

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

WARREN EASTERLING

Plaintiff-Appellant

v.

CROSWELL BUS LINES, et al.

Defendant-Appellees

Appellate Case No. 24008

Trial Court Case No. 09-CV-8648

(Civil Appeal from  
Common Pleas Court)

OPINION

Rendered on the 1<sup>st</sup> day of October, 2010.

WARREN EASTERLING, 71 Arlington Avenue, Dayton, Ohio 45417  
Plaintiff-Appellant, *pro se*

THEODORE J. FRONCEK, 1208 Sycamore Street, Cincinnati, Ohio 45202  
Attorney for Defendant-Appellees

BROGAN, J.

{¶ 1} Plaintiff-Appellant Warren Easterling files a *pro se* appeal of the decision of the Montgomery County Court of Common Pleas granting summary judgment for the Defendant-Appellee, Croswell Bus Lines Inc., et al. Easterling contends that he was wrongfully terminated from his employer, Croswell Bus Lines, because his employee handbook created a contractual right between him and

Croswell Bus Lines, and therefore was not an at-will employee.

{¶ 2} The trial court properly granted summary judgment for Croswell Bus Lines, because there is no genuine issue of material fact, since Easterling's employment was considered "at-will." For the following reasons, the judgment of the trial court will be affirmed.

I

{¶ 3} Easterling was employed by Croswell Bus Lines, Inc. as a bus driver. Easterling was terminated from Croswell Bus Lines on October 13, 2008. The reason for Easterling's termination stemmed from two earlier incidents which occurred while Easterling was driving buses for Croswell Bus Lines.

{¶ 4} The first incident occurred while Easterling was driving the Miami University equestrian team. The complaint alleged that Easterling asked a female student and member of the equestrian team if she received "sexual stimulation" from riding horses.

{¶ 5} The second incident occurred when Easterling was driving the Troy University football team. The football coach asked Easterling to turn the radio's volume down. Easterling stated he turned the radio off in the passenger area, but left it on in the driver's area. Easterling stated the music was indeed loud, and he used it as retaliation and also to drown out the student telling him how to drive the bus.

{¶ 6} On October 13, 2008, Susan Maham, an employee of Croswell Bus Lines, met with Easterling to describe his conduct. During the meeting, Easterling denied

asking the female student if she received “sexual stimulation” from riding horses, and instead claimed he asked the student if she received “sexual satisfaction” from riding horses. When asked about the incident with the Troy University football team, Easterling did admit he had retaliated against passengers that, as he put it, “ticked him off.” When he refused to acknowledge that his behavior was wrong, he was terminated for violation of Croswell’s sexual harassment policy as well as direct insubordination.

## II

{¶ 7} While Easterling never officially put forth assignments of error, this Court has gleaned that Easterling has one assignment of error. The assignment of error is as follows:

{¶ 8} “THE TRIAL COURT IMPROPERLY GRANTED SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANT-APPELLEE.”

{¶ 9} Easterling argues that he was not an “at-will” employee. Easterling claims that since the document titled, “Croswell Bus Lines, Part II, Operations Department Policies,” has a chart titled “unacceptable behavior,” Easterling believes he has a contractual right to a sliding scale of punishment. He further contends that he should only be given a warning for his two incidents, instead of being terminated outright.

{¶ 10} “The existence of an express or implied contract can overcome the employment at will presumption. \* \* \* 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.’” *Edison v. Dunlap Credit Union, Inc.* (2010), 186 Ohio App.3d 370,

¶ 31; quoting *Reasoner v. Bill Woeste Chevrolet Inc.* (1999), 134 Ohio App.3d 196, 200.

{¶ 11} There is no evidence to show that both parties assented to anything other than an at-will employment. In fact the Croswell Bus Lines Inc. Employee Handbook specifically states that the employment agreement between Easterling and Croswell Bus Lines was at-will. Mr. Easterling did not set forth any evidence to show that he was anything other than an at-will employee for Croswell Bus Lines. The gradual punishment scale Easterling relies upon does not create an implied contract between himself and Croswell. The trial court properly granted summary judgment to Croswell based on the affidavits of Susan Maham it filed in support of its motion for summary judgment. See Civ.R. 56.

{¶ 12} The appellant's assignment of error is Overruled. The judgment of the trial court is Affirmed.

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GRADY and FROELICH, JJ., concur.

Copies mailed to:  
Warren Easterling  
Theodore J. Froncek  
Hon. Barbara P. Gorman