IN THE COURT OF APPEALS OF IOWA

No. 7-552 / 96-1464

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CRAWFORD COUNTY MEMORIAL HOSPITAL,

Plaintiff-Appellant,

vs.

ST. LUKE'S REGIONAL MEDICAL CENTER OF SIOUX CITY,

Defendant-Appellee,

and

JOSEPH E KINZEY,

Defendant.

FILED
JAN 28 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Crawford County, Richard J. Vipond, Judge.

Plaintiff appeals from a district court order granting defendant St. Luke's Regional Medical Center of Sioux City's motion for summary judgment in plaintiff's action for intentional interference with a contract and with a prospective business advantage. **AFFIRMED.**

Tom L. Drew of Drew Law Firm, P.C., Des Moines, for appellant.

Michael W. Ellwanger of Rawlings, Nieland, Probasco, Killinger, Ellwanger, Jacobs & Mohrhauser, Sioux City, for appellee.

Heard by Cady, C.J., and Sackett and Streit, JJ.

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SACKETT, J.

Petitioner-appellant Crawford County Memorial Hospital appeals the trial court's decision dismissing, on a motion for summary judgment, its claim against defendant-appellee St. Luke's Regional Medical Center of Sioux City for intentional interference with a contract and prospective business arrangement plaintiff had with defendant Joseph E. Kinzey, M.D.[1] We affirm.

On August 10, 1991, plaintiff entered into an agreement with Kinzey providing, among other things, Kinzey would begin practicing medicine in Denison, Crawford County, Iowa, on March 1, 1994, for a term of three years.

In February 1992, Kinzey, then a resident, started work as an emergency room physician at defendant hospital. Kinzey signed a contract to work for defendant hospital on April 16, 1994. Kinzey terminated his contract with plaintiff on April 26, 1994.

Plaintiff subsequently filed this suit alleging defendant hospital, through its officers, directors, agents, and employees, had knowledge of plaintiff's contract with Kinzey and willfully and intentionally interfered with it to plaintiff's damage.

Defendant hospital filed a motion for summary judgment which the trial court sustained. In doing so, the court determined (1) the evidence showed Kinzey told defendant hospital of his contract with plaintiff but also told them it was no longer in

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[1] Kinzey, a defendant in district court, is not a party to this appeal.

effect and he was free to contract with defendant hospital; and (2) there was no evidence defendant hospital intended to harm plaintiff.

The trial court further found a fact finder could find defendant hospital knew Kinzey had a contract with plaintiff and knew there might be a dispute concerning the validity of the contract and it might prevent Kinzey from contracting with plaintiff, but found its actions proper as a matter of law. The trial court further found no evidence of an improper motive.

A motion for summary judgment should be granted if the moving party shows there are no genuine issues of material fact, and they are entitled to relief as a matter of law. *See Meylor v. Brown*, 281 N.W.2d 632, 634 (Iowa 1979). A disputed material fact will preclude summary judgment only when the factual dispute may effect the outcome of the suit. *See Farm & City Ins. Co. v. Anderson*, 509 N.W.2d 487, 491 (Iowa 1993).

Plaintiff contends the trial court erred in finding defendant hospital's conduct proper as a matter of law. Plaintiff advances there are facts that would support a finding defendant hospital's conduct was intentional. Plaintiff points to evidence defendant hospital entered into a contract with Kinzey prior to Kinzey terminating his contract with plaintiff. Plaintiff contends reasonable minds can draw different inferences from these facts.

If different inferences can be drawn from the facts, a jury question is generated. *Toney v. Casey's Gen. Stores, Inc.*, 460 N.W.2d 849, 852 (Iowa 1990).

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Plaintiff also contends Kinzey discussed his plans with Dr. Paul Berger, an employee of defendant hospital, while working in the emergency room and defendant hospital was actively seeking emergency room staff at the time. Plaintiff points to testimony of Kinzey in early April 1994 he told Berger he was having difficulty coming to terms with plaintiff as well as evidence other representatives of defendant hospital had knowledge of these facts.

To recover for an intentional interference with prospective contractual relations, plaintiff must show:

1. Kinzey had a contract with defendant hospital.
2. Defendant hospital knew of the contract.
3. Defendant hospital intentionally and improperly interfered with the contract.
4. Defendant hospital's action caused Kinzey not to perform the contract.

See Nesler v. Fisher & Co., 452 N.W.2d 191, 195 (Iowa 1990).

An intentional act is one where the actor desires the consequences of his or her act and believes the consequences are substantially certain to result from it. *Id.* at 197.

In looking to whether interference is improper, it is important to ascertain whether the actor's motivation came from a desire to interfere with the other's contractual relations. If this is the sole motive, it is nearly certain to be improper. Yet, where there is little desire to interfere and it comes only as a result of the

conduct of an actor engaged in a different purpose, then there is little evidence the interference was improper. *See id.*

The affidavits and deposition comprising the summary judgment record indicate Kinzey was told by counsel, and in turn told officials with St. Luke's, that there were no contractual impediments to his work at St. Luke's. Upon this showing, plaintiff had the burden to come forward with evidence from which the necessary intent by St. Luke's to injure plaintiff could be directly or inferentially established. Plaintiff did not produce any affidavits or other proposed evidentiary support for its claim. Accordingly, plaintiff did not meet its burden under existing summary judgment rules. The fact that Kinzey arguably breached a contract with plaintiff is insufficient as a matter of law to support the necessary inference.

We agree with the trial court there is no evidence from which a fact finder could find or infer an improper motive. We affirm.

AFFIRMED.

Streit, J., concurs; Cady, C.J., dissents.

CADY, C.J. (dissenting)

I respectfully dissent. I would conclude the hospital deserves to have their claim determined by a jury.

Summary judgment is proper only when the material facts are not in dispute and the applicable law produces only one outcome. In this case, the critical inquiry is whether the medical center's conduct was intentional and improper. Evidence to support this inquiry is seldom capable of direct proof. Moreover, at this stage, the hospital is entitled to all reasonable inferences. For these reasons, a jury should generally resolve the inquiry.

Furthermore, our law provides that even a casual motive to intervene may support a finding of improper conduct. *Nesler v. Fisher & Co., Inc.*, 452 N.W.2d 191, 197 (Iowa 1990). Also, the factors to determine whether conduct is improper do not permit the needed certainty in this case to conclude no reasonable juror could find for the hospital. *See Hunter v. Board of Trustees*, 481 N.W.2d 510, 518 (Iowa 1992).