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NO. COA01-298

NORTH CAROLINA COURT OF APPEALS

Filed: 5 February 2002

DORIS SIDES,

Plaintiff,

v.

Guilford County
No. 98 CVS 11711

GUILFORD COUNTY SCHOOL BOARD,

Defendant.

Appeal by plaintiff from order entered 7 December 2000 by Judge Catherine C. Eagles in Guilford County Superior Court. Heard in the Court of Appeals 10 January 2002.

The Steve Allen Law Firm, by W. Steven Allen, for plaintiff-appellant.

Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., by Jill R. Wilson and Jennifer T. Harrod, for defendant-appellee.

MARTIN, Judge.

Plaintiff, a teacher formerly employed by the Guilford County Schools, filed a complaint against the Guilford County School Board (defendant) seeking cancellation and rescission of her resignation letter, reinstatement to her position as a career teacher, extortion, wrongful termination, and punitive damages. Defendant moved to dismiss pursuant to G.S. § 1A-1, Rules 12(b)(1) and 12(b)(6); the Rule 12(b)(6) motion was allowed as to plaintiff's claim for wrongful discharge and the motions to dismiss were denied

as to all remaining claims. Defendant then moved for summary judgment.

The materials before the court tended to show that in 1983, plaintiff was convicted of fourteen counts of making false statements to obtain benefits from the Employment Security Commission. Thereafter, plaintiff applied for a teaching position with the Guilford County Schools but did not list these convictions on her employment application. Plaintiff was hired by defendant in April 1987.

In 1995, defendant performed a criminal background check on its employees and discovered plaintiff's convictions. On 12 November 1995, in response to a letter from the school system requesting that plaintiff explain why these convictions appeared on her record, plaintiff responded:

I received an overpayment of unemployment benefits. During this time also, I worked occasionally during a week's time and reported my earnings the following week when I mailed the cards. But, overlappings caused the earnings that were reported to be inaccurate because they became past due earnings when I received my check.

Following an investigation by a school system attorney, plaintiff and her attorney, Romallus Murphy, attended a meeting with Dr. Jerry D. Weast, superintendent of the Guilford County Schools, Dr. John Wright, the associate superintendent, and the school system's attorneys. Plaintiff contends Dr. Weast offered her two choices: resign or be dismissed without pay. She also claims Dr. Weast explained to her that if she chose not to resign, that he would "go all the way to the top to have [her] license

revoked throughout the entire state of North Carolina." According to plaintiff's deposition testimony, her attorney explained to her that if she chose to be dismissed without pay, the process involved in contesting the dismissal would be long and drawn out, but that if she resigned she would be able to be employed in another school system. Mr. Murphy testified that he discussed with plaintiff the benefits of resigning and her options if she chose not to resign. He also explained that if the School Board terminated plaintiff, the State Board of Education could revoke her teaching certification.

After consulting with Mr. Murphy and with her husband, plaintiff signed the Resignation and Release of Liability letter prepared by the Guilford County Board of Education. The document stated in part:

I, Doris W. Sides, being fully aware of my rights and liabilities as a citizen of the United States and the State of North Carolina and a "career teacher," as defined in N.C. Gen. Stat. § 115C-325, and upon the advice of my competent counsel, do hereby relinquish any and all claims, past or present, real or imagined, confirmed or contingent, arising out of my employment with the Guilford County Schools
. . . .

Plaintiff also attached a signed, handwritten statement wherein she stated, "I . . . submit this resignation letter to the Guilford County Schools for personal reasons."

The trial court granted defendant's motion for summary judgment as to all claims. Plaintiff appeals the trial court's summary judgment order; defendant cross-assigns error to the trial court's denial of its motions to dismiss for lack of subject matter

jurisdiction and for plaintiff's failure to state a claim upon which relief may be granted.

In her single assignment of error, plaintiff alleges the trial court erred in allowing defendant's motion for summary judgment because genuine issues of material facts exist regarding plaintiff's claims. Specifically, plaintiff argues that defendant procured her resignation through duress amounting to extortion, and that she should be reinstated to her teaching position and receive compensatory and punitive damages. We affirm the trial court's order.

Summary judgment is appropriate only when the materials before the court reveal that there is no genuine controversy concerning any factual issue material to the outcome of the action so that resolution of the action involves only questions of law. *Kessing v. National Mortgage Corp.*, 278 N.C. 523, 180 S.E.2d 823 (1971). The moving party "has the burden of showing that there is no genuine issue as to any material fact." *Holley v. Burroughs Wellcome Co.*, 318 N.C. 352, 355, 348 S.E.2d 772, 774 (1986) (citation omitted). The moving party may carry that burden by showing that an essential element of the opposing party's claim is nonexistent. *Roumillat v. Simplistic Enterprises, Inc.*, 331 N.C. 57, 414 S.E.2d 339 (1992). In ruling on the motion, the court is not authorized to resolve any issue of fact, only to determine whether there exists any genuine issues of fact material to the outcome of the case. *Caldwell v. Deese*, 288 N.C. 375, 218 S.E.2d

379 (1975). When considering summary judgment motions, the record must be viewed in a light most favorable to the non-movant. *Id.*

Extortion is defined as "wrongfully obtaining anything of value from another by threat, duress, or coercion." *Harris v. NCB Nat. Bank of North Carolina*, 85 N.C. App. 669, 675, 355 S.E.2d 838, 843 (1987) (citations omitted). Duress exists in those cases where

"one by the unlawful act of another is induced to make a contract or perform or forego some act under circumstances which deprive him of the exercise of free will." [citations omitted.]

"A threat to do what one has a legal right to do cannot constitute duress." [citation omitted.] Illegality is the foundation on which a claim of coercion or duress must exist.

Bell Bakeries, Inc. v. Jefferson Standard Life Ins. Co., 245 N.C. 408, 419, 96 S.E.2d 408, 416 (1957) (citations omitted).

In the present case, taking the evidence in the light most favorable to plaintiff, there is no evidence to support the essential element of duress. Plaintiff signed a resignation and release of liability in which she stated that she was "fully aware" of her rights as a "career teacher" as defined by G.S. § 115C-325, and expressly relinquished all claims against defendant arising out of her employment as a teacher with the Guilford County Schools. She did so after consultation with, and upon the advice of, competent counsel, who was present with her at the meeting with school officials. She also discussed the matter with her husband. When she signed the resignation and release, she included a handwritten attachment to the document in which she asserted that

she was submitting her resignation for "personal reasons." Moreover, had plaintiff chosen not to resign, the superintendent would have recommended her dismissal to defendant school board and, if the recommendation had been accepted by the Board, the dismissal would have been reported to the State Board of Education. N.C. Gen. Stat. § 115C-296(d); N.C. Gen. Stat. § 115C-333(d). Thus, Dr. Weast's statement that plaintiff's dismissal could result in revocation of her teaching certification cannot be construed as an illegal threat amounting to duress. *Bell Bakeries, Inc. v. Jefferson Standard Life Ins. Co.*, 245 N.C. 408, 96 S.E.2d 408 (1957). Because plaintiff cannot produce evidence to support an essential element of her claim, summary judgment in defendant's favor must be affirmed.

Because we affirm the trial court's summary judgment order, we need not reach defendant's cross assignments of error.

Affirmed.

Judges TIMMONS-GOODSON and BRYANT concur.

Report per Rule 30(e).