

35761

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
DIVISION II

WILLIAM R. HUGGINS and
DENISE L. HUGGINS,
Husband and Wife,

Plaintiffs,

v.

CASE NO.: 09-C-135
Judge Russell M. Clawges, Jr.

THE CITY OF WESTOVER SANITARY
SEWER BOARD, a public agency;
THE CITY OF WESTOVER, a municipal
corporation; and DAVE JOHNSON,

Defendants.

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
AND DENYING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

On April 8, 2010, came the Defendants, the City of Westover Sanitary Sewer Board and the City of Westover, by counsel, Barbara Arnold and came Defendant Dave Johnson, in person and by counsel Barbara Arnold. Also came the Plaintiffs, by and through counsel, Jacques Williams, for a hearing upon the Defendants' Motion for Summary Judgment, and the Plaintiffs' Motion for Partial Summary Judgment, both filed March 8, 2010. Plaintiffs filed a Reply to Defendants' Motion for Summary Judgment on March 18, 2010.

The Court heard arguments of counsel and took the motions under advisement. The Court has studied the motions, responses, the memoranda of law, depositions, and exhibits submitted by the parties; considered all papers of record and the arguments of counsel; and reviewed pertinent legal authorities. As a result of these deliberations, the Court is ready to rule.

FACTS and PROCEDURAL HISTORY

This case centers around a letter Plaintiff, William Huggins, submitted to his employer, the City of Westover Sanitary Sewer Board, through Westover's mayor, Defendant, Dave Johnson. Plaintiffs contend that prior to October 14, 2008, William Huggins approached Dave Johnson about leaving his job at the Sewer Department for a job at the City of Westover garage. Mr. Johnson's alleged response was that this would not be a problem. On October 14, 2008, the conversation was renewed and Mr. Johnson requested that Mr. Huggins put his desire for a transfer in writing. In a letter to Mr. Johnson dated October 14, 2008, Mr. Huggins stated, in part, "I would like to transfer to work at the garage and leave my position in the Sewer Department." Mr. Huggins did not sign this letter.

On October 27, 2008, while still employed with the Sewer Department, Mr. Huggins was injured on the job. Mr. Johnson informed BrickStreet, the Worker's Compensation insurance carrier, that the Sewer Department had no modified duties for Mr. Huggins. As a result, Mr. Huggins remained off work on temporary total disability.

At the next Sewer Board meeting held on November 12, 2008, the Board voted to accept Mr. Huggins' resignation, based on the October 14, 2008, letter. At this time, Mr. Huggins was still off work due to his injury. On or about November 21, 2008, Mr. Huggins was asked by the Board to sign his October 14, 2008, letter and he did so. Despite requesting a transfer, Mr. Huggins did not apply for any positions with the City of Westover. By notice dated December 15, 2008, Plaintiffs were informed that they no longer had health insurance as a result of Mr. Huggins' resignation from the Sewer Board.

Plaintiffs filed this civil action against the Defendants on March 2, 2009, alleging causes of

action for wrongful termination of benefits, unlawful termination of employment, violation of public policy, breach of contract, misrepresentation, and loss of consortium. Mr. Huggins claims that he was terminated by the Sewer Board and that this termination was a discriminatory practice in violation of West Virginia Code § 23-5A-3.

Mr. Huggins was not released to return to work by Worker's Compensation until May 2009. By letter dated May 18, 2009, Mr. Huggins requested reinstatement to his former position or another comparable position with the Sewer Board.

Defendants filed a Motion for Summary Judgement and Plaintiffs filed a Motion for Partial Summary Judgment. The Defendants contend that the Plaintiffs have no basis in law for their Complaint. Plaintiffs contend that they are entitled to Summary Judgment in light of the violations by the Defendants of the anti-discrimination provisions of the West Virginia Workers' Compensation Act. The parties have also filed several Motions in Limine.

DISCUSSION

"A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." Syl. Pt. 3, Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York, 133 S.E. 2d 770 (W.Va. 1963).

"When a motion for summary judgment is made . . . , an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate,

shall be entered against the adverse party.” W.Va. R.Civ.P. 56(e).

Workers’ Compensation Discrimination/Violation of Public Policy

“It shall be a discriminatory practice within the meaning of section one of this article to terminate an injured employee while the injured employee is off work due to a compensable injury within the meaning of article four of this chapter and is receiving or is eligible to receive temporary total disability benefits, unless the injured employee has committed a separate dischargeable offense.” W.Va. Code § 23-5A-3(a).

“Any employer who has provided any type of medical insurance for an employee or his dependents by paying premiums, in whole or in part, on an individual or group policy shall not cancel, decrease his participation on behalf of the employee or his dependents, or cause coverage provided to be decreased during the entire period for which that employee during the continuance of the employer-employee relationship is claiming or is receiving benefits under this chapter for a temporary disability.” W.Va. Code § 23-5A-2.

The Statute does not provide a definition for “terminate.” However, the West Virginia Supreme Court has treated the terms terminate, discharge, and fire as being interchangeable. See Powell v. Wyoming Cablevision, Inc., 184 W.Va. 700 (1991); Peters v. Rivers Edge Mining, Inc., 224 W.Va. 160 (2009).

Mr. Huggins was an at-will employee and could quit at any time. By the October 14, 2008, letter Mr. Huggins communicated his desire to leave the employ of the Sewer Board. There was no requirement that the Sewer Board accept or approve his resignation. The Sewer Board did not fire, discharge, or cause Mr. Huggins to be involuntarily terminated – he voluntarily resigned from his

employment in order to be available for another position. At the time of the November 12, 2008, meeting, Mr. Huggins was off work due to a job-related injury. Even after he was injured on October 27, 2008, he did not seek to rescind the resignation from the sewer department or withdraw his letter. On the contrary, Mr. Huggins called the secretary/treasurer of the Board to inquire whether his letter of transfer was on the agenda of the November 12, 2008, meeting.

Mr. Huggins testified that he did not apply for any job with the City of Westover as he thought his transfer would happen "in-house." In fact, he insists that he did not resign – he asked to be transferred. However, he also testified that he was aware that the Sewer Board and the City of Westover are two totally separate legal entities and that there was no policy or ordinance that allowed for or facilitated this type of transfer between the two. He also testified that he did not want to be transferred to another job with the Sewer Board. Mr. Huggins conceded that he was aware that employment with the City of Westover would require the approval of Westover city council. However, he admitted that he did not follow up on seeking a position with the City. Mr. Johnson testified that Mr. Huggins was explained the process of making application to the City after resigning from the Sewer Board. Mr. Huggins further testified that he had no evidence that Defendant Johnson urged the Sewer Board to improperly terminate him.

The Court finds that Plaintiff William Huggins was not terminated from his employment by the Sewer Board as contemplated under West Virginia Code Section 23-5A-3(a). Rather, Mr. Huggins voluntarily resigned. The action on the part of the Sewer Board to approve Mr. Huggins' resignation/transfer was at Mr. Huggins' behest. The Court does not believe that the West Virginia legislature intended that an employee cannot quit his employment while on Workers' Compensation. The Huggins' health insurance ceased as a consequence of Mr. Huggins' resignation.

Breach of Contract/Fraud/Misrepresentation

“The essential elements in an action for fraud are: (1) that the act claimed to be fraudulent was the act of the defendant or induced by him; (2) that it was material and false; that plaintiff relied upon it and was justified under the circumstances in relying upon it; and (3) that he was damaged because he relied upon it.” Horton v. Tyree, 104 W.Va. 238, 242 (1927); Syl. Pt. 1, Lengyel v. Lint, 167 W.Va. 272, 280 S.E.2d 66 (1981).

Mr. Huggins alleged in his Complaint that he had an employment agreement with the City of Westover based on negotiations with its agent, Dave Johnson, and this employment at the City garage was to begin immediately and concurrently with his departure from the Sewer department. However, Mr. Huggins testified that he knew city council would have to vote on this employment decision and that the Mayor does not vote.

The Court finds that the substance of Plaintiff's conversation with Mr. Johnson did not form a contract. Mr. Johnson told the Plaintiff on October 14, 2008, that “he didn't have a problem with it,” but “it would have to go before the board.” In addition, Plaintiff cannot prove fraud. At the time Mr. Johnson made his statements to Mr. Huggins, they were not false. As to the allegations of misrepresentation, Plaintiff cannot prove by clear and convincing evidence substantial, outrageous, and reprehensible conduct on the part of Mr. Johnson. Mayor Johnson did not unequivocally promise Mr. Huggins a transfer to the City of Westover. He merely told him that “it should not be a problem.”

Importantly, even if Mr. Huggins had an agreement for employment, he could not have fulfilled his end of the arrangement. At the time of his resignation he was receiving Worker's Compensation and was not able to work. He could not have gone to work for the City of Westover if he had been offered a job. In fact, he was not cleared to return to work until after he filed this suit.

Mr. Huggins filed a Response to Defendants' Motion for Summary Judgment and filed his own Motion for Partial Summary Judgment. He did not attach to either filing an affidavit to supplement, clarify, or rebut his testimony at deposition or offer any additional evidence to support his claims. Therefore, the Court can utilize only the letters, meeting minutes, and deposition transcripts which it has been provided.¹ What the Court is presented with does not support a breach of contract or fraud/misrepresentation claim.

Punitive Damages

"Notwithstanding any other provisions of this code or rules of a court to the contrary, in an action against a political subdivision or its employee to recover damages for injury, death, or loss to persons or property for injury, death, or loss to persons or property caused by an act or omission of such political subdivision or employee: In any civil action involving a political subdivision or any of its employees as a party defendant, an award of punitive or exemplary damages against such political subdivision is prohibited." W.Va. Code, § 29-12A-7(a).

Defendant Johnson was acting within his scope as an employee of a political subdivision when he spoke to Mr. Huggins about changing jobs and when he presented Mr. Huggins' letter to the Sewer

¹ Attached to Defendants' Motion was copies of Mr. Huggins' letter – signed and unsigned – and excerpts from Mr. and Mrs. Huggins' depositions. Attached to Plaintiffs' Motion and Response was a copy of Mr. Huggins' unsigned letter; Mr. Huggins' claim decision from BrickStreet; minutes from the Sanitary Sewer Board meeting of November 12, 2008; notice of COBRA health insurance coverage option; letter to Dave Johnson from Plaintiffs' counsel dated December 22, 2008, regarding the termination of health insurance; letter from Defendants' counsel to Plaintiffs' counsel, dated May 19, 2009, in response to Mr. Huggins' demand to be reinstated; memo from Dave Johnson to BrickStreet regarding a lack of modified duty for Mr. Huggins; excerpts from Mr. Johnson's and Mr. Huggins' depositions; letter from Plaintiffs' counsel to Dave Johnson, dated May 18, 2009, requesting Mr. Huggins' reinstatement to the Sewer department; and a copy of the definition of "termination of employment" from Black's Law Dictionary.

Board. Plaintiffs' claim for punitive damages is prohibited by statute. Furthermore, allegations of willful, wanton, and malicious conduct on the part of Mayor Johnson have not been substantiated.

Loss of Consortium

Plaintiff, Denise Huggins, wife of William Huggins alleges a loss of consortium as a result of the Defendants' wrongful conduct. However, her loss of services, society, and companionship were due to Mr. Huggins' injury and resulting doctor's visits and other treatment. Mrs. Huggins testified that there were times her husband could not travel with her or go camping with the family because he had to go to therapy for his shoulder or he had a doctor's appointment. These appointments were due to his injury and Worker's Compensation claim and not related to whether Mr. Huggins was terminated, resigned, or transferred from his employment with the Sewer Board.

Conclusion

The Court is of the opinion that there are no genuine issues of material fact and that the Defendants are entitled to judgment as a matter of law. Accordingly, based on the foregoing, the Court must DENY the Plaintiffs' Motion for Partial Summary Judgment and GRANT the Defendants' Motion for Summary Judgment.

ORDER

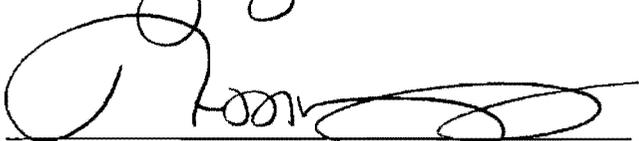
WHEREFORE, it is ORDERED that the Motion for Summary Judgment of the Defendants, City of Westover Sanitary Sewer Board, City of Westover, and Dave Johnson, should be, and hereby is, GRANTED and that Plaintiffs' claims be dismissed.

It is further ORDERED that the Motion for Partial Summary Judgment of the Plaintiffs, William and Denise Huggins, should be, and hereby is, DENIED.

A ruling by the Court on all other Motions is rendered Moot.

It is further ORDERED that this is a final order and the Clerk is directed to remove this case from the active docket of this court.

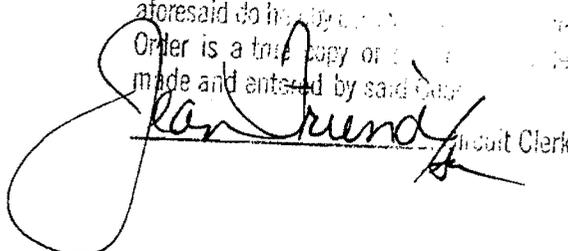
The Court further directs the Clerk of the Circuit Court of Monongalia County to distribute certified copies of this order to the parties and/or counsel of record.

Enter July 12, 2010


Russell M. Clawges, Jr., Chief Judge
17th Judicial Circuit, Division II.

STATE OF WEST VIRGINIA SS:

I, Jean Friend, Clerk of the District Court and Family Court of the County of Monongalia, West Virginia, do hereby certify that the foregoing Order is a true copy of the original Order made and entered by said Court.


Jean Friend, Circuit Clerk

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