IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 5-357 / 94-1917

PAUL HOLTMAN,

Appellant,

vs.

PLAIN TALK PUBLISHING COMPANY and **DALE THATCHER,**

Appellees.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Plaintiff appeals the trial court's grant of defendants' motion for summary judgment regarding his alleged wrongful discharge and related claims. **AFFIRMED IN PART, REVERSED IN PART AND REMANDED.**

Patrick H. Payton and Ronald G. Cable of Patrick H. Payton & Assoc., P.C., Des Moines, for appellant.

James R. Swanger, David L. Charles, and David K. Basler of Belin Harris Lamson McCormick, A P.C., Des Moines, for appellees.

Heard by Donielson, C.J., and Hayden and Cady, JJ.

DONIELSON, C.J.

The plaintiff, Paul Holtman, appeals from the trial court's denial of his motion for partial summary judgment and the grant of the defendants' motion for summary judgment. Our review of the grant or denial of summary judgment is at law. *Red Giant Oil Co. v. Lawlor, 528* N.W.2d 524, 528 (Iowa 1995). In ruling on this appeal we have carefully reviewed the entire court file in order to determine exactly what issues, legal arguments and evidentiary materials were offered in support of, and in resistance to, the motions for summary judgment. Based on this review of the record, we affirm in part, reverse in part and remand for further proceedings.

Paul Holtman was employed as a salesperson for defendant Plain Talk Publishing Company ("Plain Talk"). Defendant Dale Thatcher was the president of Plain Talk. While employed at Plain Talk, Holtman was a beneficiary and trustee of the company's employee stock ownership plan. Holtman's employment at Plain Talk was terminated by Thatcher. Holtman subsequently filed a suit in which he named Plain Talk and Thatcher as defendants. Holtman's petition contained four counts: 1) wrongful discharge; 2) interference with business relation; 3) breach of covenant of good faith and fair dealing; and 4) breach of oral contract for the payment of wages.

Holtman filed a motion for summary judgment in which he sought a determination as to whether the discharge of an employee was actionable as a

wrongful discharge when the employee had been terminated for allegedly inquiring about his employer's retirement plan and bringing his concerns about the operation of the plan to the attention of the employer's board of directors. Plain Talk also filed a motion for summary judgment in which it requested judgment as a matter of law on all four counts. The trial court granted the defendants' motion with respect to all four of Holtman's claims.[1]

I. WRONGFUL DISCHARGE - VIOLATION OF PUBLIC POLICY

Holtman contends his employment was terminated because he questioned the company's management of its pension plan. He claims he requested copies of the plan, but his requests were denied. Holtman concedes he was an "at-will" employee, subject to termination at any time. However, he argues he was terminated because of his inquiries regarding the pension plan and this falls within the public policy exception to the at-will doctrine. Based on the legal arguments and evidence presented by Holtman to the trial court, we conclude the grant of summary judgment on his wrongful discharge claim was correct.

As a general rule the relationship between an employer and employee is at-will. *French v. Foods, Inc.*, 495 N.W.2d 768, 769 (Iowa 1993). However, an

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[1]In its ruling the trial court rejected the defendants' argument that Holtman's state law tort claims were preempted by the National Labor Relations Act. The defendant's arguments on this issue are not persuasive and we too find no NLRA preemption of the plaintiff's claims.

exception to the employment at will doctrine is recognized where the discharge of an employee violates a well-recognized and defined public policy. *Fogel v. Trustees of Iowa College*, 446 N.W.2d 451, 455 (Iowa 1989).

A review of Holtman's Memorandum of Authorities and Argument presented to the trial court indicate he based his claim of the existence of a public policy exception solely upon provisions of Iowa's business corporations laws found in chapter 490 of the Iowa Code. The statutes cited by Holtman address the general powers and duties of corporations and their officers and boards of directors. Iowa Code §§ 490.302(11), .830, .842. These statutes do not give rise to a clearly expressed policy applicable in the employment context.

Our supreme court has been reluctant to expand the interpretation of non-employment related statutes to create public policy exceptions to the doctrine of at-will employment. *See, e.g., Borschel v. City of Perry*, 512 N.W.2d 565, 568 (Iowa 1994) (court would not extrapolate employment public policy exception from statutory presumption of innocence). In concluding Holtman's arguments did not rise to the level of a public policy exception in this case, we do not foreclose the possibility that such a cause of action could be predicated upon other statutory provisions.[2]

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[2]As a beneficiary of an ERISA qualified plan, Holtman was entitled to information about the plan. *See* 29 U.S.C.A. § 1021(a) (1985) (duty of disclosure and reporting). It is unlawful to discharge or discipline a person for exercising any right to which he is entitled under the ERISA statutes. 29 U.S.C.A. § 1140 (1985). Whether a claim for wrongful

II. INTERFERENCE WITH BUSINESS RELATION

In his petition Holtman claimed Thatcher intentionally and deliberately engaged in a course of conduct which interfered with, and caused the termination, of his employment with Plain Talk. Recovery upon such a cause of action is not barred merely because Holtman's employment relationship was at will. *See Toney v. Casey's General Stores, Inc.*, 372 N.W.2d 220, 222 (Iowa 1985). However, an officer or director's qualified privilege may be a defense to an action for tortious interference if the scope of the privilege is not exceeded. *See Hunter v. Board of Trustees*, 481 N.W.2d 510, 518 (Iowa 1992).

While Thatcher raises the critical issues of qualified privilege and improper motive in his appellate brief, he does not appear to have raised them in moving for summary judgment. The fact that Holtman failed to present a sufficient legal basis for supporting an action for wrongful discharge does not a fortiori preclude an action for tortious interference with his employment relationship. Without expressing any opinion as to whether he can ultimately prevail on the merits of this claim, we find the defendant did not carry his burden on this count and summary judgment should not have been granted.

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discharge could be predicated upon these statutes, and whether such a claim would be subject to the exclusive jurisdiction of the United States district courts, 29 U.S.C.A. §§ 1140, 1132(e)(1985), are questions not raised by Holtman's arguments before the trial court. We do not reach these questions in disposing of this appeal.

III. BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

At oral argument Holtman conceded a cause of action for an implied covenant of good faith and fair dealing is not recognized under Iowa law. *See French v. Foods, Inc.*, 495 N.W.2d 768, 771 (Iowa 1993). Summary judgment was properly granted on this count.

IV. WAGES

In his petition Holtman sought a judgment for wages allegedly owed to him by Plain Talk. In its motion for summary judgment and supporting affidavits, Plain Talk does not specifically address the merits of this claim.

> To obtain a grant of summary judgment on some issue in an action, the moving party must *affirmatively* establish the existence of undisputed facts entitling that party to a particular result under controlling law. . . . When the evidentiary matter tendered in support of the motion does not affirmatively establish uncontroverted facts that sustain the moving party's right to judgment, summary judgment must be denied even if no opposing evidentiary matter is presented.

Griglione v. Martin, 525 N.W.2d 810, 813 (Iowa 1994) (emphasis added).

The burden is on the moving party to show the absence of a material fact issue. *Red Giant Oil Co.*, 528 N.W.2d at 528. To determine whether a genuine issue of material fact exists, the court must examine the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits. *Id.* A review of the court file reveals Holtman's answer to defendants' interrogatory number three was on file.

That answer detailed the $13,051.49 in commissions, pay, and accrued vacation compensation to which Holtman claimed he was entitled. Holtman's deposition was submitted to the court and provided additional evidence regarding the lost wages which he was claiming. The defendant's motion and supporting documentation did not conclusively refute Holtman's entitlement to these wages. This remained an issue of material fact, and the grant of summary judgment on this issue is reversed.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.