTY, AND TACKETT, JUDGES.

BARBER, JUDGE: The Appellant, Glen Manson ("Manson"), seeks review of a summary judgment of the Jefferson Circuit Court, entered in favor of the Appellee, Brown-Forman Corporation d/b/a Blue Grass Cooperage Company ("Blue Grass"). We affirm.

The standard of review on appeal 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. There is no requirement that we

defer to the trial court, because factual findings are not at issue.¹

We refer to the record as necessary to resolve the issue before us. Manson states that "[t]his is a case of wrongful termination for alleged workers' compensation activity" Further, that "[t]his is a case brought under KRS 341.197 [sic] under the Kentucky Workers Compensation Act." KRS 342.197(1) provides that "No employee shall be harassed, coerced, discharged, or discriminated against in any manner whatsoever for filing and pursuing a lawful claim under this chapter."² Any person injured by any act in violation of thereof "shall have a civil cause of action in Circuit Court" KRS 342.197(3).

Manson would have us believe that Blue Grass wrongfully terminated him for *misrepresenting* a workers' compensation claim. Manson contends that he could not have misrepresented his workers' compensation claim because he never filed one. Manson admits that he did "suffer a minor work-connected injury on or about July 30, 1999" for which he was placed on light duty by the company physician; however, he claims that Blue Grass,

¹ *Scifres v. Kraft*, Ky. App., 916 S.W.2d 779, 781 (1996).

² In *Overnight Transp. Co. v. Gaddis*, Ky. App., 798 S.W.2d 129, 132 (1990), the Court of appeals construed this to protect employees who have filed or who are pursuing a lawful claim for workers' compensation benefits.

"through its workers' compensation insurance company, attempted to get . . . [him] to commit fraud by asking him to provide information regarding workers compensation benefits." This argument is without merit. Manson was the one who reported a work-related injury; whether he ultimately filed an application for resolution of a workers' compensation claim is immaterial. KRS 342.038(1) requires an employer to keep a record of all injuries received by employees in the course of their employment; KRS 342.038(3) requires the employer to report such injuries to its workers' compensation carrier.

The undisputed facts are that Manson was involved in a motor vehicle accident on July 29, 1999, the day before the alleged injury at work; he was transported by EMS to Jewish Hospital, treated and released. On July 30, 1999, Manson went to work and reported an injury. The injury report he signed describes the injury as follows: "While bending over moving BBL. Had pain in lower back and hip area." The date and time of the alleged work accident is "7-30-99/0955." Bluegrass sent Manson to Dr. Nunnelly. Dr. Nunnelly's records do not indicate any history of an auto accident the day before.

Manson subsequently applied for family and medical leave from July 30, 1999-September 23, 1999; he described the health condition necessitating the request as "auto accident back pain & neck pain headaches." Manson also applied for

Accident and Sickness benefits. The application reflects a diagnosis of "Back Pain - auto accident" and that the accident occurred on July 30, 1999. In addition, the application reflects that Manson was "continuously totally disabled (unable to work)" from July 30, 1999 through September 23, 1999. Manson admitted filling out a portion of the form that the attending physician was supposed to complete.

In late August 1999, a private investigator videotaped Manson engaged in roofing work during the time he was supposed to be totally disabled. On September 24, 1999, Blue Grass sent Manson a "NOTICE OF DISCHARGE" letter stating: "As of September 24, 1999, you have been dropped from the seniority of Blue Grass, due to the fact that you have misrepresented your workman's compensation and accident & sickness benefits."

Under Kentucky law, termination of an employee for *misrepresenting* a workers' compensation claim does not give rise to a civil cause of action. KRS 342.197 gives rise to a civil cause of action where an employee suffers retaliation for pursuing a *lawful* workers' compensation claim. Manson repeatedly assures us that he neither filed nor pursued a workers' compensation claim.

Based upon our review of the matter, we conclude that Manson has failed to state a cognizable claim under Kentucky law.

Accordingly, we affirm the Opinion and Order of the Jefferson Circuit Court entered February 15, 2002, and the Order denying the motion to set it aside entered March 12, 2002.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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