

[Cite as *Fendley v. Wright State Univ.*, 2017-Ohio-8279.]

RYAN FENDLEY

Plaintiff

v.

WRIGHT STATE UNIVERSITY

Defendant

Case No. 2015-01059

Magistrate Holly True Shaver

DECISION OF THE MAGISTRATE

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{¶1} Plaintiff brought this action alleging breach of contract. The court granted defendant's motion for summary judgment as to Counts II and III of plaintiff's complaint on April 19, 2017. The case proceeded to trial before the undersigned magistrate on the issues of both liability and damages. Plaintiff was an unclassified employee as set forth in defendant's administrative policies and procedures manual, known as the "Wright Way Policy." The sole issue remaining for trial was whether defendant terminated plaintiff's employment for "documented just cause" or "without just cause" as set forth in the Wright Way Policy Number 4004.1.

{¶2} Plaintiff began his employment with defendant in 2003, in the Biomedical, Industrial, and Human Factors Engineering department. During his employment, plaintiff oversaw the Wright State Research Institute (WSRI), a unit within defendant's university with the purpose of conducting applied research. In 2013, plaintiff accepted a position in defendant's office of the Provost. At the time of his termination, plaintiff had worked for defendant for eleven years.

{¶3} In March 2015, plaintiff was called to a meeting in the office of the university president, David Hopkins. During the meeting, Hopkins informed plaintiff and two of plaintiff's associates, Provost Sundaram Narayanan and Principal Investigator Phani Kidambi, that representatives from the federal government would be on campus the following day to access their computers related to an ongoing investigation. Hopkins

did not provide additional details but referred plaintiff and his associates to the state Attorney General's office for further questions. Plaintiff testified that he contacted the Attorney General's office about the investigation. Plaintiff learned that the federal investigation pertained to the university's procurement of H1-B visas for foreign workers who had been hired by the university to perform work through a contract with WSRI. The contract at issue pertained to a software development company known as Web Yoga. Plaintiff testified that he never signed any contract with Web Yoga because he did not make hiring decisions, including whether to hire foreign workers. According to plaintiff, the university's office of general counsel oversaw the issuance of H1-B visas.

{¶4} On May 4, 2015, Hopkins met with plaintiff and presented him with a letter, which states: "As you are aware, Wright State University continues to cooperate with an ongoing outside investigation. The University has begun its own internal investigation, as well. In furtherance of the investigations, the University hereby places you on paid administrative leave from your position as Senior Advisor until further notice." (Plaintiff's Exhibit 4.) In the letter, Hopkins advised plaintiff that he was relieved of all official duties, that he would soon be contacted by Robert Sweeney to take possession of his office keys and university property and equipment, and that he should make himself available during normal work hours to answer any questions that the university might have. (*Id.*)

{¶5} Plaintiff had no contact with anyone from the university until he received another letter from Hopkins, dated August 12, 2015. (Plaintiff's Exhibit 5.) In the letter, Hopkins states: "You were informed on May 4, 2015 that you were being placed on paid administrative leave as a result of an ongoing outside investigation, as well as an internal investigation.

{¶6} "Subsequent to your paid administrative leave and as a result of the ongoing investigation, I have determined that it is in the University's best interests to end our employment relationship with you.

{¶7} “As a result, this letter is to inform you that you are being terminated from your position at Wright State University, effective Wednesday, August 12, 2015.” (Plaintiff’s Exhibit 5.)

{¶8} Plaintiff asserts that defendant did not terminate his employment for documented just cause, and, as such, he is entitled to nine months of salary and benefits per the Wright Way policy. Plaintiff conceded at trial that both letters refer to an ongoing investigation, and that he learned that the investigation was about H1-B visas. However, he argues that the letters do not constitute “documented just cause” as referred to in the policy because the letters do not identify anything that he did that was improper. In addition, plaintiff testified that in the two years since his termination, he has not been indicted. Plaintiff testified that his reputation in the community has been harmed because of the press coverage of his termination and the visa program, and that he has been unable to secure employment elsewhere.

{¶9} Dr. David Hopkins testified that plaintiff was an outstanding employee and a hard worker. In February 2015, Hopkins became aware of a federal investigation and was instructed not to talk about any details of the investigation with plaintiff. Hopkins admitted that he did not specify anything in the letter that plaintiff had done wrong when he placed him on administrative leave. Hopkins testified that his understanding at the time was that the university was not to conduct its own investigation because the federal investigation was ongoing, and the university was advised not to interfere with the federal investigation. However, Hopkins also testified that the university’s Board of Trustees initiated a forensic audit of the research institute, which was performed by an outside company. Hopkins testified that in August 2015, he met with special counsel and two investigating US attorneys. After an hour-long meeting, Hopkins concluded that plaintiff had violated federal law regarding visa fraud, that his indictment was imminent, and that he needed to remove plaintiff and the other two employees from their positions.

{¶10} Ellen Reinsch Friese, chair of the board for WSRI, testified that she has worked for defendant for 21 years and worked with plaintiff for 10 years. She testified that she signed the contracts for Web Yoga, and that plaintiff did not. Friese testified that although the contract contained language regarding visa costs, the visa issue was handled by the office of general counsel, not by WSRI.

{¶11} Shari Mickey-Boggs testified that she is defendant's associate vice president for human resources. She testified that if an employee had been given notice that their employment would be terminated in nine months, that employee would accrue both sick and vacation leave during the nine-month period.

{¶12} In order to prove breach of contract, plaintiff must prove the existence of a contract; performance by plaintiff; breach by defendant; and damages or loss as a result of the breach. *Samadder v. DMF of Ohio, Inc.*, 154 Ohio App.3d 770, 2003-Ohio-5340. The construction of written contracts is a matter of law. *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, paragraph one of the syllabus (1978). The cardinal purpose for judicial examination of any written instrument is to ascertain and give effect to the intent of the parties. *Aultman Hosp. Assn. v. Community Mut. Ins. Co.*, 46 Ohio St.3d 51 (1989). "The intent of the parties to a contract is presumed to reside in the language they chose to employ in the agreement." *Kelly v. Medical Life Ins. Co.*, 31 Ohio St.3d 130, paragraph one of the syllabus (1987).

{¶13} An employment relationship with no fixed duration is deemed to be at will, which refers to the traditional rule that an employer may terminate the employment relationship at any time, for no cause, or any cause that is not unlawful. *Welch v. Finlay Fine Jewelry Corp.*, 10th Dist. Franklin No. 01AP-508, 2002-Ohio-565; *Collins v. Rizkana*, 73 Ohio St.3d 65, 67, 1995-Ohio-135. However, the terms of discharge may be altered when the conduct of the parties indicates a clear intent to impose different conditions regarding discharge. *Condon v. Body, Vickers & Daniels*, 99 Ohio App.3d 12, 18 (8th Dist.1994).

{¶14} Both parties point to the Wright Way Policy for the terms and conditions regarding plaintiff's discharge. Wright Way Policy Number 4004.1, Termination Notification, states as follows:

"a. The unclassified staff of Wright State University who have been hired on a Continuing Employment Agreement can be terminated by the university. The affected staff members shall be notified in writing as specified in the following paragraphs. Term of employment shall include only continuous employment at Wright State University as classified staff, unclassified staff, or faculty with no prior breaks in service.

"b. *Employees can be terminated for documented just cause as provided in applicable laws, rules, and regulations or because of financial exigency, without notice.* All unclassified staff members can appeal a just cause termination in compliance with the grievance procedure for the unclassified staff.

"c. Notice of termination without just cause shall be as follows:

"Term of Employment \* \* \* At least 6 years but less than 15 years [Notification of] 9 months." (Emphasis added.) (Plaintiff's Exhibit 3.)

{¶15} Upon review of the testimony and evidence presented, the magistrate finds that defendant terminated plaintiff's employment for documented just cause. Plaintiff testified that he knew that the federal investigation concerned visa fraud, which is a crime. Although the letters that defendant sent do not specifically state that the ongoing investigation pertained to visa fraud, both plaintiff and Hopkins knew that was the reason for the investigation. Indeed, Hopkins testified credibly that based upon information from federal investigators and attorneys, he believed that plaintiff's indictment for visa fraud was imminent. Although plaintiff was not indicted, and he had no personal involvement with procuring H1-B visas, the magistrate finds that the fact that plaintiff was under investigation by the federal government for visa fraud constitutes "just cause" for his termination. Whether or not plaintiff is ultimately indicted for visa fraud is not relevant to whether defendant had just cause for his termination. What

Hopkins believed at the time is relevant to show the basis for his decision to terminate plaintiff's employment. The magistrate is convinced that Hopkins made a reasonably informed and considered decision based upon information that was presented by federal investigators before terminating plaintiff's employment. Accordingly, the magistrate finds that the letters, although vague, constitute documentation for plaintiff's termination for just cause. The magistrate further finds that defendant complied with Wright Way Policy Number 4004.1, when it sent him two letters referring to an ongoing investigation, the nature of which plaintiff was aware.

{¶16} In the final analysis, the magistrate finds that defendant complied with its employment policies when it terminated plaintiff's employment for documented just cause, and, as such, plaintiff is not entitled to any additional compensation. Judgment is recommended in favor of defendant.

{¶17} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

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HOLLY TRUE SHAVER  
Magistrate

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