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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1121

Filed 18 June 2024

Cumberland County, No. 22 CVS 2435

STEPHANIE SCOTT, Plaintiff,

v.

RADEAS LLC, Defendant.

Appeal by plaintiff from order granting summary judgment entered 11 September 2023 by Judge Gale M. Adams in Superior Court, Cumberland County. Heard in the Court of Appeals 29 May 2024.

Cromer Babb & Porter, LLC, by Jacob J. Modla, for plaintiff-appellant.

Michael Best & Friedrich, LLP, by Gwendolyn W. Lewis, for defendant-appellee.

ARROWOOD, Judge.

Stephanie Scott (“plaintiff”) appeals from the trial court’s order granting summary judgment in favor of Radeas LLC (“defendant” or “defendant company”). Plaintiff argues the trial court erred in granting defendant’s motion for summary judgment because there are genuine issues of material fact in the record. For the following reasons, we affirm the trial court.

I. Background

Plaintiff filed a complaint on 3 May 2022 alleging that defendant wrongfully terminated her in violation of public policy. Specifically, plaintiff described that after she was hired by defendant in February 2019 as a technician and phlebotomist, she was assigned to work at Renew Counseling Center (“Renew”). Plaintiff was employed by defendant while she was assigned to work at Renew; Renew never employed plaintiff.

Plaintiff alleged that she observed “illegal and unethical practices” at Renew, and beginning in April 2019, she made complaints about these alleged practices to Daryl Edwards (“Edwards”), her supervisor at defendant company. Edwards stated in his deposition that he did not recall any conversation with plaintiff in which she complained of Renew’s practices. A representative of defendant stated during deposition that during their investigation, defendant “did not find any documentation of any complaints to our company from [plaintiff].” The representative further explained that defendant’s handbook provided a process for reporting complaints within defendant company by “confidentially contacting a member of Management or Human Resources. They will instruct (and assist you) in putting your complaint in writing[,] . . . [and when] the Company receives the complaint, we will promptly investigate the allegation in a fair and timely manner.”

Plaintiff further alleged that when Gerald Bynum, PA (“PA Bynum”) at Renew was absent from the facility, he directed her to text him the results of patients’ tests

so that he could authorize prescription medication for the patients, a practice plaintiff alleged was not legal. In discovery, plaintiff produced text messages between herself and PA Bynum exchanged over the course of one day, with plaintiff reporting the status of patients' tests and PA Bynum confirming when he sent a prescription for the patients. Plaintiff said she "constantly" complained to Edwards about this practice. Plaintiff also stated that on the day the text messages were exchanged between plaintiff and PA Bynum, Edwards came to the Renew facility, observed this exchange, and told plaintiff she could not see patients for PA Bynum. Plaintiff said Edwards told her to "go ahead and finish, and I'll talk to [PA Bynum]."

When Edwards was asked if he had a conversation with plaintiff about the practice occurring in PA Bynum's absence or witnessed plaintiff engaging in this practice, he stated he did not recall communicating with plaintiff or witnessing those activities. Additionally, Edwards stated that he did not know whether the practice plaintiff described with PA Bynum was illegal. Plaintiff additionally alleged that Renew falsified billing statements to Medicare and Medicaid and used unlicensed teachers for its drug awareness training. Plaintiff claimed that she requested a transfer from Renew in April 2019, but her request was ignored by defendant.

Plaintiff also alleged that she made complaints about Renew's practices to the North Carolina Addiction Specialist Professional Practice Board ("NCASPPB"), the North Carolina Department of Health and Human Services ("NCDHHS"), TRICARE, Medicaid, and a health care program of the United States Department of Defense.

She further stated in her deposition that she made those complaints prior to her 29 May 2019 termination. However, the only evidence in the record of plaintiff's complaints submitted directly to any agencies are (1) an email she received on 30 May 2019 from NCASPPB confirming her submission of a complaint and (2) emails with photo attachments she sent to NCDHHS on 31 May 2019. Norma Negron ("Negron"), the owner of Renew, stated that the agencies conducting these investigations "found nothing, no findings of corruption, no findings of falsified billing, no findings of everything else that we got accused of doing at Renew[.]"

Plaintiff also claimed both Renew and defendant became aware of plaintiff's complaints to NCDHHS about an incident plaintiff observed and later reported at her previous employer. Plaintiff stated that she asked PA Bynum to write a character letter for that investigation, and the record includes the letter written by PA Bynum. Edwards, plaintiff's supervisor at defendant company, stated during deposition that he was not made aware of any previous complaints or reports plaintiff had made about her prior employers.

On 28 May 2019, plaintiff was told she was being removed from her assignment at Renew. Plaintiff claimed she overheard on a phone call her removal was because Negron "could no longer trust her." On 29 May 2019, defendant sent plaintiff a termination letter stating that her termination was based on plaintiff's violation of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and instructing plaintiff to cease and desist using any confidential

information she possessed. Plaintiff alleged her termination was due to the repeated complaints as well as reports she made to agencies regarding Renew's practices.

A representative for defendant stated that defendant first learned of plaintiff's HIPAA violations on 28 May 2019. Negron asserted during her deposition that plaintiff accessed Renew information without permission, took client information from the Renew office, and contacted their clients. After she learned of plaintiff's actions, she called Edwards. Edwards stated that Negron informed him that plaintiff made phone calls to Renew patients, and defendant's attorneys were concerned about plaintiff's potential violation of HIPAA. Defendant's human resources director Trish Belna ("Belna") submitted an affidavit stating the following:

On May 28, 2019, Radeas received a report that Ms. Scott violated HIPAA at Renew[.] . . . On May 28, 2019 and May 29, 2019, Radeas received updates from Renew confirming Ms. Scott accessed unauthorized software and took protected patient information to her home, which she used to improperly contact Renew's patients.

Belna communicated with Jonathan White, who was the individual at defendant company responsible for plaintiff's human resources matter, and confirmed that the decision to terminate plaintiff was made based on HIPAA violations. Belna noted in her affidavit that plaintiff did not contact human resources or report alleged illegal activity at Renew. The record also contains a letter from a Renew patient stating that plaintiff called her on a Thursday, stated private information about others, and asked her for information about what happened during her appointments.

In her deposition, plaintiff was presented with an exhibit showing a schedule of Renew clients with names of patients and their appointment times. Plaintiff attached the schedule to an email she sent to someone at NCDHHS on 31 May 2019, two days after her termination from defendant company. Plaintiff stated that she had made a copy of that information initially, but another employee at Renew sent her the schedule with patient names prior to her termination. Additionally, plaintiff claimed that she faxed agencies billing statements including confidential patient information in making her reports of Renew's activities. Specifically, plaintiff stated that she knew this information was confidential under HIPAA, she would not have faxed the information from a Renew or Radeas fax machine, and she did not remove or redact any patient information before sending the schedules to the agencies.

Defendant filed a motion for summary judgment, and the trial court granted their motion on 11 September 2023. Plaintiff filed notice of appeal 4 October 2023.

II. Discussion

On appeal, plaintiff argues that the trial court erred in granting summary judgment because defendant violated public policy by terminating her. We disagree.

“Our standard of review from an order granting summary judgment is *de novo*.” *Bryan v. Kittinger*, 282 N.C. App. 435, 437 (2022) (citing *Forbis v. Neal*, 361 N.C. 519, 524 (2007)). Summary judgment is proper when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that

any party is entitled to a judgment as a matter of law.” N.C.G.S. § 1A-1, Rule 56(c) (2023).

Although North Carolina is an at-will employment state, there is an exception to the at-will doctrine that prohibits an employer from terminating an employee for a purpose contrary to public policy. *See Considine v. Compass Grp. USA, Inc.*, 145 N.C. App. 314, 317 (2001). The employee has the burden “of pleading and proving that the employee’s dismissal occurred for a reason that violates public policy.” *Id.* Our courts have recognized wrongful termination against public policy when an employee “was discharged (1) for refusing to violate the law at the employer’s request, . . . (2) for engaging in a legally protected activity, or (3) based on some activity by the employer contrary to law or public policy[.]” *Whiting v. Wolfson Casing Corp.*, 173 N.C. App. 218, 221 (2005) (quoting *Ridenhour v. IBM Corp.*, 132 N.C. App. 563, 568–69, *disc. review denied*, 350 N.C. 595 (1999)).

North Carolina case law on wrongful termination in violation of public policy “contemplates a degree of intent or [willfulness] on the part of the employer.” *Garner v. Rentenbach Constructors Inc.*, 350 N.C. 567, 572 (1999). In *Ridenhour*, an employee reported to his employer IBM that a third-party contractor was committing fraud, and IBM was able to recover over one million dollars. 132 N.C. App. at 564–65. Although the employee was awarded some money for his disclosure, IBM subsequently terminated him for unexcused absences and failure to follow procedures regarding these absences. *Id.* at 565. Following a lawsuit, this Court held that

“uncontroverted evidence introduced at trial tended to show that plaintiff was discharged immediately following a lengthy unexcused and unexplained absence from work[,]” and the employee failed to state a claim for wrongful termination in violation of public policy because IBM “was not engaged in unlawful activity and plaintiff’s evidence shows no indication he was asked by his employer to violate any federal or state law or to perform any activity ‘injurious to the public or against the public good.’ ” *Id.* at 569.

In her complaint, plaintiff alleged that third-party company Renew violated North Carolina law in several of its practices and terminated her employment because plaintiff lodged complaints to various state and federal agencies. However, the letter defendant sent to plaintiff 29 May 2019 stated her termination was based on information and belief that she had violated HIPAA. Further, a representative for defendant as well as defendant’s human resources director Belna asserted that on 28 May 2019, defendant learned of plaintiff’s HIPAA violations, and after investigation and confirmation of these violations, defendant decided to terminate plaintiff. Similar to the uncontroverted evidence in *Ridenhour* showing the plaintiff was discharged for unexplained absences from work, evidence in the record here shows that plaintiff was terminated because of violations of HIPAA.

Plaintiff does not provide any evidence to counter this reason for her termination. Furthermore, there is no evidence in the record to support plaintiff’s claim that defendant terminated plaintiff because of her reports to various agencies—

the record shows plaintiff did not submit complaints to NCDHHS and NCASPPB until *after* she was terminated, and Edwards stated during his deposition that he did not learn of plaintiff's reports to governmental agencies until "the next couple of weeks" after defendant terminated plaintiff. Without evidence showing (1) plaintiff made complaints to agencies before her termination and (2) defendant was aware of plaintiff's complaints, the record does not support that defendant terminated plaintiff for this reason. There is thus no genuine issue of fact regarding the reason for plaintiff's termination, and the trial court did not err.

Additionally, plaintiff alleged that North Carolina law was being violated *at Renew*, not at defendant company. This case is similar to *Ridenhour* where the employee in that case alleged illegal activities of a third-party contractor. As the Court in *Ridenhour* held, we hold that plaintiff failed to meet her burden because plaintiff failed to allege that defendant was engaged in any unlawful activity.

However, plaintiff maintains that defendant encouraged her to engage in illegal activity, and this action is sufficient to meet the second element of a wrongful discharge in violation of public policy claim, citing *Amos v. Oakdale Knitting Co.*, 331 N.C. 348 (1992). First, *Amos* does not stand for this position, and plaintiff's citation to other states' case law is not persuasive to this Court. Second, the record does not support plaintiff's assertion that defendant encouraged her to commit illegal activity. Plaintiff did not allege this encouragement in her complaint, and in her deposition, plaintiff merely explained that when she informed Edwards of the practice of seeing

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patients in PA Bynum's absence, he told her to finish up, and he would talk to Renew personnel. However, Edwards did not recall witnessing this practice or having any conversation about the alleged illegal activity with plaintiff. Critically, Edwards stated that he did not know whether that practice was illegal. Defendant also could not find any evidence that plaintiff lodged complaints in accordance with their written policy.

Because our law "contemplates a degree of intent or willfulness on the part of the employer[.]" *Garner*, 350 N.C. at 572, defendant could not have encouraged plaintiff to engage in illegal activity as the record shows that defendant was not aware of such activity occurring at Renew. Furthermore, the record indicates that independent investigations by government agencies in response to plaintiff's complaints resulted in no findings of illegal activity. There being no genuine issue of fact that defendant did not engage in unlawful activity, the trial court did not err in granting summary judgment for defendant.

III. Conclusion

For the foregoing reasons, we affirm the trial court's order granting summary judgment.

AFFIRMED.

Chief Judge DILLON and Judge HAMPSON concur.

Report per Rule 30(e).