IN THE SUPREME COURT OF THE STATE OF NEVADA

DEBORA ANDERSON,
Appellant,
vs.
RUPPCO INC. D/B/A A-L SIERRA WELDING PRODUCTS; AND WILLI RUPPEL,
Respondents.

No. 48037

FILED

JAN 27 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court summary judgment in a wrongful termination action. First Judicial District Court, Carson City; Michael R. Griffin, Judge.

FACTS

Appellant Debora Anderson (Anderson) was hired as a bookkeeper by Ruppco, doing business as A-L Sierra Welding (Sierra), on June 15, 1991. Sierra is a small company located in Carson City, Nevada, that has less than ten employees. Due to the small number of persons employed by Sierra, Sierra's employees routinely discussed each other's personal lives, including health issues.

In March 2004, Anderson received a phone call at work from her doctor informing her that she had been diagnosed with Hepatitis C. Anderson became upset by the news and went to see Ruppco's president, Willi Ruppel (Ruppel), to confidentially disclose this information to him. On at least two occasions after Anderson disclosed her diagnosis to Ruppel, Ruppel expressed to Anderson that other employees at Sierra had expressed concern over her health and that he felt she should disclose her diagnosis.

Following the conversations Anderson had with Ruppel about disclosing her diagnosis, Anderson obtained a letter from her doctor explaining that her diagnosis did not pose a risk to any casual contacts and that she did not have a legal obligation to divulge the details of her personal medical history. Upon being informed of this letter by Anderson, Ruppel became frustrated with Anderson and a heated discussion ensued between Ruppel and Anderson.

Following the heated discussion, Anderson left Ruppel's office and went into Sierra's warehouse where at least four other Sierra employees were present. Anderson informed the four employees that she did have a medical issue, but that it was no one else's business. Two of the Sierra employees that were present in the warehouse declared by affidavit that Anderson was shouting words they could not understand in a loud voice and appeared to be hysterical and out of control. Anderson denied that she was shouting but only raised her voice because she was upset when she entered the warehouse.

Following Anderson's alleged outburst, Ruppel approached Anderson in the warehouse and told Anderson that he no longer wanted her talking on the phone with her doctor or making personal phone calls to her doctor at work. Anderson protested because other Sierra employees were permitted to make personal phone calls at work. At the conclusion of Anderson and Ruppel's discussion, Ruppel asked Anderson to leave the facility, but Anderson ignored his instructions. Anderson later complied and left Sierra's warehouse without any belief that she had been terminated.

Anderson returned to work the next day and had three conversations with Ruppel regarding her employment status. During

these conversations, Ruppel informed Anderson that her conduct the previous day was something he could not get past and that their working relationship was similar to a marriage that was ending. Ruppel testified that he and Anderson came to an agreement that the two could no longer work together and the two orally agreed to a set of terms surrounding Anderson's termination. Ruppel further testified that he then presented Anderson with a written agreement that memorialized their earlier oral agreement.

Anderson testified that after she read the written contract presented to her by Ruppel she asked Ruppel if she could have a lawyer look at the document. Anderson further testified that Ruppel told her that she could not have a lawyer look at the document and then terminated her employment, effective immediately.

Procedural Posture

Anderson filed a civil complaint on August 8, 2005, alleging: 1) tortious discharge, 2) intentional infliction of emotional distress, and 3) negligent infliction of emotional distress. Ruppco answered Anderson's complaint on October 25, 2005.

Ruppco filed a motion for summary judgment on July 3, 2006. In its motion for summary judgment, Ruppco argued that Anderson could not state a viable claim for relief against Ruppco for the tort of wrongful discharge in violation of public policy and the attendant emotional distress claims that she filed.

Anderson filed an opposition to Ruppco's motion for summary judgment on July 27, 2006. In her opposition, Anderson argued that summary judgment was not appropriate because: 1) Ruppco failed to comply with NRCP 56(c)'s requirement of submitting a statement of undisputed facts, 2) she had properly pled, and her deposition supports,

the allegations of invasion of privacy and a violation of public policy, and 3) she disputed that she was terminated for cause.

Ruppco filed a reply on August 3, 2006. In its reply, Ruppco argued that: 1) Anderson cited an incorrect standard of review for summary judgment, 2) Ruppco complied with NRCP 56(c), 3) Anderson had not pled and could not argue violation of a right to privacy or the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 4) Anderson's claim was insufficient to establish tortious discharge in violation of public policy because it was not concrete and did not establish outrageous conduct, and 5) Anderson's employment was at-will, but even so, just cause existed to terminate her.

The district court entered an order granting Ruppco's motion for summary judgment on August 11, 2006. In its order, the district court granted summary judgment as to the tortious discharge claim because Anderson presented no evidence that she was terminated for failure to disclose medical information. Further, the district court stated in its order that the undisputed facts showed that Anderson was fired for an outrageous outburst at work. This appeal followed.

DISCUSSION

Anderson argues that the district court erred in granting Ruppco's motion for summary judgment because a factual dispute existed as to whether or not she was fired for failing to reveal confidential medical information. Further, Anderson contends that there was sufficient evidence presented to the district court from which a strong inference could be drawn that her employer, Ruppel, terminated her for refusing to authorize disclosure of her private medical information. We agree that the district court erred in granting Ruppco's motion for summary judgment because there is a genuine issue of material fact with respect to whether

Anderson was fired for refusing to disclose confidential medical information in violation of her right to privacy.

Standard of review

This court reviews orders granting summary judgment de novo. Yeager v. Harrah's Club, Inc., 111 Nev. 830, 833, 897 P.2d 1093, 1094 (1995). Summary judgment is proper only if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. NRCP 56(c); see Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). This court reviews motions for summary judgment, the evidence, and all reasonable inferences drawn from it, in a light most favorable to the nonmoving party. Whether a factual dispute is material and will preclude summary judgment is controlled by the underlying substantive law. Id. at 731, 121 P.3d at 1031.

A genuine factual dispute exists when a rational trier of fact could return a verdict for the nonmoving party based on the presented evidence. Id. This court has held that, "'[w]hen a motion for summary judgment is made and supported as required by NRCP 56, the non-moving party may not rest upon general allegations and conclusions, but must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue.'" Id. at 731, 121 P.3d at 1030-31 (quoting Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713, 57 P.3d 82, 87 (2002)).

The district court erred by granting Ruppco's motion for summary judgment

Here, a genuine issue of material fact exists as to whether Anderson was fired for refusing to disclose confidential medical information, in violation of Nevada's public policy protecting the right to privacy. See Allum v. Valley Bank of Nevada, 114 Nev. 1313, 1316-17, 970

P.2d 1062, 1064 (1998) (stating that "[a]n employer commits a tortious discharge by terminating an employee for reasons that violate public policy" and that whether an employee is at-will is irrelevant to whether a tortious discharge claim may be maintained). "Nevada has long recognized the existence of the right to privacy." PETA v. Bobby Berosini, Ltd., 111 Nev. 615, 629, 895 P.2d 1269, 1278 (1995). Section 652B of the Second Restatement of Torts states that "[o]ne who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of privacy, if the intrusion would be highly offensive to a reasonable person." Id. at 630 n.16, 895 P.2d at 1279 n.16. We have held that the rationale behind section 652B of the Second Restatement of Torts is to protect against intrusion by others into the private space and affairs of another. Id. at 630, 895 P.2d at 1279. Comment (d) of section 652B of the Second Restatement of Torts explains that the interference must be of the sort that a reasonable person would strongly object to and of a kind that would be highly offensive to an ordinary person.

We have held that the true motivation behind an employer's decision to terminate an employee is a factual issue. Apeceche v. White Pine County, 96 Nev. 723, 727, 615 P.2d 975, 978 (1980). Additionally, this court has long looked for guidance from the federal courts in employment cases. See Pope v. Motel 6, 121 Nev. 307, 311, 114 P.3d 227, 280 (2005); see also Copeland v. Desert Inn Hotel, 99 Nev. 823, 826 673 P.2d 490, 492 (1983); Apeceche at 726-27, 615 P.2d at 977-78. Summary judgment is generally unsuitable in an employment case because of the "'elusive factual question'" regarding the employer's intentions and motivations. Yartzoff v. Thomas, 809 F.2d 1371, 1377 (9th Cir. 1987).

Further, an employee may establish a causal link between the termination and the employer's motives by an inference derived by circumstantial evidence. Jordan v. Clark, 847 F.2d 1368, 1376 (9th Cir. 1988).

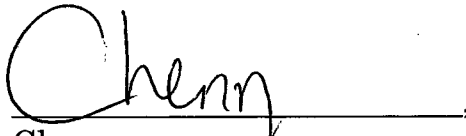
In this case, Anderson presented sufficient evidence in her opposition to Ruppco's motion for summary judgment such that a genuine issue of material fact existed. Specifically, Anderson presented evidence through her deposition testimony that Ruppel was the only person at Sierra who knew of her medical condition and that she was being pressured by Ruppel to disclose confidential medical information to her co-workers immediately prior to her termination. Additionally, Anderson testified at her deposition that Ruppel was pressuring her to reveal this confidential medical information because he had received several inquiries from other employees expressing concern about their own safety, but Anderson still refused to disclose any specific information about her medical condition as she believed this information was private. Therefore, Anderson presented sufficient evidence to show at least an inference, through circumstantial evidence, that a causal link existed between her refusal to reveal confidential medical information and Ruppel's decision to terminate her employment. Thus, summary judgment was not appropriate in this case.

CONCLUSION

The district court erred in granting Ruppco's motion for summary judgment because there exists a genuine issue of material fact in regards to whether Anderson was terminated by Ruppel because she refused to disclose confidential medical information to her co-workers in violation of her right to privacy, which is protected under Nevada's public policy. The order of the district court therefore must be reversed and we remand the case back to the district court with instructions to consider the

evidence in the light most favorable to Anderson in regards to her tortious discharge claim. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



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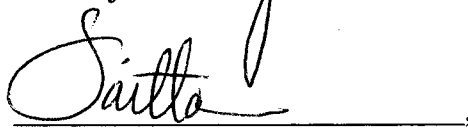

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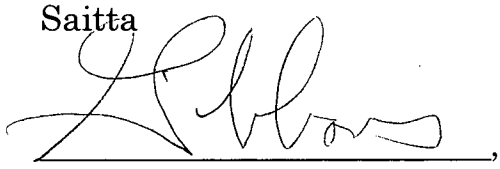

_____, J.
Gibbons

cc: First Judicial District Court Dept. 1, District Judge
Patrick O. King, Settlement Judge
Lemons Grundy & Eisenberg
Allison, MacKenzie, Pavlakis, Wright & Fagan, Ltd.
Erickson Thorpe & Swainston, Ltd.
Carson City Clerk