

[Cite as *Fendley v. Wright State Univ.*, 2018-Ohio-1557.]

RYAN FENDLEY

Plaintiff

v.

WRIGHT STATE UNIVERSITY

Defendant

Case No. 2015-01059

Judge Patrick M. McGrath

DECISION

{¶1} Currently before the court are plaintiff Ryan Fendley’s (plaintiff) objections filed on October 3, 2017. Plaintiff filed a transcript in support of his objections on September 26, 2017. Defendant Wright State University (defendant) filed a memorandum contra the objections on October 6, 2017.

Introduction

{¶2} Plaintiff’s claims stem from his termination as an unclassified employee in August 2015. After the court granted defendant’s motion for summary judgment on Counts II and III of plaintiff’s complaint, plaintiff’s remaining breach of contract claim proceeded to trial. On September 19, 2017, the magistrate issued a decision recommending judgment for defendant. For the following reasons, the court overrules plaintiff’s objections and adopts the magistrate’s decision.

{¶3} In March 2015, defendant’s president, Dr. David Hopkins (Dr. Hopkins) informed plaintiff and others that federal investigators would be accessing their computers as part of an ongoing investigation. Plaintiff contacted the Attorney General’s office and learned that the investigation related to defendant’s procurement of H1-B visas for foreign workers hired to perform work on a contract pertaining to a software development company known as Web Yoga. Plaintiff did not sign the Web Yoga contract. Defendant’s office of general counsel handled the procurement of visas.

On May 4, 2015, Dr. Hopkins presented plaintiff a letter, referencing the “outside investigation” and placing plaintiff on paid leave. In August 2015, Dr. Hopkins met with defendant’s special counsel and two investigating U.S. attorneys for an hour regarding the latter’s investigation into H1-B visas. Dr. Hopkins concluded plaintiff and others would soon be indicted and needed to be removed from their positions. On August 12, 2015, plaintiff received another letter from Dr. Hopkins which informed plaintiff of his termination “as a result of the ongoing investigation.” At the time of trial, plaintiff had not been indicted.

{¶4} Defendant’s administrative policies and procedures manual is known as the Wright Way Policy and the parties agree it governs plaintiff’s discharge. Wright Way Policy number 4004.1 provides that termination without just cause requires defendant to provide 9 months notice to unclassified employees who, like plaintiff, have worked for defendant between 6 and 15 years. It further provides, “[e]mployees can be terminated for documented just cause as provided in applicable laws, rules and regulations or because of financial exigency, without notice.” The term documented just cause is not defined in the Wright Way Policy.

Law and Analysis

{¶5} A magistrate’s decision “is not effective unless adopted by the court.” Civ.R. 53(D)(4)(a). When considering objections, Civ.R. 53(D)(4)(d) provides, in pertinent part:

Action on objections. If one or more objections to a magistrate’s decision are timely filed, the court shall rule on those objections. In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law. (Emphasis added).

In reviewing objections:

The trial court has the ultimate authority and responsibility over the magistrate's findings and rulings. The trial court must undertake an independent review of the magistrate's report to determine any errors.

When reviewing a magistrate's decision, the trial court does not sit in the position of an appellate court. Instead, the trial court must conduct a de novo review of the facts and conclusions in the magistrate's decision. As the ultimate finder of fact, the trial court must make its own factual determinations through an independent analysis and should not adopt the magistrate's findings unless the trial court fully agrees with them. It is the trial court's obligation to determine whether the magistrate properly determined the facts and applied the appropriate law. If the trial court determines, in its judgment, the magistrate has failed to do so, the trial court must substitute its judgment for that of the magistrate.

Ramsey v. Ramsey, 10th Dist. No. 13AP-840, 2014-Ohio-1921, 2014 Ohio App. Lexis 1868, ¶¶ 16-17 (internal citations omitted). The court addresses plaintiff's objections out of order.

The magistrate correctly admitted Dr. Hopkins' testimony.

{¶6} Plaintiff's fourth objection asserts the magistrate erred in admitting and considering portions of Dr. Hopkins' testimony, over plaintiff's objection, after defense counsel asked Dr. Hopkins why he decided to fire plaintiff. After Dr. Hopkins began to testify regarding updates from special counsel, plaintiff's counsel made a hearsay objection. The magistrate ruled that Dr. Hopkins could testify "that he relied on information" but that he should not testify to the information he relied upon or to "what someone else told [him]." Dr. Hopkins then testified regarding his meeting with the investigating U.S. attorneys. The magistrate allowed this testimony over plaintiff's relevance objection instructing Dr. Hopkins "to testify about your impression after the meeting" but not about "the details of what was said to you." Dr. Hopkins thereafter testified he concluded that plaintiff, among others, conspired to commit visa fraud

“[b]ased on conversations with U.S. attorneys” and that he felt he needed to terminate plaintiff from his position. Plaintiff argues that Dr. Hopkins’ testimony is hearsay, is not based on personal knowledge and is irrelevant. Plaintiff’s arguments lack merit.

{¶7} Plaintiff points to no statements of third parties which were improperly admitted. Dr. Hopkins did not relay statements made at the meeting by U.S. attorneys or anyone else. Rather, Dr. Hopkins’ testified to his impressions and conclusions. These are not statements under Evid. R. 801(A) and, therefore, are not hearsay under Evid.R. 801(C). See *State v. Wellman*, 10th Dist. No. 05AP-386, 2006 Ohio 3808, 2006 Ohio App. Lexis 3774 at ¶¶ 14; 16 (Witness’ testimony was not hearsay where he did not testify to anyone’s out-of-court statements and testified only as to beliefs he formed after meeting with his attorney); *State v. Jones*, 1st Dist. No. C-110059, 2011 Ohio 6633, 2011 Ohio App. Lexis 5497, ¶ 14 (Detective’s testimony that occupants of vehicle made statements without any testimony regarding the statement’s contents were not hearsay).

{¶8} More importantly, the court finds it would have been proper to allow Dr. Hopkins to testify without limitation, regarding statements made at the meeting by U.S. attorneys. Dr. Hopkins’ testimony regarding these statements would not constitute hearsay because defendant did not offer Dr. Hopkins’ testimony to prove the truth of the matter asserted, i.e. the veracity of any statements by U.S. attorneys. As the staff notes to Evid. R. 801 state, “[i]f a statement is not offered to prove its truth but is offers for some other reason such as simply to prove the statement was made * * * it is not hearsay.” Defendant offered Dr. Hopkins’ testimony regarding the meeting to establish Dr. Hopkins’ state of mind when he made the decision to terminate plaintiff. The relevance of the statements of U.S. attorneys did not hinge on their truth or lack thereof. Rather, their relevance was in demonstrating Dr. Hopkins’ beliefs and reasoning when he made the decision to terminate plaintiff. Therefore, the statements of U.S. attorneys to which Dr. Hopkins attempted to testify were not hearsay as defined in Evid.R. 801(C).

Wellman at ¶ 17. (Statements were not offered for truth but for establishing basis of witness' belief that he did not cause death); *Jones* at ¶ 14 (Statements were made to explain course of investigation and not to prove truth of content of statements).

{¶9} As for plaintiff's assertion that Dr. Hopkins lacked personal knowledge in violation of Evid.R. 602, Dr. Hopkins testified to the circumstances which led to the meeting as well as the fact of the meeting's occurrence. The court finds this constitutes an adequate foundation establishing Dr. Hopkins' personal knowledge of the meeting, what occurred at the meeting, and the conclusions Dr. Hopkins drew which ultimately led to his decision to fire plaintiff.

{¶10} Finally, plaintiff asserts that Dr. Hopkins' testimony is irrelevant. Under Evid.R. 401, relevant evidence is defined as any evidence tending "to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Dr. Hopkins is defendant's former president and the person who made the decision to terminate plaintiff. Dr. Hopkins' reasoning for firing plaintiff, including any conclusions or beliefs he formed after his meeting with U.S. attorneys, is certainly relevant to the determination of whether plaintiff was fired for documented just cause or not and, therefore, whether defendant breached the parties' contract.

{¶11} Given the above, the court finds no error in the magistrate's consideration of Dr. Hopkins' testimony and finds that the magistrate appropriately applied the law in admitting, with some limitation, Dr. Hopkins' testimony over plaintiff's objection. The court OVERRULES plaintiff's fourth objection.

The magistrate correctly concluded that defendant terminated plaintiff for documented just cause.

{¶12} Plaintiff's first, second and third objections attack the magistrate's finding that defendant terminated plaintiff for documented just cause and, therefore, did not breach the parties' contract. In short, plaintiff's argument is that defendant breached the

contract when it fired plaintiff because of the federal investigation and Dr. Hopkins' belief that plaintiff would be indicted. For convenience and economy, the court addresses these objections together. The magistrate found that the federal visa investigation targeting plaintiff, among others, constituted just cause for plaintiff's termination and that the letters defendant provided to plaintiff in May and August 2015, "although vague, constitute documentation for plaintiff's termination for just cause." The court agrees and finds no error in the magistrate's determinations.

{¶13} The parties left the term "documented just cause" and the process for determining it undefined in the Wright Way Policy. As plaintiff recognizes, this term should be given its plain and ordinary meaning. Just means reasonable or "having a basis in or conforming to fact or reason." It can also mean proper or "conforming to a standard of correctness." *Merriam Webster Online Dictionary*, <https://www.merriam-webster.com/dictionary/just> (accessed December 1, 2017). Cause means "a reason for an action or condition" or a "sufficient reason." *Merriam Webster Online Dictionary*, <https://www.merriam-webster.com/dictionary/cause> (accessed December 1, 2017).

{¶14} Plaintiff asserts that Dr. Hopkins' subjective belief cannot constitute just cause. However, both the decision as to what constitutes just cause and the decision to terminate must be made by someone on defendant's behalf. Here, Dr. Hopkins had a sufficient reason, grounded in fact and reason, for terminating plaintiff's employment, specifically the ongoing investigation into visa fraud targeted at plaintiff and others. As the magistrate found, Dr. Hopkins testified credibly regarding his good faith belief that plaintiff had committed visa fraud and/or would be indicted for the same. Further, that plaintiff was under investigation for visa fraud was a fact, not a belief. Defendant had a legitimate concern regarding plaintiff's involvement in visa fraud and/or eventual prosecution for visa fraud and acted on this concern when it terminated plaintiff's employment. In the court's view, the plain and ordinary meaning of "just cause"

encompasses the university president's good faith belief, based on an ongoing federal investigation, that plaintiff was the target of the investigation and/or would be indicted.

{¶15} Further, defendant did not breach its contract with plaintiff by terminating plaintiff in the absence of indictment or conviction because there is no such requirement in the parties' contract. Plaintiff argues that the "as provided in applicable laws, rules and regulations" language required defendant to determine or know for certain that plaintiff engaged "in some conduct that violated a law, rule or regulation." However, such an interpretation goes well beyond construing a contractual ambiguity in plaintiff's favor. It amounts to rewriting and/or adding terms to the parties' contract. Interpreting this language as plaintiff suggests also goes well beyond the plain and ordinary meaning of "just cause" discussed above. Rather, the "as provided in" clause should be interpreted in conjunction with "just cause" and means, in the court's view, a cause that is lawful (i.e. not based on illegal factors such as race, gender, or age). It does not mean just cause must be based on a violation of law or policy. Finally, the court finds that interpreting this language as plaintiff suggests would lead to an absurd result, one not intended by the parties. Plaintiff's interpretation would require defendant to wait for a conviction and/or to conduct an investigation tantamount to a law enforcement investigation before it could terminate an employee for just cause. Again, no such requirement is contained in the parties' contract.

{¶16} The court also agrees with the magistrate's determination that the May and August 2015 letters constitute sufficient documentation. Again, "documented" is not defined. That the letters did not reference the specific nature of the investigation is immaterial as plaintiff became aware after his initial meeting with Dr. Hopkins that the investigation pertained to visa fraud. The two letters defendant provided to plaintiff reference the outside investigation and sufficiently document the reasons for plaintiff's termination.

{¶17} The court finds that the magistrate properly determined the facts and appropriately applied the law in finding that defendant terminated plaintiff for documented just cause and, therefore did not breach the parties' contract. The court OVERRULES plaintiff's first, second and third objections.

The magistrate correctly excluded plaintiff's exhibit 13.

{¶18} At trial, plaintiff attempted to offer copies of statements of his retirement account into evidence to establish investment growth that he failed to realize after his termination due to employer retirement contributions that ceased at his termination. The magistrate refused to admit exhibit 13 on numerous grounds, primarily because plaintiff failed to provide it in discovery. The court agrees that plaintiff's failure to provide exhibit 13 in discovery, which precluded defendant from conducting discovery related to exhibit 13 and from, if it chose, retaining an expert on the subject, justified the exhibit's exclusion. In addition, plaintiff asked the magistrate to assume a rate of return based on the two retirement statements comprising exhibit 13. However, the court agrees with the magistrate's determination that investment growth, as purportedly reflected in exhibit 13, would be a speculative basis upon which to award damages without expert testimony.

{¶19} The court finds that the magistrate appropriately applied the law in excluding exhibit 13 and, therefore, OVERRULES plaintiff's fifth objection.

Conclusion

{¶20} Upon independent review as to the objected matters, the court determines that plaintiff's October 3, 2017 objections to the magistrate's decision of September 19, 2017 should be overruled. The court finds that the magistrate has properly determined the factual issues and appropriately applied the law related to plaintiff's claims.

PATRICK M. MCGRATH
Judge

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RYAN FENDLEY

Plaintiff

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Defendant

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JUDGMENT ENTRY

{¶21} For the reasons set forth in the decision filed concurrently herewith and upon independent review as to the objected matters, the court OVERRULES plaintiff's objections. The court finds that the magistrate properly determined the factual issues and appropriately applied the law. The court adopts the magistrate's decision and recommendation at its own. Judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge

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Filed January 19, 2018
Sent to S.C. Reporter 4/20/18