

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

AMIE MILLER,
Plaintiff,

v.

Civil Action No. 19-C-226

ST. JOSEPH RECOVERY CENTER, LLC,
A Delaware limited liability company,
Defendant.

ENTERED
J.B. No. _____
Page _____

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CELESTE RIDGEWAY
CLERK CIRCUIT COURT

TRIAL ORDER

On the 1st day of September, 2020 came Amie Miller, plaintiff, in person and by counsel Walt Auvil and St. Joseph Recovery Center, LLC (SJRC), by counsel Philip A. Reale, II. for purposes of a bench trial in the above-styled proceeding.

Whereupon, the Court provided counsel the opportunity to make opening statements and then proceeded to hear the evidence of the Plaintiff. The Plaintiff rested and the Court recessed at the request of the Defense. Following a short recess, the Defendant rested without presenting evidence.

Thereupon, the Court proceeded to hearing closing arguments of the parties.

Based upon the evidence presented, the Court FINDS that SJRC materially breached its obligation to provide the plaintiff compensation or benefits by failing to make payments of the base salary in accordance with the Company's regular payroll practices. The regular payroll practice of the SJRC was to pay employees every other Friday. The breaches caused by late payroll payments occurred on March 29, 2019, April 12, 2019, April 26, 2019, and June 7, 2019 when payroll was not timely made.

The first breach was cured on April 4, 2019 when payroll was paid to the plaintiff. The following day, April 5, 2019, the plaintiff began looking for other employment.

The plaintiff's actions, however, are inconsistent with the position that at the time of the presentation her letter of resignation that she believed she was entitled to the severance package set forth in the employment agreement. The evidence reflects at no time during the discussion on the day of her resignation that

the plaintiff brought up to Donna Meadows the severance package. The plaintiff further testified that at the time of her resignation she also had two letters of resignation. The first offered two months notice and the second offered three months notice. If the plaintiff believed that she was entitled to a severance package due to the alleged breach, pursuant to Section 4.4 of the Agreement she would not have been required to provide any notice, yet she prepared a letter giving full notice and a letter with a reduced period of notice and offered each to SJRC. Neither of these letters made any references to the severance package.

These facts lend more weight and credit to the specific words chosen by the Plaintiff in composing her resignation letter which was admitted as Plaintiff's Exhibit 2 which set forth her reasons for leaving SJRC. Plaintiff indicated that "I have received an offer to work as a Nurse Practitioner at a halfway house in Marietta, Ohio. After careful consideration I have realized that this opportunity is too exciting to decline." She further acknowledged that this was "a difficult decision". She further offered in the letter to being "fully committed to assisting with this transition and with training my replacement and in any other matters that will be required in this transition period."

Having considered all of the evidence and argument of counsel, the Court FINDS that the Plaintiff has failed to prove by a preponderance of the evidence that her resignation constituted termination without cause under the terms of the contract and further FINDS that the Plaintiff voluntarily resigned her employment and is therefore not entitled to the severance package set forth in the employment agreement.

The Court therefore FINDS for the Defendant.

It is ORDERED that the Clerk of this Court provide copies of this Order to counsel of record.

It is further ORDERED that this case be DISMISSED from the docket of the Court.

ENTER:


JASON A. WHARTON, JUDGE