STATE OF MICHIGAN

COURT OF APPEALS

EXCELLACARE, INC.,

Plaintiff-Appellant,

v

ABINGTON MANOR, INC., and THE MEDICAL TEAM,

Defendants-Appellees.

UNPUBLISHED
April 28, 2000

No. 210636
Oakland Circuit Court
LC No. 95-492300-CZ

Before: Doctoroff, P.J., and Holbrook, Jr., and Kelly, JJ.

PER CURIAM.

This appeal is before us on remand from the Supreme Court as on leave granted. Plaintiff is appealing the trial court's orders granting defendants' motions in limine excluding certain evidence regarding damages. We affirm.

Plaintiff is a home health care provider. Defendant Abington Manor (hereinafter Abington) operates a senior citizens residential facility. In January 1994, Abington designated plaintiff to be the health care provider to whom Abington would refer its residents. Plaintiff claims to have contracted with sixty-five of Abington's residents to provide health care services. All of these contracts were terminable at will. In February 1995, plaintiff received a letter from Abington advising that plaintiff would no longer be Abington's designated care provider. Subsequently, Abington named defendant The Medical Team (hereinafter TMT) Abington's designated health care provider. Shortly after being informed that it was no longer Abington's designated service provider, plaintiff received resignations from several of its employees. Those employees were then hired by TMT, and they continued to provide services to Abington Manor residents. Thereafter, plaintiff filed this action alleging intentional interference with contractual relations,[1] intentional interference with business relations,[2] and conspiracy.

Prior to trial, defendants filed motions in limine seeking to limit testimony regarding damages. Defendants argued that because the contracts with Abington's residents were terminable at will, plaintiff's recovery was limited to nominal damages only. The trial court, relying on this Court's decision in *Environair, Inc v Steelcase, Inc*, 190 Mich App 289; 475 NW2d 366 (1991), agreed with

defendants and granted their motions. Plaintiff's application for leave to file an interlocutory appeal was denied by this Court. The Supreme Court remanded for consideration as on leave granted.

Plaintiff first argues that the trial court erred when it ruled that under either of its tortious interference claims, plaintiff's recovery would be limited to nominal damages. We disagree. In *Environair*, the plaintiffs claimed that the defendant had tortiously interfered with a contract and tortitously interfered with a business relationship. *Id.* at 291. As in the case at hand, the defendant in *Environair* also brought a motion in limine seeking to limit damages. *Id.* Ultimately, the trial court ruled "that while Environair[3] could recover for all damages that accrued before termination of the contract . . ., recovery for damages accruing after [termination] . . . would be limited to nominal damages." *Id.* The *Environair* Court upheld the trial court's action, reasoning as follows:

> because the nature of the relationship between Environair and [defendant] was one founded upon a contract that was terminable at will, we conclude that there was no cognizable tortious interference cause of action independent of that contract, because Environair's mere subjective expectation of the continuation of the contract could not justify an expectation any greater. [*Id.* at 295.]

The *Environair* Court's conclusion was based primarily on this Court's earlier decisions in *Feaheny v Caldwell*, 175 Mich App 291; 437 NW2d 358 (1989), and *Sepanske v Bendix Corp*, 147 Mich App 819; 384 NW2d 54 (1985). In *Sepanske*, this Court affirmed the proposition that the breach of an at-will employment contract entitled the employee to receive only nominal damages because "[t]here is no tangible basis upon which damages may be assessed where plaintiff's expectation was for an at-will position which could have been changed or from which he could have been terminated without consequence." *Id.* at 829. *Environair* observed that the *Sepanske* "holding regarding the speculative nature of damages is just as applicable to a nonemployment situation also involving an at-will contractual relationship." *Environair, supra* at 294.

In *Feaheny*, the plaintiff raised allegations of both tortious interference with an employment contract and tortious interference with economic expectancy. *Feaheny, supra* at 294. Recognizing that each of these torts is distinct, *id.* at 301, the *Feaheny* Court observed that "the threshold question that must be resolved for plaintiff to proceed on any theory of tortious interference is what type of relationship exists." *Id.* at 302. Because the plaintiff's employment contract was at-will, the Court concluded that "[t]here was no cognizable tortious interference cause of action existing independent of that contract." *Id.*

Taken together, *Sepanske* and *Feaheny* stand for the proposition that while a cause of action for tortious interference with an at-will employment contract can be maintained, the damages accruing after termination are nevertheless limited to nominal damages, given the speculative nature of any such damage claim. In essence, this rule balances the goals of preventing improper tampering with an existing contract, 4 Restatement Torts, 2d, §766, comment g, pp 10-11, and denying recovery in tort for speculative damages, *Theisen v Knake*, 236 Mich App 249; 599 NW2d 777 (1999). *Environair* expanded the scope of these principles to include the "nonemployment situation also involving an at-will contractual relationship." *Environair, supra* at 294.

In support of its position, plaintiff relies on *Phillips v Butterball Farms Co, Inc (After Second Remand)*, 448 Mich 239; 531 NW2d 144 (1995), and *Hord v Environmental Research Institute of Michigan*, 228 Mich App 638; 579 NW2d 133 (1998). We conclude that plaintiff's reliance on these cases is misguided. In *Phillips*, the plaintiff claimed that she had been discharged in retaliation for filing a worker's compensation claim. *Phillips, supra* at 241. In reversing this Court's holding that the plaintiff's damages for lost wages would be limited to nominal damages, the Michigan Supreme Court stated that its action was based on the "public policy exception to the employment at will doctrine." *Id.* at 253. The public policy at issue was the prohibition against retaliatory discharge provided for in § 301(11)[4] of the Workers' Disability Compensation Act, MCL 418.101 *et seq.*; MSA 17.237(101) *et seq.* Thus, unlike the situations in both the case at hand and *Environair*, the plaintiff's case in *Phillips* did arise independently from the employment contract at issue. *Philips, supra* at 253. See also *Dunbar v Dep't of Mental Health*, 197 Mich App 1, 10; 495 NW2d 152 (1992) (observing that a claim for breach of the statutorily provided prohibition against retaliatory discharge "sounds in tort, not contract").

In *Hord*, the plaintiff's cause of action was based on the tort of fraud, not tortious interference. *Hord, supra* at 640. *Hord* was focused not on any alleged interference with an existing contractual relationship, but on an allegation that the plaintiff had been defrauded into entering into an employment contract. In other words, the interest invaded was not the existing economic relationship established by the employment contract between Hord and the Environmental Research Institute. Thus, as in *Phillips*, because the duty at issue in *Hord* arose independent of the employment contract itself, the cause of action also arose independent of that contract. *Environair, supra* at 295. See also *Hetes v Schefman & Miller Law Office*, 152 Mich App 117, 121-122; 393 NW2d 577 (1986).

Accordingly, given the nature of plaintiff's cause of action, under *Environair*, *Feaheny*, and *Sepanske*, recovery for damages after the date of the breach must be limited to nominal damages.

We also reject plaintiff's assertion that the trial court erred in excluding evidence relating to a liquidated damages provision found in the contracts between plaintiff and Abington's residents. Not only is plaintiff limited to nominal damages, but, as the trial court observed, neither defendant was a party to these contracts. By its very terms, the provision sought damages from the residents themselves, not Abington and TMT.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Donald E. Holbrook, Jr.

[1] The contracts cited by plaintiff in count I of its complaint were those between itself and the Abington residents, and between itself and its employees.

[2] The business relationships identified in count II of plaintiff's complaint were those between plaintiff and Abington, between plaintiff and Abington residents, and between plaintiff and its employees.

[3] Prior to this ruling, the trial court in *Environair* had dismissed the other plaintiff as a party.

[4] MCL 418.311(11); MSA 17.237(301)(11) states:

> A person shall not discharge an employee or in any manner discriminate against an employee because the employee filed a complaint or instituted or caused to be instituted a proceeding under this act or because the exercise by the employee on behalf of himself or herself or others of a right afforded by this act.