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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-00695-MR

JUDY ULRICH — APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE GREGORY A. LAY, JUDGE
ACTION NO. 16-CI-00294

CATHOLIC HEALTH INITIATIVES
PHYSICIAN SERVICES — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: TAYLOR, K. THOMPSON AND L. THOMPSON, JUDGES.

THOMPSON, L., JUDGE: Judy Ulrich appeals from a summary judgment entered by the Laurel Circuit Court in favor of Catholic Health Initiatives Physician Services (hereinafter referred to as CHIPS). Appellant brought a wrongful termination claim against CHIPS alleging that she was fired in violation of public

policy. She argues that the trial court erred in granting summary judgment to Appellee. We find no error and affirm.

On March 9, 2016, Appellant was employed by Appellee as an office lead in one of Appellee's medical facilities. An office lead provides administrative and clerical support. On that day, an inspector from the Office of the Inspector General arrived to conduct an unannounced inspection of Appellee's medical facilities. The inspector was working on behalf of the Kentucky Cabinet for Health and Family Services and, while unannounced, this was a routine inspection. Appellant led the inspector around the facility and answered questions asked of her; however, she was not able to answer all questions the inspector asked. Later that day, Appellant informed upper management of the inspection.

On March 22, 2016, Appellee terminated Appellant for violating the company's government contact protocol.[1] That protocol states: "If you have an emergency situation involving government actions, investigations or compliance issues (e.g., search warrants, personal contact with government agents, telephone inquiry, etc.) do the following" and then indicates an employee should immediately call certain administrative and legal people. The policy further states that "if the

[1] Appellee indicates that had Appellant not had previous disciplinary actions taken against her, she would not have been fired for violating this policy. In March of 2015, Appellant received a three-day suspension for rude, unprofessional, and offensive language and action to employees. That same month, she also received a final written warning for failing to report unauthorized disclosure of protected health information.

agent is present to **search the premises**, ask the agent to wait until a lawyer can be present. If the agent refuses, do not interfere with the agent's activities." (Emphasis original.) Appellant had been trained on the government contact protocol. As part of her employment, Appellant was obligated to complete a LEARN assignment, which is what Appellee calls its online training program. Appellant had completed the LEARN assignment twice, most recently on March 4, 2015. Appellee terminated Appellant because she did not contact the appropriate people when the agent arrived but waited until the agent's walkthrough was over and the agent had left the premises.

On April 8, 2016, Appellant filed the underlying action claiming that she was terminated for failing to hinder a surprise inspection by the Office of Inspector General and that her termination was against public policy. After discovery was completed, both parties filed motions for summary judgment. The trial court ultimately found in favor of Appellee. The court held that the government contact protocol did not violate public policy and that it did not act to hinder lawful government investigations. The court granted Appellee's motion for summary judgment and denied Appellant's motion. This appeal followed.

> 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. . . . "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." Summary "judgment is only proper where the movant shows that the adverse party could not prevail under any circumstances." Consequently, summary judgment must be granted "[o]nly when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor[.]"

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

Appellant argues on appeal that the trial court should not have granted summary judgment in favor of Appellee because there are issues of fact to be resolved and that Appellee's actions violated public policy. We disagree.

> The tort of wrongful discharge of a "terminable-at-will" employee is a relatively recent development, having arisen out of carefully crafted exceptions to the common law doctrine that "an employer may discharge his at-will employee for good cause, no cause, or for a cause that some might view as morally indefensible." *See Firestone Textile Co. Div. v. Meadows*, 666 S.W.2d 730, 731 (Ky. 1984) (citing *Production Oil Co. v. Johnson*, 313 S.W.2d 411 (Ky. 1958) and *Scroghan v. Kraftco Corp.*, 551 S.W.2d 811 (Ky. App. 1977)).
>
> In *Pari–Mutuel Clerks' Union v. Kentucky Jockey Club*, 551 S.W.2d 801 (Ky. 1977), this Court recognized an exception to the "terminable-at-will" doctrine and provided a cause of action for wrongful discharge to a worker who claimed he was discharged for engaging in lawful union activity under [Kentucky Revised Statute (KRS)] Chapter 336. *Firestone* provided a similar exception where the termination was motivated by a desire to punish an employee for "seeking benefits to which he is entitled by law," specifically, workers' compensation. *Firestone,* 666 S.W.2d at 734.

> We recognized in *Firestone* that, although the "terminable-at-will" doctrine, should be retained, "a narrow public policy exception should be adopted" when the firing of an employee undermined a "most important public policy." *Id.* To insure that the tort of wrongful discharge developed in a "clearly defined and suitably controlled" manner, we adopted the rule described in *Brockmeyer v. Dun & Bradstreet*, 113 Wis.2d 561, 335 N.W.2d 834, 840 (1983), and established for Kentucky the following limitations on conditions under which exceptions to the "terminable-at-will" doctrine would give rise to a wrongful discharge claim:
>
> > 1) The discharge must be contrary to a fundamental and well-defined public policy as evidenced by existing law.
> >
> > 2) That policy must be evidenced by a constitutional or statutory provision.
> >
> > 3) The decision of whether the public policy asserted meets these criteria is a question of law for the court to decide, not a question of fact.
>
> *Firestone*, 666 S.W.2d at 731.

Hill v. Kentucky Lottery Corp., 327 S.W.3d 412, 420-21 (Ky. 2010).

In the case at hand, Appellant cites to Kentucky Revised Statute (KRS) 216B.010, KRS 216B.042, and 902 KAR[2] 20:008 to support her contention that her termination violated public policy. These rules allow the Cabinet for Health and Family Services to make rules for the certification of medical facilities and inspect said facilities. When examining the public policy issue and the

[2] Kentucky Administrative Regulation.

attendant relevant statutes, the statutes must have an "employment-related nexus." *Grzyb v. Evans*, 700 S.W.2d 399, 402 (Ky. 1985). In other words, "important to a finding of wrongful discharge is the requirement that the public policy must be defined by statute and directed at providing statutory protection to the worker in his employment situation." *Shrout v. The TFE Grp.*, 161 S.W.3d 351, 354 (Ky. App. 2005) (footnote omitted). Here, the statutes and regulation cited by Appellant do not relate to Appellant or protecting her interests as an employee, they relate to Appellee and its healthcare license.

Based on the foregoing, we hold that the trial court correctly granted summary judgment. The statutes and regulation cited by Appellant in making her public policy argument do not concern her employment. This is a requirement for the public policy exception to the terminable-at-will doctrine. We affirm the judgment of the trial court.

THOMPSON, K., JUDGE, CONCURS.

TAYLOR, JUDGE, CONCURS IN RESULT ONLY.

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