NO. COA02-196

NORTH CAROLINA COURT OF APPEALS

Filed: 17 December 2002

JESSE E. WORLEY, II,
Plaintiff

v.

Johnston County
No. 01 CVS 2305

BAYER CORPORATION,
Defendant

Appeal by plaintiff from an order entered 13 November 2001 by Judge Knox V. Jenkins, Jr. in Johnston County Superior Court. Heard in the Court of Appeals 17 October 2002.

Barringer, Barringer, Stephenson & Schiller, L.L.P., by David G. Schiller and Marvin Schiller, for plaintiff-appellant.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C., by John S. Burgin and Sheri L. Roberson, for defendant-appellee.

WALKER, Judge.

Plaintiff was employed by defendant in the fractionation department of its manufacturing plant in Clayton, North Carolina for more than one year prior to his termination on 6 March 2000. In his complaint, plaintiff alleged that Jerry Sellers (Sellers), the fractionation department manager, repeatedly assured him that his employment would not be terminated if he reported to management any mistakes he made in the course of his work and did not attempt to fix or cover up the mistakes. Plaintiff further alleged that

despite these repeated assurances, Sellers discharged him for reporting a mistake. Defendant contends that plaintiff made a mistake while carrying out his job duties but did not report the mistake.

Although plaintiff and defendant did not have a written employment agreement, plaintiff alleged that an oral agreement between him and Sellers was binding on defendant and that defendant breached such agreement when it terminated plaintiff.

Without answering plaintiff's complaint, defendant moved to dismiss for failure to state a claim upon which relief may be granted under N.C. Gen. Stat. § 1A-1, Rule 12(b)(6) (2001). The trial court granted defendant's motion to dismiss on 13 November 2001.

In his sole assignment of error, plaintiff contends that the trial court erred in granting defendant's Rule 12(b)(6) motion to dismiss because defendant terminated plaintiff's employment in violation of their binding oral employment agreement. To support his contention, plaintiff argues that he was not an at-will employee because his oral agreement with defendant contained a definite term of employment in that it was terminable upon a specific event, namely his failure to report a mistake or an attempt to conceal a mistake.

A motion to dismiss for failure to state a claim upon which relief may be granted challenges the legal sufficiency of a pleading. *Walker v. Sloan*, 137 N.C. App. 387, 392, 529 S.E.2d 236, 241 (2000). In ruling on a motion to dismiss under Rule 12(b)(6),

a court must determine whether, taking all allegations in the complaint as true, relief may be granted under any recognized legal theory. *Taylor v. Taylor*, 143 N.C. App. 664, 668, 547 S.E.2d 161, 164 (2001). A complaint may be dismissed for failure to state a claim if no law supports the claim, if sufficient facts to make out a good claim are absent, or if a fact is asserted that defeats the claim. *Shell Island Homeowners Ass'n, Inc. v. Tomlinson*, 134 N.C. App. 217, 225, 517 S.E.2d 406, 413 (1999).

With this standard of review in mind, we examine this State's at-will employment law which provides the basis for plaintiff's claim. In North Carolina, "the relationship between employer and employee is presumed to be terminable at will" by either party and without cause absent an agreement to the contrary. *Buchanan v. Hight*, 133 N.C. App. 299, 302, 515 S.E.2d 225, 228 (citation omitted), *appeal dismissed and disc. rev. denied*, 351 N.C. 351, 539 S.E.2d 280 (1999). Our Supreme Court has recognized three exceptions to the at-will employment doctrine: (1) a contract providing for a definite term of employment; (2) a discharge occurring for "impermissible considerations such as the employee's age, race, sex, religion, national origin, or disability, or in retaliation for filing certain claims against the employer;" and (3) a termination contravening public policy. *Kurtzman v. Applied Analytical Indus., Inc.*, 347 N.C. 329, 331, 493 S.E.2d 420, 422 (1997), *reh'g denied*, 347 N.C. 586, 502 S.E.2d 594 (1998).

Under the first exception to the at-will employment doctrine, plaintiff contends that defendant's assurances created an oral

agreement for a definite term that was terminable only upon the occurrence of a specific event, his failure to report a mistake or an attempt to conceal a mistake. An employee bears the burden of establishing employment for a specific duration to remove it from the employment at-will presumption. *Freeman v. Hardee's Food Systems*, 3 N.C. App. 435, 165 S.E.2d 39 (1969). Our Supreme Court consistently has held that assurances of continued employment, permanent employment or employment for life are insufficient to rebut the at-will presumption. *Kurtzman, supra* (holding that assurances such as "you'll have a job" and an offer for a "secure position" did not remove employment from the at-will employment doctrine); *Still v. Lance*, 279 N.C. 254, 182 S.E.2d 403 (1971) (holding that an agreement for a regular permanent job was not sufficiently definite to rebut the at-will presumption); *Tuttle v. Lumber Co.*, 263 N.C. 216, 139 S.E.2d 249 (1964) (ruling that although the employer promised employment for as long as the employee's work was satisfactory, such employment remained at-will); *Malever v. Jewelry Co.*, 223 N.C. 148, 149, 25 S.E.2d 436, 437 (1943) (holding that employment with "no additional expression as to duration" was terminable at-will despite assurances of "permanent employment"). However, this Court has held that if an employee contributes "some special consideration in addition to his services," assurances of continued or permanent employment may be contractually enforceable. *Burkhimer v. Gealy*, 39 N.C. App. 450, 454, 250 S.E.2d 678, 682, *disc. rev. denied*, 297 N.C. 298, 254 S.E.2d 918 (1979).

As required by the standard of review for motions to dismiss, we assume plaintiff's allegations in the complaint regarding defendant's assurances are true. However, defendant's assurances that plaintiff would have a job if he reported his mistakes and did not conceal them falls into the category of general assurances of continued employment which our courts have held will not convert at-will employment into employment for a definite term, terminable only for cause. Plaintiff provides no other evidence that the alleged oral agreement sets a definite term for employment. Further, plaintiff does not allege that he contributed consideration in addition to his services to rebut the at-will presumption and make the alleged offer for permanent employment enforceable. Thus, plaintiff has failed to set forth sufficient facts to establish an employment agreement for a definite term under the first recognized exception to the employment at-will doctrine.

Plaintiff also argues that his termination contravenes this State's public policy. The public policy exception to at-will employment has been narrowly construed and is "grounded in considerations of public policy designed either to prohibit status-based discrimination or to insure the integrity of the judicial process or the enforcement of the law." *Kurtzman*, *supra*, at 333-34, 493 S.E.2d at 423.

> There is no specific list of what actions constitute a violation of public policy. However, wrongful discharge claims have been recognized in North Carolina where the employee was discharged (1) for refusing to violate the law at the employers [sic]

> request, (2) for engaging in a legally protected activity, or (3) based on some activity by the employer contrary to law or public policy.

Ridenhour v. IBM Corp., 132 N.C. App. 563, 568-69, 512 S.E.2d 774, 778 (citations omitted), *disc. rev. denied*, 350 N.C. 595, 537 S.E.2d 481 (1999).

Plaintiff does not allege that defendant terminated him for any of the above recognized reasons. There is no evidence that defendant asked plaintiff to violate the law or that defendant engaged in an activity contrary to law or public policy. Also, plaintiff does not allege that he was terminated for engaging in a legally protected activity. Thus, we hold that plaintiff failed to present sufficient facts to support a finding that his termination violated public policy; therefore, he has failed to rebut the at-will presumption under this exception.

Because there are insufficient facts to support a claim for breach of an oral agreement and the claim finds no support in the at-will employment doctrine, we hold that the trial court properly dismissed plaintiff's claim.

Affirmed.

Judges McCULLOUGH and CAMPBELL concur.

Report per Rule 30(e).