IN THE COURT OF APPEALS OF IOWA

FILED
MAY 31 1996
CLERK SUPREME COURT

No 6-056 / 94-1874

SHIRLEY CLEMENS,

Appellant.

vs.

COVENANT MEDICAL CENTER,

Appellee.

Appeal from the Iowa District Court for Black Hawk County, Alan L. Pearson, Judge.

Appeal in wrongful discharge action from ruling that employment of plaintiff had been terminated for just cause. **AFFIRMED.**

Robert D. Fulton of Fulton, Frerichs, Martin & Andres, P.C., Waterloo, for appellant.

John R. Walker of Beecher, Rathert, Roberts, Field, Walker & Morris, P.C., Waterloo, for appellee.

Heard by Habhab, P.J., Huitink, J., and McCartney, S.J.* Vogel, J., takes no part.

*Senior judge from the Second Judicial District serving on this court by order of the Iowa Supreme Court

McCARTNEY, S.J.

The employee, Shirley Clemens, in her action for wrongful discharge appeals from a ruling that her employment with Covenant Medical Center was terminated for just cause. She asserts that there was no just cause and that her termination was not in accordance with her employment contract.

We affirm.

The appellant, Shirley Clemens (Shirley), has been a licensed practical nurse since 1971 and, in June of 1988, she commenced employment in the nursery of the appellee hospital, Covenant Medical Center (Covenant). She generally worked in the regular nursery and occasionally in the intensive care nursery. Her employment continued until October 31, 1991, when her employment was terminated. Shirley had not been subject to disciplinary actions and had received satisfactory performance appraisals prior to the circumstances leading to her termination.

Shirley had a teenage son, James. In 1990 and 1991 James was involved with a girl named Laurie. In April 1991, Shirley learned Laurie was pregnant and that Laurie claimed James was the father of the child. Shirley testified she was aware in June 1991 Laurie wished to place the baby for adoption and was working with Catholic Charities to do so. James informed his parents in September 1991 it was his intention to keep the baby.

Shirley regularly worked the 11 p.m. to 7 a.m. shift in the nursery at Covenant. On the morning of Friday October 25, 1991, Shirley was just finishing her shift when she was informed by other hospital staff Laurie had been admitted to the hospital and was about to deliver her baby. Nurse Kruger and Shirley both testified they discussed the fact the baby was to be given up for adoption. Nurse McCombs testified she and Shirley also discussed that the baby was to be put up for adoption. At that time Shirley had not told any hospital staff she believed the baby was her grandchild.

Shirley observed the baby before she left work at the end of her shift. When she arrived home Shirley informed her son and husband the baby had been born. Shirley had no further contact with the baby on that day.

The next day at approximately 11 p.m , Shirley, her husband and James went to Covenant to see the baby. Shirley led the others into the intensive care nursery. The nurse on duty, Jan Calloway, was a coworker of Shirley. Calloway was surprised when Shirley announced she and her husband were the grandparents of the baby and their son was the father. The Clemens family observed the baby and nurse Calloway thought she saw a camera flash. The Clemens were only in the nursery for a few minutes and did not appear to have disturbed the baby.

Covenant has a specific policy handling the care of maternity patients who intend to put their babies up for adoption. This policy contains procedures nursery staff are to follow in caring for adoptive babies. The births of such babies are not

publicized ("no pub") and they are segregated from the general nursery population and placed in areas like the intensive care nursery so they are not subject to public observation.

A birth mother and Covenant execute an agreement under which the hospital contractually agrees not to release any information regarding the admission of the mother to the hospital or the birth of the child. No visitors are allowed to visit the baby unless specifically designated by the mother. Shirley testified that as an employee in the nursery at Covenant, she was aware of these policies. Shirley admitted a breach of a no pub agreement could possibly damage the emotional health of a mother and subject the hospital to liability. Laurie and Covenant had executed a no pub agreement in conjunction with her admission and the delivery of her child.[1] Laurie did not designate James or his parents as visitors allowed to see her baby.

After Shirley, her husband, and son left the intensive care nursery, nurse Calloway became concerned their conduct had violated the no pub agreement the hospital had with Laurie. Calloway contacted her superiors, and Shirley was notified

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[1] The no pub agreement provided --

ABSOLUTE NO PUBLICITY FOR BIRTHS AND MOTHERS

I hearby understand and agree to the hospital ploicy [sic] that no information will be released regarding my baby's birth or my admission to this hospital. No phone calls will be transferred to my room, no letters, cards, or flowers delivered, no visitors except my support person will be allowed to see me or my baby. In consideration of my request, we agree to hold Covenant Medical Center harmless in the event there are any claims as a result of honoring this request.

she was not to return to work until an investigation had been done into the circumstances surrounding the visit to the nursery.

Nancy Karjum, Director of Maternal Child Services at Covenant, contacted Shirley and arrange to meet with her on October 31, 1991. At that time, Ms. Karjum terminated Shirley The disciplinary record prepared at this meeting indicates Shirley was terminated for violating two personnel policy rules: the disclosure of confidential patient information; and conduct detrimental to patient care and medical center operations. The disciplinary record and trial testimony reveal that at the time of her termination Shirley believed she had done nothing wrong, she did not believe she had broken any patient confidence and she had indicated she would do the same thing again.

Shirley opted to utilize the available procedures for review of her disciplinary action. The decision to terminate her employment was reviewed at four different levels, and it was recommended at all levels that the termination be upheld.

Shirley filed a wrongful discharge action against Covenant. Following a bench trial, the trial court found her conduct constituted not only a violation of the confidentiality policy, but was also conduct detrimental to the patient and the operations of the medical center. The court found there was just cause for the termination and it was in compliance with the employment contract. On appeal, Shirley claims the trial court erred in finding there was just cause for her termination

and substantial evidence did not support the finding that her conduct was detrimental to patient care and medical center operations.

Our review is limited to correction of errors at law. *Palmer v. Women's Christian Ass'n of Council Bluffs*, 485 N.W.2d 94 (Iowa App. 1992); Iowa R. App. P. 4.

The parties agree the employment of Shirley was governed by an employment contract and her employment could only be terminated for just cause pursuant to the employee handbook and personnel policy procedures. The parties also agree Covenant had adopted a progressive disciplinary policy which was part of the employment contract. The only disputed issue is whether the conduct of Shirley rose to the level of a rule violation which could be punished by immediate termination.

At issue are two classifications of disciplinary violations found in the discipline policy:

> A-2 The following types of unsatisfactory behavior are of such a serious nature that violation could result in immediate termination of employment. . . . Neglect or abuse of any patient or conduct detrimental to patient care or Medical Center operations.
>
> . . .
>
> B-15 The following types of unsatisfactory behavior can result in some form of progressive disciplinary action: . . . Mishandling or unauthorized disclosure of confidential Medical Center or patient information.

The progressive disciplinary action guidelines indicate a first time violation of A-2 can result in immediate termination while a first-time violation of B-15 results only in a written warning.

Covenant concedes that if the conduct of Shirley amounted to nothing more than a B-15 disclosure of confidential patient information, termination would not be appropriate under the guidelines. However, it argues her conduct constitutes the greater A-2 violation of conduct detrimental to patient care and medical center operations. We agree. In interpreting the integrated employment contract, we are guided by section 212(2) of the Restatement of Contracts. *See Young v. Cedar County Work Activity Center, Inc.*, 418 N.W.2d 844, 848 (Iowa 1987).

The evidence at trial, including her own testimony, indicates Shirley knew Laurie intended for her baby to be placed for adoption. Yet, in violation of the confidentiality and adoption policies adopted by Covenant, Shirley disclosed confidential patient information when she informed her son and husband Laurie had given birth to a son. This disclosure was clearly a B-15 violation of patient confidentiality. However, Shirley compounded this mistake by taking her son and husband to the hospital to see the baby. In doing so she facilitated an egregious violation of hospital policy which rose to the level of an A-2 violation, conduct detrimental to patient care and medical center operations.

Shirley knew of the strict "no pub" policies for babies that are to be put up for adoption and she knew Laurie and the hospital were treating this birth as that of a child to be adopted She did not check to see if Laurie had designated her, her husband or her son as visitors allowed to see the baby. Instead, Shirley bypassed the nurse's station and led her husband and son through a nonpublic hallway directly into the intensive care nursery. Shirley led these unauthorized visitors to the nursery late at night when her regular shift usually began. In doing so, Shirley would know the nurses on duty, and she probably presumed it was unlikely they would question her presence or assume she would violate a "no pub" agreement.

Shirley claimed she knew Laurie intended for her baby to be adopted, but she did not know it was a "no pub" baby. There was considerable evidence from hospital personnel regarding the fact that all adoptive babies are treated as "no pub." Shirley was aware or should have been aware of this well-established policy. The purpose of this policy was to protect the birth mother in what is otherwise an often emotional and traumatic time. When the hospital informed Laurie her "no pub" agreement had been breached, Laurie was upset because she had not wanted James Clemens to see the baby.

We agree with the trial court that the conduct of Shirley rose above a mere breach of confidentiality. Her flagrant violation of the "no pub" visitation prohibitions was detrimental to patient care and medical center operations. Under

her employment contract with Covenant, such conduct was punishable by immediate termination. Such conduct more than nullified the agreement between Covenant and Laurie; it destroyed all value it had both to Laurie and Covenant and exposed Covenant to potential further liability. It was clearly detrimental to both patient care and Covenant operations.

There was just cause for the termination and it was in accordance with the terms of her employment contract. Substantial evidence supported the decision of the trial court.

AFFIRMED.