**[Cite as *Brooks v. Miami Valley Hosp.*, 2009-Ohio-6813.]**

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

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| MARK A. BROOKS | : | |
| Plaintiff-Appellant | : | C.A. CASE NO. 23361 |
| v. | : | T.C. NO. 2008 CV 5332 |
| MIAMI VALLEY HOSPITAL | : | (Civil appeal from Common Pleas Court) |
| Defendant-Appellee | : | |
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**O P I N I O N**

Rendered on the 23rd day of December, 2009.

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MARK A. BROOKS, 2150 Equestrian Drive, Apt. #3D, Miamisburg, Ohio 45342
Plaintiff-Appellant

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Attorneys for Defendant-Appellee

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FROELICH, J.

**{¶ 1}** This case is before the Court on Plaintiff-Appellant Mark Brooks' appeal from a March 31, 2009, trial court decision granting summary judgment in favor of Defendant-Appellee Miami Valley Hospital. For the following reasons, we will affirm the judgment of the trial court.

I

**{¶ 2}** Brooks began working as a security guard for Miami Valley Hospital on February 4, 2008, with a 90-day probationary period. Due to instances requiring reprimands, that probationary period was extended by 30 days, during which two additional complaints arose about Brooks' performance. At the end of the probationary period, Miami Valley Hospital did not wish to continue Brooks' employment and advised him that he could either quit voluntarily, or that his employment would be terminated. Brooks refused to quit, and the hospital terminated his employment on June 6, 2008.

**{¶ 3}** On the same day, Brooks filed a complaint against Miami Valley Hospital claiming wrongful termination. The hospital filed a motion for summary judgment, to which Brooks replied. The trial court granted summary judgment in favor of Miami Valley Hospital, and Brooks appeals.

II

**{¶ 4}** Brooks' First Assignment of Error:

**{¶ 5}** "THE TRIAL COURT ERRED IN DISMISSING THE CASE AFTER RULING IN FAVOR OF THE DEFENDANT IN SUMMARY JUDGMENT WHEN OTHER CAUSES OF ACTION WERE PLEAD [sic]."

**{¶ 6}** Brooks admits that the only claim presented in his complaint was for wrongful termination, but he insists that he intended to file additional claims, and both the court and Miami Valley Hospital should have been aware of this. As a result, he concludes that despite the trial court's granting summary judgment in favor of Miami Valley Hospital on the wrongful termination claim, the court should not have dismissed the case because he wanted to present additional claims.

**{¶ 7}** Any claims against a defendant must be stated in the complaint in order to put the defendant on notice of all claims against him. Civ.R. 8(A). At the trial court's discretion, a complaint may be amended to include additional claims. See, e.g., *Pentaflex v. Express Services, Inc.* (1998), 130 Ohio App.3d 209, 217, citing *Wilmington Steel Prod. v. Cleveland Elec. Illum. Co.* (1991), 60 Ohio St.3d 120, 122. However, that did not happen in this case. Instead, the only claim presented in the complaint and before the trial court when summary judgment was granted was a claim for wrongful termination. The granting of summary judgment on the only claim before the court resulted in dismissal of the case. Accordingly, Brooks' first assignment of error is overruled.

III

**{¶ 8}** Brooks' Second Assignment of Error:

**{¶ 9}** "THE TRIAL COURT ERRED IN RULING THE PLAINTIFF'S EMPLOYMENT WAS AT-WILL IN SUMMARY JUDGMENT."

**{¶ 10}** In his second assignment of error, Brooks argues that the trial court erred in granting summary judgment because the court incorrectly concluded that his employment with Miami Valley Hospital was at-will.

**{¶ 11}** Summary judgment pursuant to Civ.R. 56 should be granted only if no genuine issue of material fact exists, the moving party is entitled to judgment as a matter of law, and reasonable minds can come to but one conclusion, which is adverse to the nonmoving party. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66, 375 N.E.2d 46. The moving party bears the initial burden of showing that no genuine issue of material fact exists for trial. Id. The burden then

shifts to the non-moving party to set forth specific facts which show that there is a genuine issue of material fact for trial. Id. Throughout, the evidence must be construed in favor of the non-moving party. Id. An appellate court reviews summary judgments de novo. *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588, 641 N.E.2d 265. In other words, we review such judgments independently and without deference to the trial court's determinations. Id.

**{¶ 12}** "The common-law doctrine of employment at will generally governs employment relationships in Ohio. Under this doctrine, a general or indefinite hiring is terminable at the will of either the employee or the employer; thus, a discharge without cause does not give rise to an action for damages." *Wiles v. Medina Auto Parts,* 96 Ohio St.3d 240, 2002-Ohio-3994, ¶5, citations omitted. Ohio recognizes exceptions to this doctrine, one of which is an express or implied contract. *Shepard v. Griffin Services, Inc.,* Montgomery App. No. 19032, 2002-Ohio-2283, citations omitted.

**{¶ 13}** Brooks argues that he had an implied contract of employment with Miami Valley Hospital. "In order to imply a contract, '[t]here must be specific evidence to show that the parties mutually assented to something other than at-will employment.'" Id, citation omitted. Employee handbooks and statements of company policy could contain such evidence. Id., citing *Kelly v. Georgia-Pacific Corp.* (1989), 46 Ohio St.3d 134, 139. However, most of those documents contain disclaimers, requiring the employee to acknowledge that the document does not create a contract for employment, which negate any inference of a contractual relationship. Id., *Wing v. Anchor Media, Ltd. of Texas* (1991), 59 Ohio St.3d 108,

paragraph one of the syllabus. If so, "the handbook then becomes 'merely a unilateral statement of rules and policies which creates no obligations and rights.'" Id., citation omitted.

**{¶ 14}** It is Brooks' claim that the documents provided to him at the time of his employment created an implied contract. He points to language in the hospital's probationary period policy, which states: "If the job performance of a new employee is satisfactory at the end of the probationary period, the employee is granted regular status retroactive to his first day of employment in the regular position." He further claims that pursuant to the hospital's resignation and termination policies, a regular employee may only be discharged for cause. Brooks concludes that once he completed his 90-day probationary period, he became a regular employee who could only be terminated for cause and that the hospital did not have cause to terminate his employment. However, referring to the employment application and the Code of Conduct, Brooks undermines his own argument of the existence of an implied contract by admitting that "there was no mutual understanding between the applicant and the employer to qualify these documents as a binding agreement."

**{¶ 15}** Furthermore, Miami Valley Hospital produced four documents demonstrating that Brooks was aware of the at-will nature of his employment including any employment beyond his probationary period. When Brooks applied for the position, he signed the application directly below the following language, "I understand that the employee manual is for informational purposes only and does not constitute an employment contract. I understand that any employment offered

is for an indefinite duration and at will and that either I or the Employer may terminate my employment at any time without notice or cause." Several days prior to his first day of work, Brooks also signed a document entitled "Premier Health Partners 2008 Annual Code of Conduct Statement," which concluded with the following language, "I know nothing in this statement is intended to be a contract for employment...." Brooks signed the document directly below this language.

**{¶ 16}** On his first day of work, Brooks signed a document acknowledging receipt of the Miami Valley Hospital policy packet, and agreeing that he knew where and how to access that information on the hospital's intranet. The document also stated, "I understand that this manual provides general guidelines concerning my employment and is not intended nor should it be construed to constitute a contract...." Moreover, the relevant policy itself stated, "both the employee and the employer may choose to end the employment relationship at any time for any reason as neither is contractually bound to the employment relationship."

**{¶ 17}** It is apparent that Miami Valley Hospital did not see Brooks' performance as satisfactory or his probationary period as having been successfully completed, as evidenced by the decision to extend that probationary period by 30 days. Moreover, the probationary period policy, which Brooks acknowledged receiving during his probationary period, specifically states that "the probationary period may be extended at the recommendation of the supervisor and department director...." That document also states that as a probationary employee, Brooks could be terminated "without following all of the steps of the Corrective Action Policy."

**{¶ 18}** In any event, even assuming, arguendo, that Brooks should have been classified as a "regular" employee at the end of his first 90-day probationary period, nothing in any of the documents provided by either party below equates "regular status" with contractual employment. As a regular employee, the corrective action policy states that "[t]he hospital reserves the right to bypass any corrective action step due to circumstances following consultation with Human Resources." Additionally, the resignation and termination document lists "examples of involuntary terminations," of which "discharge for cause" is just one possible reason for termination. Contrary to Brooks' argument, it is not the only possible reason for termination.

**{¶ 19}** The language in these documents amounts to disclaimers by Miami Valley Hospital. Such disclaimers in employment documents and the employee's acknowledgment that the documents do not create an employment contract, negate any other inference of contract between the parties that may exist. *Shepard,* supra, citing *Wing,* supra. In light of the repeated disclaimers by Miami Valley Hospital, acknowledged by Brooks, we conclude that Brooks was an at-will employee.

**{¶ 20}** For these reasons, even construing the evidence in favor of Brooks as the non-moving party, no genuine issue of material fact exists regarding his wrongful termination claim, and Miami Valley Hospital was entitled to judgment in its favor. Accordingly, Brooks' second assignment of error will be overruled.

IV

**{¶ 21}** Brooks' Third Assignment of Error:

**{¶ 22}** "DOES OHIO'S AT-WILL EMPLOYMENT DOCTRINE CONFLICT WITH THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION?"

**{¶ 23}** Finally, Brooks argues for the first time on appeal that Ohio's preference for at-will employment is unconstitutional because it violates the Equal Protection Clause. However, we need not address constitutional issues raised for the first time on appeal. *State v. Awan* (1986), 22 Ohio St.3d 120. Because this constitutional challenge was not raised first in the trial court, Brooks has waived his right to appeal the issue. Regardless, the Supreme Court of Ohio has often upheld the employment-at-will doctrine. *Wiles v. Medina Auto Parts,* 96 Ohio St.3d 240, 2002-Ohio-3994, ¶5, citing *Collins v. Rizkana* (1995), 73 Ohio St.3d 65, 67, 1995-Ohio-135; *Mers v. Dispatch Printing Co.* (1985), 19 Ohio St.3d 100, paragraph one of the syllabus. Accordingly, Brooks' third assignment of error is overruled.

V

**{¶ 24}** Having overruled all three of Brooks' assignments of error, the judgment of the trial court will be Affirmed.

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GRADY, J. and WOLFF, J., concur.

(Hon. William H. Wolff, Jr., retired from the Second District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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