

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

LORI A. VALENT,

Appellant

v.

KNBT,

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 3094 EDA 2012

Appeal from the Order of October 8, 2012,
in the Court of Common Pleas of Lehigh County,
Civil Division at No. 2012-C-1074

BEFORE: STEVENS, P.J., WECHT and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

FILED MAY 30, 2013

This is an appeal from an order sustaining Appellee's preliminary objections and dismissing Appellant's amended complaint with prejudice. We affirm.

Given the manner in which we dispose of this appeal, we only will briefly summarize the background underlying the matter. Appellee is a bank. Appellee employed Appellant but terminated her in November of 2010. Appellant filed a complaint, and later an amended complaint, against Appellee. The complaint contained one count entitled "WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY."

*Retired Senior Judge assigned to the Superior Court.

Appellee filed preliminary objections to the amended complaint. In its preliminary objections, Appellee contended that a demurrer was appropriate because Appellant failed to state a cause of action for wrongful discharge. After Appellant filed a response to the preliminary objections, the trial court sustained the objections and dismissed Appellant's amended complaint with prejudice.

Appellant timely filed a notice of appeal. In her brief to this Court, Appellant asks us to consider one question, namely, "Whether or not the Appellant's Amended Complaint sets forth a cause of action pursuant to the public policy exception to the at will employment rule?" Appellant's Brief at 4.

When reviewing a trial court's order sustaining preliminary objections in the nature of a demurrer and dismissing a suit, our scope of review is plenary.

When reviewing an order granting preliminary objections in the nature of a demurrer, an appellate court applies the same standard employed by the trial court: **all material facts set forth in the complaint as well as all inferences reasonably deducible therefrom are admitted as true** for the purposes of review. The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible.

Where affirmance of the trial court's order sustaining preliminary objections would result in the dismissal of an action, we may do so only when the case is clear and free from doubt. To be clear and free from doubt that dismissal is appropriate, it must appear with certainty that the law would not permit recovery by the plaintiff upon the facts averred. Any doubt should be resolved by a refusal to sustain the objections. We review the trial court's decision for an abuse of discretion or an error of law.

DeMary v. Latrobe Printing and Pub. Co., 762 A.2d 758, 761 (Pa. Super. 2000) (citations and quotation marks omitted) (emphasis in original).

The trial court issued a thorough opinion in support of its decision to sustain Appellee's preliminary objections and dismiss Appellant's amended complaint. Trial Court Opinion, 10/08/12. In her brief to this Court, Appellant does not address the court's opinion or directly cite any error in the court's analysis. ***See Commonwealth v. Wrecks***, 931 A.2d 717, 722 (Pa. Super. 2007) ("An appellant also has the burden to convince us that there were errors and that relief is due because of those errors."). Moreover, after a review of the parties' briefs and the certified record, we can discern no error in the court's opinion. We, therefore, rely on that opinion in affirming the order sustaining Appellee's preliminary objections and dismissing Appellant's complaint.

Order affirmed.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambett", written over a horizontal line.

Prothonotary

Date: 5/30/2013

IN THE COURT OF COMMON PLEAS, LEHIGH COUNTY, PENNSYLVANIA
CIVIL DIVISION

LORI A. VALENT,
Plaintiff

Case No.: 2012-C-1074

v.

KNBT,
Defendant

APPEARANCES:

Donald P. Russo, Esquire,
For Plaintiff

Edward J. Easterly, Esquire
For Defendant

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LEHIGH COUNTY, PA

OPINION

CAROL K. McGINLEY, P.J.

The issue before this court is whether Plaintiff's allegation of wrongful discharge, as asserted in her Amended Complaint, states a claim upon which relief can be granted. Plaintiff's Amended Complaint sets forth the following facts, which we must accept as true for purposes of considering the Preliminary Objections of the Defendant.

Lori A. Valent ("Valent") began working for Defendant bank KNBT on March 25, 1996; in 2005 she became the assistant branch manager at the Schnecksville, Pennsylvania branch. Amended Complaint, ¶¶ 3 and 4. Valent was advised she had to treat customers with large

account balances preferentially, and one such company was “XYZ Corporation”¹. *Id.* at ¶¶ 5 and 6. XYZ Corporation operated a local farm a few miles away from KNBT’s Schnecksville branch and the corporation primarily used the Schnecksville branch for its banking activities related to the operation of the farm. *Id.* at ¶¶ 13 and 14.

In order to process the corporation’s payroll, XYZ Corporation would fax information to the KNBT branch each Tuesday or Wednesday to ensure the branch had adequate cash on hand to handle the payroll disbursement to the XYZ Corporation’s employees for payment on Friday. *Id.* at ¶ 8. XYZ Corporation’s payroll amount ranged from two or three thousand dollars to almost eighty thousand dollars depending on the season. The bank would make sure that cash was deposited into the bank’s cash drawer before the branch would open. *Id.* at ¶¶ 9 and 10. XYZ Corporation would provide the bank branch with envelopes containing the names of employees who were Mexican immigrants; payment amounts would be read off from the payroll; and bank representatives would put the money into each envelope. *Id.* at ¶ 11. After the envelopes were filled, an XYZ Corporation courier would be called to pick up the payroll in a large, white money bag. *Id.* at ¶ 12.

On Friday, October 15, 2010, at approximately 5:00 p.m., several XYZ Corporation employees entered the KNBT branch; bank employees assisted them in cashing their paychecks with the method of identification that the KNBT’s branch manager had previously approved, namely their Mexican ID and their XYZ Corporation employee badge. *Id.* at ¶¶ 7, 15, and 20. On some occasions, Mexican employees of XYZ Corporation would have other employees cash their paychecks for them at the branch because they did not have valid forms of identification. *Id.* at ¶ 19. Shortly after the XYZ Corporation employees left the bank branch, branch

¹ A fictitious name of the corporation is used in the Amended Complaint without explanation.

employees received an e-mail from one of the other branches informing them that the checks the XYZ Corporation employees were presenting were all fraudulent, and the employees had hit three other KNBT branch offices. *Id.* at ¶ 21.

After the fraudulent checks were cashed at two of KNBT's branch offices, the Bank Secrecy Act Department came in to discuss the details of what had happened with the fraudulent checks. *Id.* at ¶ 25. The police were not involved regarding this incident. *Id.* at ¶ 26.

Valent was terminated from her position at the Schnecksville branch of KNBT on November 15, 2010, for not following check cashing procedures. *Id.* at ¶¶ 27-29.

Valent filed a Complaint on March 14, 2012, and an Amended Complaint on May 7, 2012, asserting a cause of action for wrongful discharge in violation of public policy. Valent alleges that KNBT "violated public policy by forcing her to engage in the type of 'suspicious transaction' that must be reported to banking regulators under the Bank Secrecy Act, Pub. L. 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5330 and 31 C.F.R. § 103.18." *Id.* at ¶ 32. Valent also alleges violations of the Patriot Act, which added new requirements to the Bank Secrecy Act, citing 31 U.S.C. 5311 et seq. *Id.* at ¶ 33. Finally, Valent asserts that KNBT's actions in terminating her violated the public policy of this Commonwealth and that a discharge of an employee who has reported the "aforementioned violations"² violates the public policy of this Commonwealth. *Id.* at ¶¶ 52 and 53.

KNBT filed Preliminary Objections to Valent's Amended Complaint in the nature of a demurrer arguing that the Amended Complaint should be dismissed for failure to state a claim

² The aforementioned violations appear to relate back to the bank's alleged violation of the Patriot Act's requirement to adopt a Customer Identification Program and maintain recordkeeping pursuant to that program.

for wrongful discharge. Plaintiff contends that a claim for wrongful discharge is properly set forth pursuant to the public policy exception to the at-will employment doctrine.

Our standard of review is as follows:

“Preliminary objections in the nature of a demurrer test the legal sufficiency of the complaint.” When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom. Preliminary objections which seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief. If any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections.

Haun v. Community Health Systems, Inc., 14 A.3d 120 (Pa. Super. 2011).

The at-will doctrine of employment is presumed, and absent a valid contract providing to the contrary or other recognized exception, employees may be discharged at any time, for any reason, or for no reason at all. *Rutherford v. Presbyterian-University Hospital*, 417 Pa. Super. 316, 323, 612 A.2d 500, 503 (1992). Generally, “there is no common law cause of action against an employer for termination of an at-will employment relationship. *Geary v. United States Steel Corp.*, 456 Pa. 171, 319 A.2d 174 (1974).

Exceptions to this rule have been recognized in only the most limited of circumstances, where discharges of at-will employees would threaten clear mandates of public policy.” *Paul v. Lankenau Hosp.*, 524 Pa. 90, 95, 569 A.2d 346, 348 (1990), quoting *Clay v. Advanced Computer Applications, Inc.*, 522 Pa. 86, 559 A.2d 917, 918 (1989). Accordingly, “the presumption of all non-contractual employment relations is that it is at-will and that this presumption is an extremely strong one. An employee will be entitled to bring a cause of action for a termination of that relationship only in the most limited of circumstances where the termination implicates a

clear mandate of public policy in this Commonwealth.” *McLaughlin v. Gastrointestinal Specialists, Inc.*, 561 Pa. 307, 750 A.2d 283 (2000).

The Court in *McLaughlin* made it clear that a claim for wrongful discharge must be more than an asserted violation of a federal statute, holding that:

...in order to set forth a claim for wrongful discharge a Plaintiff must do more than show a possible violation of a federal statute that implicates only her own personal interest. The Plaintiff in some way must allege that some *public* policy of *this* Commonwealth is implicated, undermined, or violated because of the employer’s termination of the employee. Public policy of the Commonwealth must be just that, the policy of this Commonwealth.

Id. at 317, 750 A.2d at 289 (emphasis in original).

A declaration of Pennsylvania public policy does not come by supposed public interest, but “by examining the precedent within Pennsylvania, looking to our own Constitution, court decisions and statutes promulgated by our legislature.” *Id.* at 316, 750 A.2d at 287. In addition,

Pennsylvania courts have only “permitted employees to proceed with wrongful discharge cases when public policy concerns are clear,” *Rothrock v. Rothrock Motor Sales, Inc.*, 810 A.2d 114, 118 (2002), and when the actions of the respective plaintiffs directly implicate a Pennsylvania law, legal duty, or the exercise of a fundamental right. *See e.g., Shick v. Shirey*, 552 Pa. 590, 716 A.2d 1231, 1237-38 (1998) (employee terminated in retaliation for filing a workers’ compensation claim); *Rothrock*, 810 A.2d at 114 (employee discharged for refusing to deter another employee from pursuing a workers’ compensation claim); *Highhouse v. Avery Transp.*, 443 Pa. Super. 120, 660 A.2d 1374 (1995) (employee discharged for filing unemployment benefits claim); *Raykovitz v. K Mart Corp.*, 665 A.2d 833 (Pa. Super. 1995); *Field v. Philadelphia Electric Co.*, 388 Pa. Super. 400, 565 A.2d 1170 (Pa. Super. 1989) (employee discharged for reporting violations of federal regulations regarding nuclear materials, an activity required by statute); and *Reuther v. Fowler & Williams, Inc.*, 255 Pa. Super. 28, 386 A.2d 119 (1978) (employee discharged for serving on a jury, an obligation under state law).

Wetherhold v. Radioshack Corp., 339 F.Supp.2d 670 (E.D.Pa. 2004).

The narrow public policy exceptions to the at-will employment doctrine fall into three categories: an employer (1) cannot require an employee to commit a crime, (2) cannot prevent an

employee from complying with a statutorily imposed duty, and (3) cannot discharge an employee when specifically prohibited from doing so by statute. *Spierling v. First American Home Health Services, Inc.*, 737 A.2d 1250 (Pa. Super. 1999).

In order to determine whether Valent set forth a claim for which relief can be granted, we must determine whether Valent's Amended Complaint alleges that her actions implicated a Pennsylvania law, legal duty or the exercise of a fundamental right in such a way that to terminate her employment based on those actions threatens a clear mandate of Pennsylvania public policy.

Valent asserts that Pennsylvania public policy was violated pursuant to Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act)³, Pub. L. No. 107-56, 115 Stat. 396 (2001), and the Bank Secrecy Act, Pub. L. 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951 – 1959, and 31 U.S.C. 5311-5330 and 31 C.F.R. § 103.18. Additionally, although not asserted in the Amended Complaint, in her response to preliminary objections, Valent further relies on the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. No. 111-203, § 929A, 124 Stat. 1376, 1852 (2010), in an attempt to establish that Pennsylvania public policy was implicated when Valent was terminated. KNBT contends that Pennsylvania public policy has not been implicated where Valent's alleges only that KNBT violated federal law.

³ We note that it is set forth in Valent's Amended Complaint, "[t]he [USA PATRIOT] Act requires financial institutions to collect ID from individuals opening new accounts or sending wire transfers. *It does not cover check cashing* but financial institutions use the ID requirements listed in the Act for new accounts as the basis of check cashing ID rules." Plaintiff's Amended Complaint ¶ 34 (emphasis added). According to Valent's own Amended Complaint, the Patriot Act does not govern check cashing policies.

Plaintiff points to three federal statutes and argues that KNBT has violated those federal statutes by not complying with the duties related to financial information gathering required by those statutes with respect to check cashing. The Amended Complaint does not provide any allegations related to Valent's efforts to comply with a statutorily imposed duty, let alone termination as a result of her efforts to comply with said duty. Instead, it appears that the thrust of Valent's argument is that if KNBT is complacent with statutory failures in recordkeeping, then those involved cannot be wrongfully discharged for their misdeeds. This is not what the public policy exception to the at-will employment doctrine was intended to protect.

There is nothing in the Amended Complaint that asserts that Valent was prevented from complying with a statutorily imposed duty. Instead, the only averments related to the implication of Pennsylvania public policy are:

52. The Plaintiff further believes, and therefore avers, that the Defendant's actions in terminating her were in violation of public policy of the Commonwealth of Pennsylvania.

53. The Plaintiff believes, and therefore avers, that a discharge of an employee who has reported the aforementioned violations violates the public policy of the Commonwealth of Pennsylvania.

Plaintiff's Amended Complaint, ¶¶ 52, 53.

It is evident in Paragraph 52 that Valent recognizes the need to plead a violation of Pennsylvania public policy in order to set forth a cognizable cause of action for wrongful termination; however, simply stating the requirement, without identifying the Pennsylvania public policy implicated and/or asserting facts that would support such a generalized allegation is not sufficient to withstand preliminary objections.

In addition, Paragraph 53 asserts a violation of Pennsylvania public policy of an employee who has reported a violation of the Patriot Act or the Bank Secrecy Act. An employee who is terminated after reporting violations of the aforementioned Acts could perhaps assert a proper public policy implication; however, Valent is not that person. There is nothing in the Amended Complaint that asserts or leads us to infer that Valent reported any banking activity to any federal or Commonwealth agency or any person, even within KNBT. Because Paragraph 53 relies on facts not pled in the Amended Complaint, it is unnecessary for us to determine whether termination on those grounds would implicate Pennsylvania public policy.

Valent also argues in her responsive brief that her termination implicates Pennsylvania public policy pursuant to the Pennsylvania Banking Code, specifically Act of June 29, 2009, P.L. 46, No. 7 C1.07 Session of 2009, No. 2009-7, which provides:

Section 2. Section 1104 of the act, amended December 9, 2002 (P.L.1604, No. 209), is amended to read:

Section 1104. Protection of Employees.—A. No licensee may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee or a person acting on behalf of the employee makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority a violation of [this act] law. (71 P.S. § 733-1101)

The Pennsylvania Banking Code might implicate Pennsylvania public policy in that it prohibits termination, but such protection only arises when an employee is terminated from employment *after* the employee makes a good faith report or is terminated when the employee was about to report to the employer or appropriate authority a violation of the Banking Code. There is no allegation in the Complaint that would allow us to infer that she reported or was about to report

any violation to any person or agency. Therefore, Valent's reliance on the Pennsylvania Banking Code for the implication of Pennsylvania public policy is misplaced.

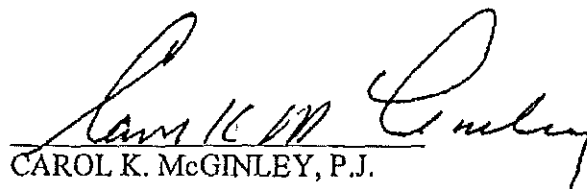
Finally, Valent argues that she was being required to participate in the commission of a crime the check cashing actions permitted by KNBT are criminal, citing 18 Pa.C.S.A. § 4114, which states, "A person commits a misdemeanor of the second degree if by deception he causes another to execute any instrument affecting or purporting to affect or likely to affect the pecuniary interest of any person." We do not address that issue because we find the Amended Complaint completely silent as to any assertion that Valent was required to commit a crime or threatened that she would be terminated if she did not commit a crime. Failure to assert that the employer required the employee to commit a crime, precludes the protection from the public policy exception.

Valent has failed to allege a public policy exception to the at-will termination doctrine, and, therefore, her wrongful discharge claim is not one upon which relief can be granted. Accordingly, KNBT's Preliminary Objections are sustained and Valent's Amended Complaint is dismissed with prejudice.

BY THE COURT:

Date:

October 8, 2012


CAROL K. MCGINLEY, P.J.