

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
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JILL CYPHERS

Plaintiff

v.

EDISON STATE COMMUNITY COLLEGE

Defendant

Case No. 2013-00357

Judge Patrick M. McGrath
Magistrate Anderson M. Renick

ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶1} On January 20, 2015, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On February 13, 2015, plaintiff filed a response. On February 23, 2015, defendant filed a reply and a motion for leave to file the same, which is hereby GRANTED. The motion is now before the court for a non-oral hearing. L.C.C.R. 4.

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." See also

Gilbert v. Summit Cty., 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶4} Plaintiff's claims arise from her employment with defendant Edison State Community College (ESCC) as a professor of nursing. Plaintiff began her employment with defendant in 1999 as an instructor and plaintiff relates that she later became a clinical liaison for a nursing home. According to plaintiff, during an October 19, 2011 meeting to discuss students' progress, Dean Gwen Stevenson became argumentative and specifically addressed plaintiff's alleged improper conduct. Plaintiff alleges that Dean Stevenson subsequently stated that plaintiff had been disrespectful during the meeting, whereupon plaintiff apologized. On January 20, 2012, plaintiff received a written complaint for insubordination, and plaintiff asserts that she was thereafter subject to retaliatory conduct from Dean Stevenson and other employees of defendant. On May 14, 2012, plaintiff received a letter from Linda Peltier, ESCC's Vice President of Strategic Human Resources, which explained that plaintiff had received three written performance notices and that she had continued "to demonstrate a lack of respect of [her] direct supervisor and co-workers." (Defendant's Exhibit C.) The letter advised plaintiff that, pursuant to the terms of the collective bargaining agreement (CBA) between her union and ESCC, she was being immediately terminated as an employee of ESCC.

{¶5} In her response to defendant's motion for summary judgment plaintiff states that she had followed the grievance procedures under the CBA "on numerous occasions," including in response to both a performance correction notice she received on February 28, 2012, and her termination notice. Plaintiff relates that she appealed various decisions related to her termination and that she ultimately received \$769.59 from a "coerced" settlement agreement resulting from arbitration under the CBA grievance process.

{¶6} Plaintiff alleges breach of contract, wrongful termination in violation of public policy, and defamation.

BREACH OF CONTRACT

{¶7} Plaintiff acknowledges that she was a member of a union and that her employment was subject to a CBA. In support of its motion, defendant submitted the affidavit of Linda Peltier, who avers as follows:

{¶8} “3. At all times, Ms. Cyphers was a member of a public collective bargaining unit, and she was represented by the Edison State Education Association (‘ESEA’), an affiliate of the OEA/NEA. A copy of the collective bargaining agreement that governed her employment at the time of her termination is appended as Ex. B.”

{¶9} R.C. 2743.03(A)(1) provides in part: “The court of claims is a court of record and has exclusive, original jurisdiction of all civil actions against the state permitted by the waiver of immunity contained in section 2743.02 of the Revised Code * * *.” It is well settled that “[w]hile R.C. 2743.02(A)(1) vests exclusive subject-matter jurisdiction over suits previously barred by sovereign immunity, R.C. 4117.09(B)(1) expressly allows for suits alleging violations of collective bargaining agreements to be brought in common pleas courts. *Moore v. Youngstown State University*, 63 Ohio App. 3d 238, 242 (10th Dist. 1989).

{¶10} Inasmuch as plaintiff’s employment was subject to a CBA, R.C. 4117.09(B)(1) specifically creates a right of action over such claims and limits the jurisdiction over this suit to the common pleas courts. *Id.* Accordingly, this court has no jurisdiction over plaintiff’s breach of contract claim.

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

{¶11} Plaintiff admits that her employment was governed by a contract and subject to a CBA through her union. In her affidavit, Peltier avers that plaintiff was

employed by ESCC under a series of continuing faculty contracts. A copy of plaintiff's employment contract that was in place at the time of her termination is attached to the affidavit as Exhibit A.

{¶12} "Ohio courts have never recognized a claim for the wrongful termination of a contract employee in violation of public policy. A claim of wrongful termination in violation of public policy has only been permitted where the employee was an employee at will." *Schutte v. Danis Cos.*, 141 Ohio App. 3d 824, 832 (2nd Dist. 2001), citing *Greeley v. Miami Valley Maintenance Contractors, Inc.*, 49 Ohio St. 3d 228 (1990). Accordingly, plaintiff cannot prevail on her public policy claim.

STATUTE OF LIMITATIONS

{¶13} Defendant contends that plaintiff's defamation claims are barred by the applicable statute of limitations.

{¶14} R.C. 2743.16(A) states, in relevant part:

{¶15} "[C]ivil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties."

{¶16} R.C. 2305.11(A) requires an action for defamation to be commenced within one year of the time the cause of action accrued, governs such actions between private parties, and is shorter than the two-year statute of limitations in R.C. 2743.16(A). Accordingly, R.C. 2305.11 applies to plaintiff's defamation action against ESCC. *Pankey v. Ohio Adult Parole Auth.*, 10th Dist. Franklin No. 11AP-36, 2011 Ohio 4209, ¶ 9 (finding that "defamation claims between private parties are subject to a one-year limitation period, as set forth in R.C. 2305.11(A)," meaning "[plaintiff's] defamation claim in the Court of Claims is likewise subject to the shorter limitations period"). "A cause of action for defamation accrues on the date of publication of the alleged

defamatory matter.” *Id.* at ¶ 9, citing *Fleming v. Ohio Attorney Gen.*, 10th Dist. Franklin No. 02AP-240, 2002-Ohio-7352, ¶ 13. Plaintiff asserts that the defamatory conduct occurred during her employment which ended on May 14, 2012. Plaintiff relates that she filed an action in the Miami County Court of Common Pleas on or about May 10, 2013, and that this action was timely filed pursuant to the savings statute, R.C. 2305.19, inasmuch as she filed this case within one year after the common pleas case was dismissed.

{¶17} However, defendant argues that plaintiff filed this case before the common pleas court case was dismissed, and that the savings statute is inapplicable inasmuch as plaintiff did not file the instant action within one year after her failure otherwise than upon the merits in the Miami County action. *See Reese v. The Ohio State Univ. Hosps.*, 6 Ohio St. 3d 162, 163 (1983) (finding that the savings statute is applicable only when “an action was timely commenced, was dismissed without prejudice, and the applicable statute of limitations had expired by the time of such dismissal.”)

{¶18} In her response, plaintiff represents that the common pleas case was “dismissed on or around June 10, 2013,” approximately one week before this case was filed on June 18, 2013. However, defendant’s reply includes a certified copy of the judgment entry from the common pleas court which dismissed plaintiff’s case on July 25, 2013, more than four weeks after this case was filed. Therefore, defendant is entitled to judgment as a matter of law based upon the applicable statute of limitations.

{¶19} Based upon the foregoing, plaintiff’s breach of contract claim is DISMISSED and defendant’s motion for summary judgment is GRANTED as to plaintiff’s wrongful termination and defamation claims. Judgment is rendered in favor of defendant. All previously scheduled events are VACATED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge

cc:

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