

[Cite as *Snyder v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-7330.]

IN THE COURT OF CLAIMS OF OHIO

CHARLES W. SNYDER, M.D. :

Plaintiff :

v. :

CASE NO. 2001-12169
Holly True Shaver, Magistrate

MAGISTRATE DECISION

STATE OF OHIO DEPARTMENT OF :
REHABILITATION AND CORRECTIONS :

Defendant

.....

{¶1} Plaintiff brought this action against defendant, the Ohio Department of Rehabilitation and Correction (DRC), alleging claims of breach of contract, breach of implied contract, promissory estoppel and wrongful termination in violation of public policy. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} Plaintiff is a psychiatrist licensed to practice in Ohio. In 1998, plaintiff had discussions with Dr. Neil Waugh, Manager of Mental Health Services at Noble Correctional Institution (NCI), regarding an employment opportunity. On June 16, 1998, plaintiff entered into an employment contract with defendant for a position as an independent contractor to provide psychiatric services on a part-time basis to inmates at NCI from July 1, 1998, to June 30, 1999. On June 10, 1999, plaintiff entered into a second contract with defendant for a full-time independent contractor position as a psychiatrist at NCI from July 1, 1999, through June 30, 2001. Both contracts contained the following provision in the “Terms of Termination” section: “4. DRC may immediately terminate the contract if the contractor, subcontractor and/or any individuals submitted violates the ‘Standards for Conduct for

Contractors' or otherwise compromises the security and safety of the work site." (Plaintiff's Exhibits 1(a) and 2(a).)

{¶3} One responsibility of a psychiatrist at NCI was to authorize the use of restraints on mentally ill inmates when the situation required. A psychiatric physician's order to use restraints could be obtained in writing or via telephone consultation. Although a shift captain could order restraints when security was at issue, only a staff psychiatrist or on-call psychiatrist was authorized to order restraints due to an inmate's mental health issues. According to DRC policy, restraints were to be used on mentally ill inmates to prevent imminent and substantial bodily injury to the inmate or to others, but only if all other less restrictive approaches had been considered. (Defendant's Exhibit C, Section V.)

{¶4} According to Ohio Administrative Code (OAC) Section 5120-9-01(C), use of immobilizing restraints constitutes a "use of force" against an inmate. Pursuant to OAC Section 5120-9-02(A)(4), a "use of force report" must be filed whenever an employee exerts physical restraint or control over an inmate. Thereafter, the deputy superintendent of programs may conduct an investigation if warranted.

{¶5} On January 10, 2001, plaintiff went before a Use of Force Review Board regarding a November 2000 incident where he had given telephone authorization for the use of restraints on an inmate with a mental health disorder. According to plaintiff, NCI staff informed him that the inmate, who was schizophrenic, was banging his head against a wall, had threatened to kill Dr. Waugh, and was otherwise "out of control." On January 11, 2001, plaintiff wrote a memorandum to Warden Jeffrey Wolfe that stated:

{¶6} "Following the Use of Force Review Board interrogation of my practice on January 10, 2001, I recognized the necessity of redefining my provision of psychiatric services for NCI. I will no longer order physical nor chemical restraints on inmates representing a danger to themselves or to others. Likewise I will infrequently order the release of inmates ordered physically restrained by any DR&C employee. I advocate that all dangerous inmates at NCI be provided the 'talk down' approach and I will be available to

assist this process via the cuff port. My position on this matter is simply one of liability concern. Informing your staff of the availability of the statewide psychiatrist on-call as a 24/7 service seems an only alternative. The psychiatrist on-call has the option to medicate and/or restrain. ****” (Plaintiff’s Exhibit 17.)

{¶7} On January 18, 2001, Warden Wolfe served plaintiff with a termination notice wherein Wolfe stated that plaintiff was being terminated because he had violated the terms of his employment contract.

{¶8} Plaintiff alleges that defendant’s termination of his employment constitutes a breach of contract and a breach of an implied contract for continuing employment. Plaintiff also asserts claims of promissory estoppel and wrongful termination in violation of public policy based upon his contention that he was dismissed because of his advocacy on behalf of his inmate patients.

I. BREACH OF CONTRACT

{¶9} Prior to his termination, plaintiff had entered into a written contract that was to expire on June 30, 2001. As a general rule, the goal of the court in construing written contracts is to arrive at the intent of the parties, which is presumed to be stated in the document itself. See *Foster Wheeler Enviresponse, Inc. v. Franklin Cty. Convention Facilities Auth.*, 78 Ohio St.3d 353, 1997-Ohio-202; *Graham v. Drydock Coal Co.*, 76 Ohio St.3d 311, 1996-Ohio-393. Where the terms of a contract are clear and unambiguous, the court cannot find different intent from that expressed in the contract. *E.S. Preston Assoc., Inc. v. Preston* (1986), 24 Ohio St.3d 7. However, where the terms in a contract are ambiguous, extrinsic evidence may be relied upon to determine the intent of the parties. *Ohio Historical Soc. v. Gen. Maintenance & Eng. Co.* (1989), 65 Ohio App.3d 139.

{¶10} Upon review of the contract, the court finds that the contract language is unambiguous. Section 4 of the Terms of Termination states that DRC may immediately terminate the contract if the subcontractor compromises the security and safety of the work site. Plaintiff’s January 11, 2001, memo states: “I will no longer order physical nor chemical

restraints on inmates representing a danger to themselves or to others. Likewise I will infrequently order the release of inmates ordered physically restrained by any DR&C employee.” The court finds that plaintiff’s actions as specifically stated in the January 11, 2001, memo, if taken, would compromise the security and safety of the work site at NCI, in violation of Section 4 of the Terms of Termination. Specifically, safety and security are of the highest priority in a correctional facility. Plaintiff’s memo demonstrates his willingness to act in contravention of defendant’s safety and security procedures in situations where mentally ill inmates represent a danger to themselves or to others. In addition, ordering the release of inmates who had been physically restrained upon order by any DRC employee would compromise the security of the workplace.

{¶11} Plaintiff testified that he was the only psychiatrist present at NCI Monday through Thursday. Kay Northrup, Deputy Director of Health Care, testified that psychiatrists are authorized to order restraints to ensure that they are used only when clinically appropriate; that plaintiff was the treating psychiatrist for most of the mentally ill inmates; and that plaintiff would be consulted for guidance about whether restraints should be used on any of his patients. Based upon the language in Section 4 of the Terms of Termination, the court finds that plaintiff advocated action that would compromise the security and safety of NCI and was subject to immediate termination therefor.

II. BREACH OF IMPLIED CONTRACT

{¶12} Plaintiff also alleges that defendant breached an implied contract for future employment. Plaintiff bases this argument on assertions that in 1998, when he began to communicate with Dr. Waugh about a part-time position at NCI, Dr. Waugh told plaintiff that plaintiff would control his own future at NCI, and that contract renewal was commonplace for psychiatrists at NCI. Plaintiff testified that he expected that his contract would be renewed in June 2001, based on Dr. Waugh’s representations about the position.

{¶13} In order to have an implied contract, all of the essential elements of a contract are required, including a meeting of the minds. *Priebe v. O'Malley* (1993), 89 Ohio App.3d 8, 12; *Bartlett v. Daniel Drake Mem. Hosp.* (1991), 75 Ohio App.3d 334, 338.

{¶14} Plaintiff argues that Dr. Waugh assured him that continued employment at NCI could be expected and that contract renewals were the norm. However, these statements were made before plaintiff had signed his first written contract with defendant. Consequently, any statements that Dr. Waugh made to plaintiff regarding his future employment at NCI before he signed the contract cannot be admitted to vary the terms of the contract. Plaintiff has failed to prove the existence of an implied contract which was different from the written contract that he signed.

III. PROMISSORY ESTOPPEL

{¶15} Promissory estoppel is defined as follows: "A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise." Restatement of the Law, Contracts 2d (1973), Section 90; *McCroskey v. State* (1983), 8 Ohio St.3d 29, 30.

{¶16} In order for plaintiff's claim of promissory estoppel to succeed, the threshold element of a promise must be met. Defendant must have made a promise to plaintiff which should have reasonably been expected to induce action. *McCroskey*, at 30. In addition, to support a claim for promissory estoppel, representations concerning job security must be specific promises. *Helmick v. Cincinnati Word Processing, Inc.* (1989) 45 Ohio St.3d 131.

{¶17} The court finds that Dr. Waugh's comments do not rise to the level of a specific promise of future employment. In addition, Dr. Waugh testified that he was not in a position to hire or fire plaintiff, and Warden Wolfe testified that he alone had that authority. Therefore, plaintiff could not have reasonably relied on any alleged promises about the position made by Dr. Waugh.

IV. WRONGFUL TERMINATION

{¶18} Lastly, plaintiff asserts that he was terminated in violation of public policy. “To state a claim of wrongful discharge in violation of public policy, a plaintiff must allege facts demonstrating that the employer’s act of discharging him contravened a ‘clear public policy.’” *Painter v. Graley*, 70 Ohio St.3d 377, 1994-Ohio-334, paragraph two of the syllabus. See, also, *Greeley v. Miami Valley Maintenance Contractors, Inc.* (1990), 49 Ohio St.3d 228. A clear public policy may be ascertained from the federal and state constitutions, statutes, administrative rules and regulations, and the common law. *Painter*, supra, at paragraph three of the syllabus. Whether an employment termination violates public policy must be analyzed according to a four-prong test that balances the justification for the termination against the effect that it will have on the public policy. *Kulch v. Structural Fibers, Inc.*, 78 Ohio St.3d 134, 1997-Ohio-219. Specifically, reviewing courts must determine whether: 1) a clear public policy was manifested in a state or federal constitution, statute or administrative regulation, or in the common law (the clarity element); 2) the firing would jeopardize that public policy (the jeopardy element); 3) the dismissal was motivated by conduct related to the public policy (the causation element); and, 4) the employer had a legitimate business justification for the termination (the overriding justification element). *Id.* at 151. The clarity and jeopardy elements are questions of law, while the causation and overriding-justification elements are questions of fact. *Id.*

{¶19} Plaintiff argues that he was fired because he was an advocate on behalf of inmate patients. Plaintiff points to memos that he had written regarding such issues as insufficient medical treatment of inmates; his request to allow a certain inmate to be given a double portion of food at meal times and to permit that inmate to eat either first or last so that he could avoid contact with other inmates; and his request for a toxicology screen to determine whether an inmate was taking his medication as prescribed. However, plaintiff points to no state or federal constitution, statute or administrative regulation or common law theory of public policy that would satisfy the “clarity” element.

{¶20} Even assuming that a clear public policy existed under the facts of this case, and assuming that plaintiff's termination would somehow jeopardize that public policy, the court concludes that plaintiff has failed to prove by a preponderance of the evidence that the termination of his employment was motivated by his conduct regarding his memos about inmate health care. Contrary to plaintiff's assertion, the evidence presented at trial shows that defendant's decision was solely related to concerns about the issues raised in plaintiff's January 11, 2001, memo.

{¶21} Warden Wolfe testified that he was concerned when he received plaintiff's January 11, 2001, memo because he interpreted it to be an expression of plaintiff's intention not to fulfill his job responsibilities. He then consulted with Lanny Sacco, Mental Health Administrator at NCI, Deborah Nixon-Hughes, Chief of the Bureau of Mental Health Services, and Dr. Sara McIntosh, Clinical Supervisor regarding plaintiff's January 11, 2001, memo, and after consultation, decided to terminate plaintiff. He further testified that plaintiff's previous memos regarding specific inmates had no bearing on his decision to terminate plaintiff and that he harbored no ill-will or personal animosity towards plaintiff.

{¶22} Kay Northrup, Deputy Director of Health Care, testified that plaintiff's January 11, 2001, memo was brought to her attention and that she was concerned that it was a statement that plaintiff would not comply with policy; that it was unacceptable for plaintiff to refuse to authorize restraints because that would be a violation of policy; and that she discussed plaintiff's January 11, 2001, memo with her staff and concurred with the decision to terminate plaintiff's contract.

{¶23} Deborah Nixon-Hughes was responsible for oversight of Mental Health Services for DRC, including the staff at NCI and she also indirectly supervised plaintiff. She testified that she was concerned when she received plaintiff's January 11, 2001, memo because it suggested that plaintiff would not comply with the restraint policy under any circumstances. According to Nixon-Hughes, plaintiff would be the contact person for NCI if restraints were needed; she was "vaguely aware" of plaintiff's prior memos but was

not actively involved in them; and plaintiff was fired because of the last memo, not because of the previous memos.

{¶24} Based upon the testimony and evidence presented at trial, the court concludes that defendant had a legitimate business justification for its decision to terminate plaintiff's employment. Accordingly, the court finds that plaintiff's claim for violation of public policy is without merit.

{¶25} For the foregoing reasons, the court finds that plaintiff has failed to prove any of his claims by a preponderance of the evidence and accordingly, judgment is recommended in favor of defendant.

{¶26} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).*

HOLLY TRUE SHAVER
Magistrate

Entry cc:

William J. O'Malley
Carla E. Oglesbee
3040 Riverside Dr., Suite 120
Columbus, Ohio 43221

Attorneys for Plaintiff

Larry Y. Chan
Assistant Attorney General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

Attorney for Defendant

HTS/cmd
Filed December 30, 2003
To S.C. reporter January 26, 2004