

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-938

Filed: 3 March 2015

Rowan County, No. 14 CVS 783

SANDRA SIMS-CAMPBELL, Plaintiff,

v.

HARRY L. WELCH, JR., Individually and in his Official Capacity as Register of Deeds of Rowan County, North Carolina, Defendant.

Appeal by plaintiff from orders entered 3 June 2014 by Judge Mark E. Klass in Rowan County Superior Court. Heard in the Court of Appeals 7 January 2015.

Ferguson Chambers & Sumter, P.A., by Christina L. Trice and James E. Ferguson, II, for plaintiff-appellant.

Womble Carlyle Sandridge & Rice, L.L.P., by James R. Morgan, Jr., for defendant-appellee.

DIETZ, Judge.

This case requires us once again to delineate when certain government employees may be fired for political reasons. From 2010 to 2014, Defendant Harry L. Welch was the Rowan County Register of Deeds. In February 2014, Plaintiff Sandra Sims-Campbell, who was Welch's Assistant Register of Deeds and second-in-command in the office, announced her plan to run against Welch in the upcoming election. Shortly after that announcement, Welch fired Sims-Campbell. Sims-

Campbell sued to challenge her termination. The trial court dismissed her case and she then appealed to this Court.

Government employees generally are protected from termination because of their political viewpoints. But this Court and various federal appeals courts repeatedly have held that deputy sheriffs and deputy clerks of court may be fired for political reasons such as supporting their elected boss's opponents during an election. *See, e.g., Carter v. Marion*, 183 N.C. App. 449, 645 S.E.2d 129 (2007); *Jenkins v. Medford*, 119 F.3d 1156 (4th Cir. 1997); *Upton v. Thompson*, 930 F.2d 1209 (7th Cir. 1991); *Terry v. Cook*, 866 F.2d 373 (11th Cir. 1989). This exception is necessary because these deputies are authorized to act on behalf of their elected superiors and their actions are binding on their bosses. It would be untenable if employees with these broad-ranging powers could not be terminated when they were also actively working to undermine their superiors for their own political gain.

Assistant registers of deeds have the same authority within their office as deputy sheriffs and deputy clerks of court do in theirs, including the authority to act on behalf of, and bind, their elected bosses. Indeed, the same sections of the General Statutes govern all three positions. Thus, we find our precedent governing deputy sheriffs and deputy clerks of court controlling in this case. Under that precedent, county registers of deeds may fire their assistant registers of deeds for political

reasons without violating the United States and North Carolina Constitutions or state laws. We therefore affirm the trial court's dismissal of this action.

Facts and Procedural History

The following recitation of facts represents Plaintiff Sandra Sims-Campbell's version of events, viewed in the light most favorable to her. Because this appeal stems from the trial court's order granting Defendant Harry Welch's motion to dismiss, we must view the allegations in the complaint as true and consider the record in the light most favorable to Sims-Campbell. *Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640, 644, 669 S.E.2d 279, 283 (2008).

Sims-Campbell began working for the Office of the Register of Deeds of Rowan County on 1 September 1991. After receiving outstanding reviews as a deputy register of deeds, Sims-Campbell accepted a promotion in December 2008 to the position of Assistant Register of Deeds. In this position, Sims-Campbell "acted as the Register of Deeds in the absence of the Register of Deeds."

Welch assumed the office of Register of Deeds in 2010, and Sims-Campbell continued to serve as Assistant Register of Deeds under his direction. She consistently received exceptional performance evaluations, with Welch once noting, "[Sims-Campbell] is a blessing to my team. She is not only the most knowledgeable[,] but she readily shares with the rest of my staff. She is great with the public."

On 27 February 2014, Sims-Campbell informed Welch of her intention to run against him in the upcoming election for the office of Register of Deeds. Later that day, Welch asked Sims-Campbell to take the following day off, with pay, so that he could consider her announcement. The next day, Welch terminated Sims-Campbell from her position as Assistant Register of Deeds.

Sims-Campbell filed a Verified Complaint and motion for a preliminary injunction on 9 April 2014, asserting claims for wrongful discharge in violation of North Carolina public policy and intentional infliction of emotional distress. In response, Welch moved to dismiss pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. The trial court entered orders on 30 June 2014 denying Sims-Campbell's motion for a preliminary injunction and granting Welch's motion to dismiss the complaint for failure to state a claim. Sims-Campbell timely appealed to this Court.

Analysis

Sims-Campbell contends that the trial court improperly granted Welch's motion to dismiss her claims. "This Court must conduct a *de novo* review of the pleadings to determine their legal sufficiency and to determine whether the trial court's ruling on the motion to dismiss was correct." *Leary v. N.C. Forest Prods., Inc.*, 157 N.C. App. 396, 400, 580 S.E.2d 1, 4, *aff'd per curiam*, 357 N.C. 567, 597 S.E.2d 673 (2003).

I. Plaintiff's Constitutional and Statutory Claims

Sims-Campbell first argues that Welch terminated her employment in violation of the United States and North Carolina Constitutions and applicable state law. We disagree.

In North Carolina, employment relationships ordinarily are at-will. *See Salt v. Applied Analytical, Inc.*, 104 N.C. App. 652, 655, 412 S.E.2d 97, 99 (1991). As a result, “both employer and employee are generally free to terminate their association at any time and without any reason.” *Id.* But the First Amendment (and the analogous provision in our State Constitution) imposes an exception on our State’s at-will employment rules: ordinarily, the government cannot terminate public employees for engaging in political speech and activity. *See Jenkins v. Medford*, 119 F.3d 1156, 1160 (4th Cir. 1997).

Nevertheless, courts have recognized that there is a special subset of government jobs where “political party affiliation can be an appropriate requirement for effective job performance.” *Jenkins*, 119 F.3d at 1162; *see also Upton v. Thompson*, 930 F.2d 1209 (7th Cir. 1991); *Terry v. Cook*, 866 F.2d 373 (11th Cir. 1989). In *Jenkins*, a case from Buncombe County, the U.S. Court of Appeals for the Fourth Circuit held that “political affiliation and loyalty to the sheriff are appropriate job requirements” for deputy sheriffs. 119 F.3d at 1163. The court noted that the General Assembly made deputy sheriffs at-will employees who “serve at the pleasure

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of the appointing officer” and that they “hold an office of special trust and confidence, acting in the name of and with powers coterminous with his principal, the elected sheriff.” *Id.* at 1163-64 (internal quotation marks omitted). Their position thus resembles that of “a policymaker, a communicator, or a privy to confidential information.” *Id.* at 1164 (internal quotation marks omitted). In light of these important public duties, the court held that “sheriffs may dismiss deputies either because of party affiliation or campaign activity” without violating the First Amendment. *Id.* at 1164-65.

This Court later applied *Jenkins* to deputy clerks of superior court. *Carter v. Marion*, 183 N.C. App. 449, 453-54, 645 S.E.2d 129, 131 (2007). In *Carter*, three Surry County deputy clerks sued the newly elected clerk of court, alleging that the clerk terminated their appointments because they had not supported her in the election. *Id.* at 451, 645 S.E.2d at 129-30. Citing *Jenkins*, we held that it did not violate the United States or North Carolina Constitutions, or public policy of this State, for a clerk of court to terminate his deputies for political reasons. *Id.* at 453-54, 645 S.E.2d at 131-32. We explained that deputy clerks are authorized to carry out acts that “the clerk may be authorized and empowered to do,” that “the clerk is responsible for the acts of his deputies,” and that “deputy clerks serve at the pleasure of the elected clerk and are appointed by the clerk.” *Id.* at 454, 645 S.E.2d at 132. We therefore concluded

“that political affiliation is an appropriate employment requirement” for deputy clerks of court. *Id.* at 455, 645 S.E.2d at 132.

Jenkins and *Carter* control the outcome of this case. As Sims-Campbell concedes in her complaint, her job as assistant register of deeds was to “act[] as the Register of Deeds in the absence of the Register of Deeds.” As with deputy sheriffs and clerks of court, assistant registers of deeds implement policies of the elected registers of deeds, exercise discretion, and act as agents for registers of deeds, who are bound by, and may be held civilly liable for, the acts of their assistants. See N.C. Gen. Stat. § 161-6 (2013). And, as with appointees of sheriffs and clerks of court, the General Assembly expressly provided that assistant registers of deeds serve “at the pleasure” of their elected superiors. N.C. Gen. Stat. § 153A-103(2) (2013). Accordingly, we hold that a register of deeds may terminate the appointment of an assistant register of deeds for political reasons without violating the federal or state constitution or state public policy.

Sims-Campbell also argues that, even if her firing was not unconstitutional or in violation of public policy, it violated Section 153A-99 of the General Statutes, which provides that “county employees . . . are not restricted from political activities,” including “while off duty, . . . attending political meetings, or advocating and supporting the principles or policies of civic or political organizations, or supporting partisan or nonpartisan candidates of their choice in accordance with the

Constitution and laws of the State and the Constitution and laws of the United States of America.” N.C. Gen. Stat. § 153A-99(a) (2013). The express purpose of this statute is “to ensure that county employees are not subjected to political or partisan coercion while performing their job duties.” *Id.*

This argument fails because an assistant register of deeds is not a county employee. Section 153A-99 provides that “[c]ounty employee’ or ‘employee’ means any person employed by a county or any department or program thereof that is supported, in whole or in part, by county funds.” *Id.* § 153A-99(b)(1). Employees of the register of deeds are not “persons employed by a county or any department or program thereof.” Section 153A-103 of our General Statutes provides that the elected register of deeds retains the “exclusive right to hire, discharge, and supervise the employees in his office.” *Id.* § 153A-103(a)(1). Aside from fixing the number of salaried employees in the office of register of deeds, a county thus lacks *any* authority to supervise or control the details of the work performed by employees in that office. An employer-employee relationship simply cannot exist between a county and employees of the register of deeds where the county has no authority to hire, fire, supervise, or control those employees. *Cf. Hoffman v. Moore Reg’l Hosp., Inc.*, 114 N.C. App. 248, 250-51, 441 S.E.2d 567, 569 (1994) (holding that, as a matter of law, no employer-employee relationship existed because the alleged employer did not have

the right to supervise and control the details of the work performed by the alleged employee).

We again find guidance in our cases dealing with the office of sheriff. In a series of cases, this court has held that sheriff's deputies—whose appointments and powers are governed by the same statutes as those for assistant registers of deeds—are not county employees, but rather employees of the sheriff. *See, e.g., Hubbard v. Cnty. of Cumberland*, 143 N.C. App. 149, 152, 544 S.E.2d 587, 589-90 (2001); *Clark v. Burke Cnty.*, 117 N.C. App. 85, 89, 450 S.E.2d 747, 749 (1994); *Peele v. Provident Mut. Life Ins. Co.*, 90 N.C. App. 447, 449-50, 368 S.E.2d 892, 894 (1988); *Styers v. Forsyth Cnty.*, 212 N.C. 558, 560, 194 S.E. 305, 306 (1937). Indeed, in *Peele*, this Court noted that N.C. Gen. Stat. § 153A-103, which applies equally to sheriffs and registers of deeds, unambiguously provides that the elected official “has the exclusive right to hire, discharge, and supervise the employees in his office.” *Peele*, 90 N.C. App. at 449-50, 368 S.E.2d at 894; N.C. Gen. Stat. § 153A-103(a)(1). In light of the statute's plain language and our analogous case law concerning deputy sheriffs, we conclude that an assistant register of deeds, appointed by and working at the pleasure of the elected register of deeds, is not a “county employee” within the meaning of N.C. Gen. Stat. § 153A-99(b)(1).

Sims-Campbell responds by pointing to two readily distinguishable sources. First, she cites a 1998 advisory opinion of the North Carolina Attorney General which

addressed whether § 153A-99 applied to the political activities of elected officials. *See* Opinion of Attorney General to Mr. William R. Gilkeson, Staff Attorney, N.C. General Assembly, 1998 N.C.A.G. 1 (Jan. 14, 1998), *available at* <http://www.ncdoj.gov/About-DOJ/Legal-Services/Legal-Opinions/Opinions/342.aspx>. “While opinions of the Attorney General are entitled to ‘respectful consideration,’ such opinions are not compelling authority.” *Williams v. Alexander Cnty. Bd. of Educ.*, 128 N.C. App. 599, 602, 495 S.E.2d 406, 408 (1998) (internal quotation marks omitted). Here, we are not persuaded by this opinion of the Attorney General, which addressed a different issue, failed to recognize the controlling case law from our Court cited above, and relied instead on a federal district court decision that has since been overturned by the Fourth Circuit. *See Carter v. Good*, 951 F. Supp. 1235 (W.D.N.C. 1996), *rev’d*, 145 F.3d 1323 (4th Cir. 1998).

Sims-Campbell also relies on this Court’s opinion in *Venable v. Vernon*, 162 N.C. App. 702, 592 S.E.2d 256 (2004) to support her argument that she was a county employee. But in *Venable*, we explicitly declined to determine whether the plaintiff, a former sheriff’s deputy, was “a county employee as defined by N.C. Gen. Stat. § 153A-99.” *Id.* at 706, 592 S.E.2d at 258. The *Venable* decision is thus of no value to the issue presented here.

In sum, we hold that an assistant register of deeds, like a deputy sheriff, is not a “county employee” within the meaning of § 153A-99 of the General Statutes. As a result, Sims-Campbell’s claims under that statutory provision must fail.

II. Plaintiff’s Claim for Intentional Infliction of Emotional Distress

Sims-Campbell next argues that the trial court erred in dismissing her claim for intentional infliction of emotional distress. She contends that Welch’s conduct “was intolerable and outrageous to society’s expectations” because he “terminated [Sims-Campbell] after more than two decades of service at the Register of Deeds Office because she chose to be open and honest in discussing her intention to run in the upcoming election.” We reject this argument and hold that Sims-Campbell’s complaint does not state a claim for intentional infliction of emotional distress.

In order to survive a motion to dismiss, a claim for intentional infliction of emotional distress must charge that the defendant engaged in “extreme and outrageous conduct” which was intended to cause and did in fact cause the plaintiff to suffer severe emotional distress. *Simmons v. Chemol Corp.*, 137 N.C. App. 319, 325, 528 S.E.2d 368, 371 (2000). This Court consistently has held that the mere firing of an employee can never be “extreme and outrageous” conduct sufficient to state a claim for intentional infliction of emotional distress. *Johnson v. Colonial Life & Accident Ins. Co.*, 173 N.C. App. 365, 373, 618 S.E.2d 867, 872-73 (2005); *Lorbacher v. Hous. Auth. of City of Raleigh*, 127 N.C. App. 663, 675-77, 493 S.E.2d 74, 81-82

(1997); *see also Laing v. Fed. Exp. Corp.*, 2011 WL 6072028 at *9 (W.D.N.C. 2011); *Smith v. Computer Task Grp., Inc.*, 568 F. Supp. 2d 603, 621 (M.D.N.C. 2008). Here, Welch's only allegedly wrongful conduct was his decision to summarily fire Sims-Campbell when she decided to run against him in the upcoming election. That alleged conduct does not satisfy the "extreme and outrageous" standard as a matter of law. Accordingly, we affirm the trial court's order dismissing Sims-Campbell's claim for intentional infliction of emotional distress.

Conclusion

For the reasons stated above, we hold that the trial court properly dismissed Plaintiff's complaint for failure to state a claim on which relief can be granted. Because we affirm the trial court's order on this basis, we need not address Plaintiff's appeal from the denial of her motion for a preliminary injunction or Defendant's alternative arguments concerning sovereign and governmental immunity, which Plaintiff maintains were not properly preserved for appeal.

AFFIRMED.

Judges STEELMAN and INMAN concur.