

IN THE CIRCUIT COURT OF
MARION COUNTY, WEST VIRGINIA

LOYD FRANKLIN RANSOM, JR.,

PLAINTIFF,

Case Number: CC-24-2019-C-93

v.

Judge David R. Janes

GUARDIAN REHABILITATION SERVICES,
INC., AND GUARDIAN ELDER CARE AT
FAIRMONT, LLC,

DEFENDANTS.

**Amended Order Granting Defendants' Motion for
Summary Judgment and Dismissing Case From Docket**

Now pending before the Court are Defendants Guardian Rehabilitation Services, Inc., and Guardian Elder Care at Fairmont, LLC's Motion for Summary Judgment and Memorandum of Law in Support of Motion for Summary Judgment and Plaintiff's Motion for Partial Summary Judgment.

The Motions are ripe for disposition, having been fully briefed and argued by Counsel at the hearing on September 17, 2021. Upon consideration of the record before it, the relevant legal authority, and the oral argument of Counsel, this Honorable Court concludes that there is no genuine issue of material fact and Defendants are entitled to judgment in their favor as a matter of law as to Plaintiff's claim for wrongful discharge in violation of the West Virginia Business Liability Protection Act and wrongful discharge under *Harless v. First National Bank of Fairmont*, 246 S.E.2d 270 (1978). Accordingly, Defendants' Motion for Summary Judgment is **GRANTED** for the following reasons.

FINDINGS OF FACT

1. On May 23, 2019, Plaintiff filed a Complaint against Guardian Rehabilitation Services, Inc., and Guardian Elder Care at Fairmont, LLC, alleging two causes of action, namely wrongful discharge in violation of the West Virginia Business Liability Protection Act ("BLPA") and wrongful discharge under *Harless v. First National Bank of Fairmont*, 246 S.E.2d 270 (1978).
2. Defendants filed an Answer and Affirmative Defenses on August 2, 2019.
3. On August 13, 2021, Defendants filed a Motion for Summary Judgment and a Memorandum of Law in Support of Motion for Summary Judgment
4. On September 2, 2021, Plaintiff filed a Motion for Partial Summary Judgment and Memorandum of Law in Support of Motion for Partial Summary Judgment.
5. Defendants' Brief in Opposition to Plaintiff's Motion for Partial Summary Judgment was filed on September 15, 2021.
6. Plaintiff's Opposition to Defendants' Motion for Summary Judgment was filed on September 15, 2021.¹
7. Defendants' filed a Reply Brief in Support of Defendants' Motion for Summary Judgment on September 16, 2021.
8. Guardian Rehabilitation Services., Inc. operates a healthcare and rehabilitation services center located in Fairmont, Marion County, West Virginia.
9. On October 4, 2018, Plaintiff began his employment with Guardian as a certified occupational therapy assistant.
10. On October 22, 2018, Mr. Ransom parked his vehicle in the Guardian parking lot before reporting to work.

¹ On September 16, 2021, Plaintiff filed an Amended Opposition to Defendants' Motion for Summary Judgment which included a signed affidavit of Plaintiff.

11. Inside of Mr. Ransom's vehicle was a Bushmaster armorer AR-15 rifle.
12. Per Mr. Ransom's testimony, his firearm was leaning against the seat with the butt of the firearm on the floorboard.
13. Mr. Ransom testified that the firearm was visible to someone outside of the vehicle.
14. Guardian received a report on October 22, 2018 that an employee saw the rifle in Mr. Ransom's vehicle.
15. On October 22, 2018, Mr. Ransom was terminated when another Guardian employee reported seeing a rifle in Mr. Ransom's vehicle to Guardian's management/administration.

CONCLUSIONS OF LAW

16. Defendants have moved for summary judgment pursuant to West Virginia Rules of Civil Procedure 56.
17. Plaintiff filed a cross Motion for Partial Summary Judgment pursuant to West Virginia Rules of Civil Procedure 56.
18. Plaintiff alleges that his termination violated West Virginia's Business Liability Protection Act ("BLPA"), W.Va. Code § 61-7-14.
19. The BLPA limits a property owner's ability to prohibit a firearm where certain conditions are met.
20. Subsection (d) of the BLPA enumerates "Prohibited Acts" and it contains subparts (1)-(4).²

² Defendants have argued for application of subsection (d)(1). Plaintiff has argued for application of subsection (d)(3). These subsections, both of which apply to employees/employers, are in conflict. Subsection (d)(1) specifies that the firearm must be "out of view." While subsection (d)(3) does not specify that the firearm must be "out of view," the statute cannot be read to obviate subsection (d)(1) and its requirement that the firearm be "out of view". To read the statute to the contrary would lead to an absurd result.

21. Subsection (d)(1) states as follows:

(1) No owner, lessee, or other person charged with the care, custody, and control of real property may prohibit any customer, employee, or invitee from possessing any legally owned firearm, when the firearm is:

(A) Lawfully possessed;

(B) *Out of view*;

(C) Locked inside or locked to a motor vehicle in a parking lot; and

(D) When the customer, employee, or invitee is lawfully allowed to be present in that area.

W.Va. Code § 61-7-14 (d)(1)(A)-(D) (*italics added*).

22. For an employee who has a firearm in his vehicle in an employer provided parking lot to receive the protection of the BLPA, the firearm in question must be “out of view.”

23. Mr. Ransom’s rifle was not out of view in his vehicle parked in Guardian’s employee parking lot on October 22, 2018.

24. Guardian did not violate the BLPA when it terminated Mr. Ransom, and his claim should be dismissed as a matter of law.

25. Plaintiff also alleges that his termination violated a substantial public policy of the state of West Virginia, and therefore, he was entitled to assert a claim pursuant to *Harless v. First National Bank in Fairmont*, 246 S.E.2d 270 (W. Va. 1978) and its progeny.

26. In West Virginia, it is a long-established rule that an employee is presumed to be an at-will employee. *Wright v. Standard Ultramarine & Color Co.*, 90 S.E. 2d 459 (W. Va. 1955).

27. Absent an exception to the at-will doctrine, an employee may be terminated at any time, with or without cause. *Id.*

28. West Virginia courts have recognized a public policy exception to at-will employment beginning with the West Virginia Supreme Court's decision in *Harless v. First National Bank in Fairmont*, 246 S.E.2d 270 (W. Va. 1978).

29. It is axiomatic that where a public policy has *not* been violated, *Harless* cannot apply. See *Blanda v. Martin & Seibert, L.C.*, 836 S.E. 2d 519 (W. Va. 2019) (“a cause of action for wrongful discharge exists when an aggrieved employee can demonstrate that his/her employer acted contrary to a substantial public policy in effectuating the termination.”) (internal citations and quotations omitted).

30. As the Court has decided that Guardian did not violate the BLPA, there is no public policy violation giving rise to a potential claim under *Harless*.

31. Mr. Ransom's cause of action for wrongful discharge in violation of *Harless* must fail.

WHEREFORE, it is **ORDERED** that the Defendants' Motion for Summary Judgment is **GRANTED**. Accordingly, it is **ORDERED** that this entire action be, and hereby is, **DISMISSED** and stricken from the docket of this Court.

The Clerk is directed to make a notation to this judgment on the civil docket and to transmit certified copies of this Order to all counsel of record.

Entered this _____ day of _____, 2021.

The Honorable David R. Janes