[Cite as *Coles v. I-Force*, 2015-Ohio-1040.]

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

ANTHONY COLES	:	
	:	
Plaintiff-Appellant	:	Appellate Case No. 26385
	:	
v.	:	Trial Court Case No. 2013CV7038
	:	
I-FORCE AND MANCOR INDUSTRIES	:	(Civil Appeal from
	:	Common Pleas Court)
Defendants-Appellees	:	
	:	

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O P I N I O N

Rendered on the 20th day of March, 2015.

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Plaintiff-Appellant

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HALL, J.

{¶ 1} Anthony Coles appeals pro se from the trial court's entry of summary judgment against him on his wrongful-discharge complaint against Mancor Industries and Daily Services, LLC dba I-Force.

{¶ 2} In his sole assignment of error, Coles contends "[t]he trial court erred in the assessment of the only evidence presented to the court, the deposition of the Plaintiff."

{¶ 3} The present appeal stems from Coles' brief at-will employment relationship with I-Force, a temporary-staffing agency that assigns its employees to work for various clients. In May 2013, I-Force hired Coles and assigned him to work at Mancor. Coles worked in Mancor's press room with three other people, including a supervisor named Bill Lacy. Coles worked a total of five shifts at Mancor over a one-week period.

{¶ 4} In his deposition, Coles mentioned three incidents that occurred while he was at Mancor.[1] (Coles depo. at 100). The first involved a conversation with Lacy about employees having to supply their own tools. Coles believed this was inappropriate, and Lacy supplied tools for Coles to use. (*Id*. at 88-93, 146-149). The second involved Lacy becoming angry at Coles over Coles' inability to see lines on a blueprint due to inadequate magnification. Lacy "went ballistic" before eventually agreeing that the lines could not be seen clearly. (*Id*. at 94-99). Coles believed Lacy became angry in part because he felt insecure in his job and felt threatened or intimidated by Coles' qualifications. (*Id*. at 149-152, 162). According to Coles, Lacy had heard about his qualifications from another Mancor supervisor named "Jerry." Coles had spoken to Jerry

[1] Because the trial court entered summary judgment against Coles, we will accept his deposition testimony as true and construe it most strongly in his favor.

before clocking in for work earlier that day and had mentioned his work-related accomplishments. When Lacy subsequently arrived, Jerry "shot straight over" and started talking to Lacy. Coles believed that Jerry had told Lacy about Coles' experience and qualifications. (*Id*. at 99-101, 149-152). Coles explained that "what [he] told Jerry was enough to make [Lacy] very uneasy because [Lacy] hadn't fully acquired the position that he was in." (*Id*. at 151). Coles added that Lacy "was not happy to hear that I was there with those qualifications" and that Lacy "really didn't want to hear that I had what I had" experience-wise. (*Id*. at 151-152).

{¶ 5} The third incident Coles mentioned involved work hours. The schedule at Mancor typically required working one twelve-hour day and four shorter days, resulting in a forty-hour week. This often involved a twelve-hour day followed by four seven-hour days. (*Id*. at 145). Coles and other employees disliked the fact that Mancor required them to work one long day but avoided paying overtime by reducing their hours on other days. (*Id*. at 82-87). During Coles' week at Mancor, however, he worked a twelve-hour day and four eight-hour days. (*Id*. at 85-86). An issue arose on the last day, a Saturday, when Lacy told Coles he could go home after seven hours. Coles responded by telling Lacy that he was scheduled to work eight hours. Lacy directed Coles to see "Josh," another supervisor. Josh and Lacy then both told Coles that there was nothing left for him to do and that he could go home. At that point, a supervisor named "Larry" intervened and said he had something Coles could do. Coles proceeded to work on a task given to him by Larry. Coles stayed the final hour and then clocked out. (*Id*. at 104-109, 154). As he left, Lacy told him he was going to be fired because he asked for the extra hour. (*Id*. at 110, 155-156). Coles returned to Mancor for a scheduled shift the following day. When he

arrived, Lacy informed him he did not work there anymore. (*Id*. at 114).

{¶ 6} Coles went home and called Michelle Cox, his contact at I-Force. (*Id*. at 115). She told him she would try to find out what had happened. (*Id*. at 116). Cox and Coles spoke on the phone again a day later. At that time, she informed Coles that he had given Jerry the "evil eye" at work and had gone on "a rant" or "went off on him[.]" (*Id*. at 116-117). Coles picked up his paycheck at I-Force a few days later. (*Id*. at 118). On that occasion, Cox gave him a document stating that he had been insubordinate and verbally abusive in questioning a manager's role at Mancor. (*Id*. at 119-122, 157). When Coles responded by asking who he had verbally abused, Cox told him to quit complaining or she would not get him another job. (*Id*. at 119-123). Coles inquired how asking a question was complaining. He also told her she did not need to find him another job and left, stating that he did not want another assignment from I-Force. (*Id*. at 119-120, 138).

{¶ 7} In his deposition, Coles testified that he believed the claim about verbal abuse was made up and that Mancor quit using him due to his alleged insubordination over not leaving work an hour early. (*Id*. at 126-128, 160-161). Coles opined that Lacy had used insubordination as an excuse to get rid of him because Lacy felt threatened by his qualifications. (*Id*. at 160-164). Coles maintained that he was not insubordinate because he was given an opportunity to leave early, not told to clock out. (*Id*. at 161-162).

{¶ 8} In November 2013, Coles filed a pro se complaint against I-Force and Mancor alleging "wrongful termination." (Doc. #1). I-Force and Mancor separately moved for summary judgment. (Doc. #22, 27). In response to the motions, Coles made clear that he was bringing a claim for wrongful discharge in violation of public policy. (Doc. #30).

After briefing, the trial court sustained the summary judgment motions. (Doc. #34). The trial court reasoned that Coles could not prevail against Mancor because it was not his employer. (*Id*. at 7). With regard to I-Force, the trial court reasoned:

> Not only has Plaintiff failed to identify any public policy violated by I-Force, but by Plaintiff's own deposition testimony I-Force did not discharge him. Plaintiff told the I-Force Manager that she did not need to find him another position, that he didn't want another assignment from I-Force, and that he didn't want to work for I-Force anymore. By Plaintiff['s] own account, he terminated his employment relationship with I-Force * * *. Plaintiff's claim for wrongful discharge in violation of public policy cannot succeed. * * *

(*Id*. at 6-7).

{¶ 9} On appeal, Coles contends the stated reasons for Mancor ending his assignment there, verbal abuse and insubordination, were lies. He argues that clear public policy exists against lying, or bearing false witness, and that Mancor wrongfully discharged him in violation of that public policy. He also asserts that I-Force constructively discharged him when Cox told him, in response to a question, that she would not find him another job if he did not stop complaining. Coles claims Cox's statement showed that she did not want to communicate with him, constituted a threat, and established a hostile environment. Coles additionally argues that Mancor and I-Force both breached a covenant of good faith and fair dealing. Mancor allegedly breached this covenant when Lacy told him he had to buy his own tools, yelled at him about reading a blueprint, and told him he could go home early. I-Force allegedly breached this covenant when Cox

interpreted his question about who he verbally abused as complaining and told him she would not find him another job if he did not stop complaining. Finally, Coles disputes various factual statements by the trial court. Contrary to the trial court's statement that he "informed" Jerry about his accomplishments, Coles contends he "traded information" with Jerry. Contrary to the trial court's statement that he "was sent home" by Lacy and "refused to go," Coles claims he was merely told he could go home. Contrary to the trial court's statement that he "was terminated" by Lacy, Coles asserts that Lacy told him "they were going to terminate" him. Coles also disputes the trial court's statement that he "demanded" to be paid for the extra hour, that he arrived for work on Sunday despite having been told by Lacy on Saturday that he was terminated, and that Cox "indicated a willingness" to find him another job if he stopped complaining.

{¶ 10} We review a grant of summary judgment de novo, which means that "we apply the standards used by the trial court." *Brinkman v. Doughty*, 140 Ohio App.3d 494, 497, 748 N.E.2d 116 (2d Dist.2000). Pursuant to Civ.R. 56(C), 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." Summary judgment is appropriate only where: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable minds can come to but one conclusion, that conclusion being adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978). Because summary

judgment is a procedural device to terminate litigation, courts should award it cautiously after resolving all doubts in favor of the non-moving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-59, 604 N.E.2d 138 (1992).

{¶ 11} With the foregoing standards in mind, we find no error in the trial court's entry of summary judgment in favor of Mancor and I-Force. As an initial matter, none of the issues Coles raises with regard to the trial court's factual statements are material to the propriety of summary judgment. Some of Coles' factual disputes are semantic (i.e., whether he "informed" Jerry or "traded information" with Jerry). The others do nothing to establish a genuine issue of material fact for trial because the disputes he raises are not material to the outcome of his lawsuit.

{¶ 12} Coles' argument about the covenant of good faith and fair dealing also fails to establish a genuine issue of material fact for trial. We reach this conclusion for at least two reasons. First, his complaint does not contain a cause of action for breach of the covenant of good faith and fair dealing, and he did not raise that issue below.[2] He cannot argue it for the first time on appeal. Second, even if the issue were properly before us, it would fail as a matter of law. Coles admittedly was an at-will employee (Coles depo. at 143-144), and Ohio law does not recognize a good faith and fair dealing requirement in at-will employment relationships. *Dunina v. Life Care Hosps. of Dayton*, 2d Dist. Montgomery No. 21142, 2006-Ohio-2824, ¶ 29, citing *Hapner v. Tuesday Morning, Inc*., 2d Dist. Montgomery No. 19395, 2003-Ohio-781, ¶ 129; *Snedigar v. Miami Univ*., 10th Dist. Franklin No. 11AP-8, 2011-Ohio- 4365, ¶ 14 (citing cases).

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[2] During his discovery deposition, Coles did make a passing reference to Mancor violating "something like good faith dealing." (Coles depo. at 164). His complaint contained no such cause of action, however. Nor did he attempt to raise the issue in his memoranda opposing summary judgment. (Doc. #25, 30).

{¶ 13} Coles' argument about a constructive discharge by I-Force also fails as a matter of law. We again reach this conclusion for at least two reasons. First, he failed to adequately raise a constructive-discharge cause of action below and cannot raise one for the first time on appeal.[3] Second, even if the issue were properly before us, no rational trier of fact could find a constructive discharge based on Cox's statement, in response to his question about who he had verbally abused, that she would not find him another job if he did not stop complaining. Regardless of whether Coles thought he was not complaining and believed Cox's statement was unjustified, we conclude, as a matter of law, that her interaction with him did not establish a constructive discharge, which requires proof that "the employer's actions made working conditions so intolerable that a reasonable person under the circumstances would have felt compelled to resign." *Mauzy v. Kelly Serv., Inc*., 75 Ohio St.3d 578, 664 N.E.2d 1272 (1996), paragraph four of the syllabus.

{¶ 14} Finally, with regard to both Mancor and I-Force, we find no genuine issue of material fact regarding wrongful discharge in violation of public policy. "In Ohio, the common-law doctrine of employment at will governs employment relationships. The act of terminating an at-will employee's relationship with an employer usually does not give rise to an action for damages." (Citations omitted.). *Dohme v. Eurand Am., Inc*., 130 Ohio St.3d 168, 2011-Ohio-4609, 956 N.E.2d 825, ¶ 11. "However, if an employee is discharged or disciplined in contravention of a clear public policy articulated in the Ohio or

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[3] Coles' complaint contained no cause of action for constructive discharge. In his memorandum opposing summary judgment, Coles mentioned the issue in one sentence, stating: "Due to the lack of fiduciary duty by I-Force it created a state of Constructive Discharge." (Doc. #25 at 2).

United States Constitution, federal or state statutes, administrative rules and regulations, or common law, a cause of action for wrongful discharge in violation of public policy may exist as an exception to the general rule." (Citations omitted.) *Id*.

{¶ 15} To establish wrongful discharge in violation of public policy, a plaintiff must show: (1) the existence of clear public policy manifested in a state or federal constitution, a statute or administrative regulation, or the common law; (2) that discharging him under the circumstances of his case would violate the public policy; (3) that his dismissal was motivated by conduct related to the public policy; and (4) that the employer lacked an overriding legitimate business justification for the dismissal. *Id*. at ¶ 12-16.

{¶ 16} In the proceedings below, Coles asserted that the clear public policy at issue was a public policy against lying. He cited Mancor "company policy" as the source of this public policy. (Coles depo. at 164). Coles also suggested below that Lacy had violated clear Mancor policy by terminating him without authority. (Doc. #30 at 2). On appeal, he cites the Bible as a source of clear public policy against bearing false witness. (Appellant's brief at 1). He argues, among other things, that his termination violated this clear public policy because the allegations against him, verbal abuse and insubordination, were lies.

{¶ 17} Upon review, we see no error in the trial court's rejection of Coles' public-policy claim. Even if we assume purely arguendo (1) that he qualified as an employee of both Mancor and I-Force for purposes of his wrongful-discharge claim and (2) that he was fired,[4] we find no clear public policy that Mancor or I-Force violated. We

[4] Assuming that Coles was an employee of Mancor is contrary to his deposition testimony. There he acknowledged that he was an employee of I-Force, which sent him on an assignment to work for Mancor, its client. (Coles depo. at 124, 135-137). We

are unconvinced that Mancor's purported "company policy" against lying and the Bible's admonishment against bearing false witness constitute clear public policy manifested in a *state or federal constitution*, a *statute or administrative regulation*, or *the common law.* As I-Force properly notes, "[a]part from statements made under oath with attendant warnings regarding the possibility of criminal prosecution, Ohio does not have a 'clear public policy' against lying either in general or with regard to employment." (I-Force's appellate brief at 8).

{¶ 18} In any event, we find no genuine issue of material fact with regard to the public-policy claim for at least two additional reasons. First, even construing the evidence in his favor, what Coles characterizes as a factual "lie" appears to be a difference of opinion. Coles acknowledged below that Mancor thought he was insubordinate because he did not leave an hour early on Saturday and worked an additional hour. (Coles depo. at 128, 170). Regardless of any disagreement about whether his conduct actually rose to the level of insubordination, discharging a worker for perceived insubordination does not violate any clear public policy. Second, even if we accept that the allegations of verbal abuse and insubordination were wholly baseless, the question is whether the actual

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recognize, however, that in some situations an employee of a temporary staffing agency also has been considered an employee of the agency's client. *See*, *e.g.*, *State ex. rel. Newman v. Indus. Comm.*, 77 Ohio St.3d 271, 673 N.E.2d 1301 (1997) (holding that customer companies of temporary service agencies are "employers" subject to claims for violations of specific safety requirements). For present purposes, we simply will assume arguendo that Coles was an employee of Mancor and I-Force with respect to his wrongful-discharge claim. We also will assume for sake of argument that I-Force terminated his employment after Mancor indicated that it did not want him assigned there anymore. Although the trial court found that Coles quit his job with I-Force by telling Cox he did not want any more assignments, a "separation notice" introduced as an exhibit to Coles' deposition suggests that Cox already may have terminated his employment with I-Force due to his alleged verbal abuse and insubordination at Mancor. (*See* Coles depo. at Def. Exh. 5).

reason for Coles' discharge violated public policy. In his deposition, he opined that Lacy had used insubordination as an excuse to get rid of him because Lacy felt threatened by his qualifications. (*Id*. at 160-164). Although discharging a worker based on insecurity arising from a perception that the worker's qualifications are superior, if proven, may be a "bad reason," it does not violate any clear public policy.

{¶ 19} For the reasons set forth above, we overrule Coles' assignment of error and affirm the judgment of the Montgomery County Common Pleas Court.

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FAIN, J. and WELBAUM, J., concur.

Copies mailed to:

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