STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Stephanie R. Ferrell,
Plaintiff Below, Petitioner

vs) No. 101557 (Greenbrier County 09-C-15)

Lowell C. Rose and Greenbrier County Commission, Defendants Below, Respondents

FILED
May 27, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Stephanie R. Ferrell appeals the circuit court's order granting summary judgment to respondents in her suit for tortious interference with her employment contract. Petitioner argues that the circuit court erred by concluding that she did not establish a prima facie case on the intent and causation elements of tortious interference and by weighing the evidence and essentially judging credibility on a summary judgment motion. The Respondents Lowell C. Rose and the Greenbrier County Commission have filed their response.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Petitioner Stephanie Ferrell, an at-will employee who worked as a reporter for a Greenbrier County newspaper, was terminated by the newspaper after approximately eight months. Prior to her termination, petitioner received an unfavorable 90-day evaluation which cited problems, including failure to remain neutral in her reporting and personal involvement in her news stories. As part of this evaluation, petitioner was advised to refrain from sending emails on behalf of the newspaper without the prior approval of her supervisors. The evaluation also indicated that petitioner's performance would be carefully monitored and "if, in our opinion, a definite improvement is not forth coming [sic] it could lead to termination of your employment. . . ." Her initial 90-day probationary period was extended an additional two months.

At the time of the events leading to her ultimate termination, petitioner was working on a story concerning a proposed annexation of several areas by the City of Rainelle. Certain citizens who opposed the potential annexation informed petitioner that they were being denied the opportunity to be placed on the agenda for an upcoming Greenbrier County Commission meeting. Petitioner sent an email to the three Greenbrier County Commissioners asking why these individuals had not been placed on the agenda to speak at an upcoming commission meeting and indicating if they were not allowed to speak at the meeting, she would "give them a voice in my newspaper." According to petitioner's testimony, she had cleared the email with her editor, Bill Frye, prior to its transmission to the Greenbrier County Commissioners. Editor Frye and the publisher of the newspaper, Judy Steele, both denied seeing the email prior to its transmission to the county commissioners. Shortly after the email was received, Respondent Lowell Rose, then President of the Greenbrier County Commission, brought a copy of the email to Publisher Steele. According to petitioner, respondent Rose allegedly told Publisher Steele, "I want this taken care of and you know what I mean!"

Petitioner's employment was terminated the next day. Editor Frye testified that respondents Lowell Rose and the Greenbrier County Commission had no role in petitioner's termination. Rather, it was her continuing insubordination, as reflected in the email being sent without prior review and permission, that resulted in the decision to terminate her employment.

Petitioner filed suit for tortious interference against respondents. Respondents moved for summary judgment. The circuit court granted summary judgment on the basis that petitioner did not establish a prima facie claim that respondents committed tortious interference with her employment.

"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 Company v. Federal Insurance Company of New York*, 148 W.Va. 160, 133 S.E.2d 770 (1963). This Court applies a *de novo* standard of review in regard to a circuit court's entry of summary judgment. Syl. Pt. 1, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E. 2d 755 (1994). This Court has also recognized that "[s]ummary judgment is appropriate where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove." *Id.* at Syl. Pt. 4.

The Court has recognized that "[t]o establish prima facie proof of tortious interference, a plaintiff must show: (1) existence of a contractual or business relationship or expectancy; (2) an intentional act of interference by a party outside that relationship or expectancy; (3) proof that the interference caused the harm sustained; and (4) damages. If a plaintiff makes a prima facie case, a defendant may prove justification or privilege,

affirmative defenses. Defendants are not liable for interference that is negligent rather than intentional, or if they show defenses of legitimate competition between plaintiff and themselves, their financial interest in the induced party's business, their responsibility for another's welfare, their intention to influence another's business policies in which they have an interest, their giving of honest, truthful requested advice, or other factors that show the interference was proper." Syl. Pt. 2, *Torbett v. Wheeling Dollar Savings & Trust Company*, 173 W.Va. 210, 314 S.E. 2d 166 (1983).

Petitioner argues that the circuit court erred by concluding that she did not establish a prima facie case on the intent and causation elements of tortious interference. Petitioner argues that "this case affords the Court an opportunity to clarify that in West Virginia tortious interference is not a 'specific intent' tort, but rather liability attaches where an actor may not specifically desire interference with a contract but knows it is certain or substantially certain to occur as a result of his actions." Petitioner references Restatement of Torts (Second)§ 766 (Comment j) in support of this argument. After careful consideration, the Court declines to adopt the position advocated by petitioner. The Court concludes that the circuit court did not err in finding that petitioner failed to set forth a prima facie case as to the elements of an intentional act of interference or causation of harm by the alleged interference. As such, there was no error in the entry of summary judgment in favor of respondents.

Petitioner also argues that the circuit court erred by weighing the evidence and essentially judging credibility on a summary judgment motion. The Court disagrees with the petitioner's contentions and concludes that the circuit court's entry of summary judgment was proper based upon the finding that the petitioner failed to establish a prima facie case of tortious interference.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: May 27, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh