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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 19-666

Filed: 4 February 2020

Buncombe County, No. 18 CVS 4926

JOSEPH L. CARRINGTON, JR., Plaintiff,

v.

CAROLINA DAY SCHOOL, INC., Defendant.

Appeal by plaintiff from order entered 30 April 2019 by Judge R. Gregory Horne in Buncombe County Superior Court. Heard in the Court of Appeals 7 January 2020.

Ferikes & Bleynt, PLLC, by Edward L. Bleynt, Jr., for plaintiff-appellant.

Constangy, Brooks, Smith & Prophete, LLP, by Jonathan W. Yarbrough, for defendant-appellee.

YOUNG, Judge.

This appeal arises out of an employer's decision not to renew an employee's employment contract. The trial court did not err in finding that the former employee failed to state a claim upon which relief can be granted. Therefore, we affirm.

I. Factual and Procedural History

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Plaintiff-Appellant Joseph Carrington, Jr. (“Carrington”) is a former girls basketball coach for Defendant-Appellee Carolina Day School, Inc. (“CDS”). Carrington was hired as Head Coach of the Girls Varsity Basketball Team in 2009. CDS issued Carrington a renewable, one-season contract, which, prior to the 2017-2018 season, had been renewed at the start of every season. Carrington’s final contract, for the 2017-2018 season, expired on 30 June 2018. Carrington alleges that he continued to perform certain off-season tasks after the expiration of his contract in June 2018. Thus, according to Carrington, his 2017-2018 contract was automatically renewed through an implied contract that would be reduced to writing later that year. However, on or about 19 October 2018, CDS advised Carrington that his contract would not be renewed for the 2018-2019 season because “his coaching style did not match the school’s philosophy.”

CDS informed the basketball players and their families that their long-time coach would no longer be serving in that role stating:

It has become clear that a coaching change is necessary to more closely align the girl’s [sic] basketball program with our school’s core beliefs. As with any personnel matter, the details of this change are confidential. . . . We thank coaches Carrington and West for their years of coaching Wildcats basketball and for the eight consecutive state championships earned for the school.

On 26 November 2018, Carrington initiated this action, contesting the non-renewal and alleging breach of contract, wrongful discharge, defamation, intentional

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infliction of emotional distress, and unfair and deceptive trade practices. The trial court concluded that Carrington's complaint failed to state a claim upon which relief can be granted. Carrington filed a timely written notice of appeal.

II. Standard of Review

"The motion to dismiss under N.C. R. Civ. P. 12(b)(6) tests the legal sufficiency of the complaint. In ruling on the motion, the allegations of the complaint must be viewed as admitted, and on that basis the court must determine as a matter of law whether the allegations state a claim for which relief may be granted." *Stanback v. Stanback*, 297 N.C. 181, 185, 254 S.E.2d 611, 615 (1979) (citations omitted). "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 (2003).

III. Failure to State a Claim

a. Breach of Contract

Carrington contends that CDS continued to be bound under an implied contract to retain Carrington for the subsequent season because he continued to perform off-season tasks. We disagree.

Every year prior to the 2018-2019 season, CDS entered into a new contract prior to the start of the basketball season. Based on this annual process, Carrington

knew in the summer of 2018 that he had not secured a contract for the upcoming season and that he would have to do so. Furthermore, even if he was under an implied contract pursuant to the terms of the prior 2017 Employment Agreement, it was an at-will agreement. The express written contract provided that CDS had the right to terminate at any time for any reason. The 2017 Employment Agreement provided: “This Agreement may be terminated: a) By the School at any time for any reason in the School’s sole and absolute discretion.” Therefore, the trial court did not err in dismissing this claim.

b. Wrongful Discharge

Carrington contends that he was wrongfully discharged. We disagree.

Carrington’s wrongful discharge claim is based on the same allegations as his breach of contract claim, and for the same reasons above, was appropriately dismissed. Additionally, to prevail on a claim for wrongful discharge in violation of North Carolina public policy, the “plaintiff must identify a specified North Carolina public policy that was violated by an employer in discharging the employee.” *McDonnell v. Tradewind Airlines, Inc.*, 194 N.C. App. 674, 678, 670 S.E.2d 302, 305 (2009). Carrington did not show what public policy violation existed as a result of his employment termination. Furthermore, Carrington cannot plead the requisite elements for a wrongful discharge claim: that he participated in conduct protected by law or refused to participate in an unlawful act or an act that violated public policy

and that his participation in such was a substantial factor in the discharge decision. *Brooks v. Stroh Brewery Co.*, 95 N.C. App. 226, 230, 382 S.E.2d 874, 878 (1989). Therefore, the trial court did not err in dismissing this claim.

c. Defamation

Carrington contends that CDS defamed him. We disagree.

“In order to recover for defamation, a plaintiff must allege that the defendant caused injury to the plaintiff by making false, defamatory statements of or concerning the plaintiff, which were published to a third person.” *Boyce v. Isley, PLLC v. Cooper*, 153 N.C. App. 25, 29, 568 S.E.2d 893, 897 (2002). “If a statement cannot reasonably be interpreted as stating actual facts about an individual, it cannot be the subject of a defamation suit.” *Craven v. SEIU Cope*, 188 N.C. App. 814, 817, 656 S.E.2d 729, 732 (2008).

Carrington takes issue with the following statements he attributes to CDS:

- That CDS has an “educationally-based athletics program” with “students [being] our top priority.”
- That Carrington did not meet the CDS “core beliefs and mission.”
- That “[i]t has become clear that a coaching change is necessary to more closely align the girl’s [sic] basketball program with our school’s core beliefs.”

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- That as with any personnel matter, the details of the change are confidential.
- That upon information and belief, the Head of School and one or more members of the CDS Board of Trustees told CDS parents that there was more than meets the eye to its decision to end Carrington's tenure, and that the CDS community would just have to trust the administration and the Board of Trustees about the decision.
- That an unidentified Physical Education (P.E.) teacher referred to Carrington as a "scumbag."
- That in an email to CDS families and faculty, and supposedly friends of CDS and the media, that the Head of School and the Athletic Director informed Plaintiff that "due to clearly stated recent and ongoing issues, the School would not renew his coaching agreement."

All but one of these statements (i.e., the P.E. teacher's statement), reflect CDS' judgment that Carrington's retention as a coach was no longer in line with the school's goals. These statements say nothing about Carrington's credentials or other qualifications as a coach. CDS simply stated that a change was needed to better align with their school values. Therefore, the trial court did not err in dismissing this claim.

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As for the statement by one P.E. teacher calling Carrington a “scumbag,” Carrington’s defamation argument again fails. There is no evidence showing that CDS should be held vicariously liable for the P.E. teacher’s comments, and furthermore, calling someone a “scumbag” is merely an opinion and not subject to a defamation claim. *Id.* Therefore, the trial court did not err in dismissing this claim.

d. Intentional Infliction of Emotional Distress

Carrington contends that he has a viable claim for intentional infliction of emotional distress. We disagree.

Under North Carolina law, the essential elements of an Intentional Infliction of Emotional Distress (“IIED”) claim are: “1) extreme and outrageous conduct by the defendant 2) which is intended to and does in fact cause 3) severe emotional distress.” *Waddle v. Sparks*, 331 N.C. 73, 82, 414 S.E.2d 22, 27 (1992). To be considered extreme and outrageous, the conduct must be so outrageous in character and extreme in degree that it exceeds all bounds of decency and is considered atrocious and utterly intolerable. *Briggs v. Rosenthal*, 73 N.C. App. 672, 677, 327 S.E.2d 308, 311 (1985). Here, failing to renew Carrington’s at-will contract and stating that the change was made because Carrington did not meet the core beliefs of CDS is hardly extreme and outrageous conduct. The facts alleged are not extreme and outrageous. Therefore, the trial court did not err in dismissing this claim.

e. Unfair and Deceptive Trade Practices

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Carrington contends that CDS conducted Unfair and Deceptive Trade Practice in violation of North Carolina General Statutes Chapter 75 by not offering him a contract to coach basketball for the 2018-19 season, and then making statements about the school's decision not to offer him a contract. We disagree.

Chapter 75, the Unfair and Deceptive Trade Practices Act, does not apply to the employee-employer relationship. *Buie v. Daniel, Inc't'l Corp.*, 56 N.C. App. 445, 448, 289 S.E.2d 118, 119-20 (1982). To the extent Carrington is alleging the unfair and deceptive trade practices occurred outside the employee-employer relationship, Carrington's claim necessarily depends on the validity of his defamation claims. Given that there was nothing defamatory said or written by CDS, then Carrington's Chapter 75 claim was properly dismissed with prejudice. *Craven*, 188 N.C. App. 814-17, 656 S.E.2d at 729-32. Therefore, the trial court did not err in dismissing this claim.

AFFIRMED.

Judges MCGEE and DIETZ concur.

Report per Rule 30(e).