IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

RENDERED: AUGUST 29, 2013
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2012-SC-000472-OA

SHARON TRAVIS — PETITIONER

V. — IN SUPREME COURT

HON. JOHN D. MINTON, JR.,
CHIEF JUSTICE OF THE KENTUCKY
SUPREME COURT; AND
KENTUCKY ADMINISTRATIVE
OFFICE OF THE COURTS — RESPONDENTS

MEMORANDUM OPINION OF THE COURT

DENYING

Petitioner, Sharon Travis, worked in the Barren-Metcalfe County Family Court as the Court Administrator for Judge W. Mitchell Nance. As a result of concerns expressed about her by an employee of the Administrative Office of the Courts (hereinafter "AOC") during an exit interview, an outside neutral attorney was appointed to investigate. The investigation revealed that Ms. Travis had created a "hostile work environment" and "an atmosphere of fear" in the office of the Family Court. The investigation also found that she had "violated confidentiality principles relating to confidential matters." *Nance v. Kentucky Administrative Office of the Courts*, 336 S.W.3d 70, 72 (Ky. 2011).

As a result of the findings of the investigation, Jason M. Nemes, then Director of the AOC, asked Judge Nance to discharge Ms. Travis. When Judge Nance declined to do so, Mr. Nemes, with the authority of John D. Minton, Jr., Chief Justice of the Kentucky Supreme Court, sent a letter to Ms. Travis dated March 26, 2009, terminating her employment pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 27A.020(1) effective close of business on March 27, 2009. This letter was not distributed to the public.

On March 24, 2010, one year after the discharge, Judge Nance filed a petition for a writ of prohibition in this Court. *Nance v. AOC,* 336 S.W.3d 70. The petition requested that the AOC be compelled to "cease and desist" the alleged unlawful interference with his powers as the appointing authority for employees in his office. The petition also requested that Ms. Travis be reinstated as Family Court Administrator. On March 26, 2010, two days after the petition for a writ of prohibition was filed, Ms. Travis filed a wrongful termination action in the Franklin Circuit Court. That action contained allegations "identical" to those found in Judge Nance's petition. The trial court dismissed the action for want of subject matter jurisdiction. The Court of Appeals affirmed the dismissal and this Court declined to grant discretionary review.

Almost three months later, Ms. Travis filed this petition pursuant to KRS 413.270. That statute provides in pertinent part that

> [i]f an action is commenced in due time and in good faith in any court of this state and the defendants or any of them make defense, and it is adjudged that the court has no jurisdiction of the action, the plaintiff or

> his representative may, within ninety (90) days from the time of that judgment, commence a new action in the proper court.

KRS 413.270(1).

Because neither the Franklin Circuit Court nor the Court of Appeals has subject matter jurisdiction over this action, Ms. Travis has properly filed her petition in this Court. She seeks an opportunity to challenge the termination of her employment; reinstatement to her previous position; and full back-pay restoration of all benefits as if she had never been terminated.

At the outset, we note that Ms. Travis held a non-tenured position. This meant that she was an at-will employee who was not subject to the protections of Section 8 of the Personnel Policies of the Court of Justice. Section 8 addresses disciplinary actions, dismissals, and appeals. *See* Personnel Policies, Section 1.05(1). Ms. Travis served at the pleasure of her appointing authority. *See* Personnel Policies, Section 1.03(5). Furthermore, Ms. Travis has failed to establish an exception to the terminable at-will doctrine which was discussed by our predecessor Court in *Bennett v. Jones*, 851 S.W.2d 494 (Ky. App. 1993).

Where that authority is not properly executed, however, the Chief Justice may act either directly or by delegation of his authority. *Nance*, 336 S.W.3d at 74. Thus, when Judge Nance, as her appointing authority, refused to terminate her employment, Chief Justice Minton properly authorized the termination.

In her petition, Ms. Travis first contends that she is entitled to challenge the determination that she violated personnel policies and statutes. As previously noted, Ms. Travis's employment was at-will and could have been properly terminated with or without cause. *Wymer v. JH Properties., Inc.*, 50 S.W.3d 195, 198 (Ky. 2001). It would be absurd and illogical to hold that she was entitled to challenge the for-cause finding when her employment could have been terminated regardless of cause. The at-will status of Ms. Travis's employment was not altered merely because reasons were given for her termination. Accordingly, she is not entitled to challenge the determination.

Second, she alleges that she was entitled to procedural due process protections such as a pre-termination hearing. However, for persons to be entitled to those protections, they must first have a property interest in their employment. Because Ms. Travis's employment was at-will, she did not have a property interest in it. *Miller v. Admin. Office of the Courts*, 361 S.W.3d 867, 875 (Ky. 2011).

Ms. Travis also contends that she is entitled to due process protections because she was discharged for *violating* personnel policies. She claims that this discharge resulted in an injury to her reputation, as well as a loss of her employment status and, as such, she is entitled to a hearing under *Silva v. Worden*, 130 F.3d 26 (1st Cir. 1997). Under *Silva*, however, the "municipality terminating the employee must also be responsible for the dissemination of defamatory charges, in a formal setting . . . and thereby significantly have interfered with the employee's ability to find future employment." *Id.* at 32-33,

citing *Beitzell v. Jeffrey*, 643 F.2d 870, 879 (1st Cir. 1981). In her petition, Ms. Travis does not state any specific actions that injured her reputation. Nor does she allege any interference with her ability to find future employment.

Lastly, Ms. Travis claims that she is entitled to a hearing based on the holding in *Paul v. Davis*, 424 U.S. 693 (1976). Under *Paul*, the movant must show "harm to reputation plus harm to some other tangible interest." *TECO Mech. Contr., Inc. v. Com.*, 366 S.W.3d 386, 395 (Ky. 2012). Again, Ms. Travis does not have a tangible interest in her at-will employment and she has not shown any harm to her reputation.

Ms. Travis was an at-will employee who had no due process rights relating to her non-tenured employment. She was not entitled to a hearing to challenge her termination. Accordingly, the petition is hereby denied.

Abramson, Cunningham, Noble, Scott and Venters, JJ., and Special Justices Charles E. English and Ruth H. Baxter, sitting. All concur. Minton, C.J., and Keller, J., not sitting.

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