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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-679

Filed 21 May 2025

Harnett County, No. 21CVS000283-420

JOHN R. MANN, M.D.,
Plaintiff,

v.

GOSHEN MEDICAL CENTER, INC. AND
GREGORY M. BOUNDS;
Defendants/Third-Party Plaintiffs,

v.

IBRAHIM OUDEH AND
IBRAHIM N. OUDEH, M.D., P.A.,
Third-Party Defendants.

Appeal by plaintiff from directed verdict entered 20 March 2024 by Judge William R. Pittman in Harnett County Superior Court. Heard in the Court of Appeals 28 January 2025.

Brent Adams & Associates, by Brenton D. Adams, for plaintiff.

Fox Rothschild LLP, by George J. Oliver, Stephen W. Petersen, and Jeffrey R. Whitley, for defendants.

No brief filed for third-party defendants.

FREEMAN, Judge.

Plaintiff appeals from a directed verdict entered on his breach of contract claim and the trial court's entry of attorney's fees and costs against him. Plaintiff contends that the trial court erred by (1) granting defendants' motion for a directed verdict, and (2) granting defendants' motion for costs and fees after plaintiff filed his notice of appeal. After careful review, we affirm in part, vacate in part, and remand.

I. Facts and Procedural Background

In May 2017, Goshen Medical Center, led by CEO Gregory Bounds (collectively, "defendants"), began negotiating with Dr. Ibrahim Oudeh to purchase his private practice in Dunn, North Carolina. Dr. Oudeh suggested that defendants should also hire plaintiff as a general practitioner once they purchased his practice.

In June 2017, negotiations for hiring plaintiff began. Plaintiff and defendants signed an agreement ("the June agreement"), which included in relevant part that: plaintiff would work for Goshen for 36 months after the estimated first day of employment, which was 1 July 2017; he would be paid \$180,000 annually; he would be entitled to benefits, which included paid time off, health benefits, retirement plan, family medical leave, and malpractice insurance. The June agreement made no mention of paying plaintiff bonuses. Immediately after the term and the estimated start date provision, the June agreement stated: "This agreement will be void in the event that [plaintiff] fails to initiate employment within 90 days of the estimated first day of employment listed above." Plaintiff signed the June agreement and began working at the Dunn office on 1 July 2017.

The parties contest who owned the practice in July 2017. Plaintiff asserts that defendants owned the practice in July 2017. Defendants, on the other hand, maintain that the practice was still owned and operated by Dr. Oudeh, though defendants actively participated in its operation and reimbursed Dr. Oudeh for his expenses. On 4 December 2017, defendants finalized acquiring Oudeh's practice.

On 11 December 2017, plaintiff signed a new offer of employment (the "December offer"). This offer provided that as an employee of Goshen, plaintiff would be entitled to the same salary and benefits as specified in the June agreement, but it also included a "[p]roductivity [b]onus quarterly but not guaranteed." It did not, however, include a term of employment.

After plaintiff signed the December offer, "[h]e could not produce a Social Security card, so [Goshen] could not process his application, so [Goshen] started paying him immediately at this rate [as] a contract worker." While plaintiff worked for Goshen as an independent contractor, he was not paid benefits or bonuses.

In April 2018, plaintiff produced his Social Security card, and defendants hired him as an employee of Goshen. From that point on, plaintiff was paid employment benefits and quarterly bonuses.

On 23 July 2020, plaintiff fell while at work. He went on medical leave and received worker's compensation. While plaintiff was on medical leave, defendants received reports that plaintiff was practicing medicine at another practice with Dr. Oudeh, and that he was diverting patients from Goshen to that practice. On 7

October, defendants terminated plaintiff in a letter which stated:

It has been brought to our attention that you are actively making efforts to send[,] recruit and/or persuade current patients, of the GMC-Dunn medical office, to transfer to another primary care provider. This has been reported by the patients directly to the staff at the GMC-Dunn office. In addition, you have made several attempts, that we are aware of, to contact and speak with employees to assist you in getting patient HIPAA information for this same purpose without presenting written authorization . . . from the respective patients. This is in direct violation of your employment agreements and statements.

Plaintiff sued defendants on 17 February 2021, bringing claims of breach of contract and wrongful discharge, and seeking to recover punitive damages.¹ Defendants joined Dr. Oudeh and his practice, Ibrahim N. Oudeh, M.D., P.A., (collectively, “third-party defendants”), as third-party defendants.

The matter came on for trial on 4 March 2024. After plaintiff rested, defendants filed a motion for directed verdict as to all of plaintiff’s claims. The trial court orally granted the motion and dismissed all of plaintiff’s causes of action on 8 March 2024, which was memorialized in a written order on 20 March 2024. The trial court also dismissed defendants’ third-party complaint against third-party defendants.

On 18 March 2024, defendants filed a motion for plaintiff to pay reasonable

¹ Plaintiff included a cause of action for “mental and emotional distress,” but on appeal does not argue that this was a separate cause of action, but rather a component of his compensatory damages. Plaintiff also sued Bounds for wrongful interference with contract, but voluntarily dismissed the claim before the matter came on for trial.

and necessary costs. On 4 April 2024, Plaintiff appealed the trial court's order granting defendants' motion for directed verdict. The trial court granted defendants' motion for costs on 22 April 2024 and filed it on 29 April 2024. Plaintiff timely appealed the trial court's order granting defendants' motion for costs.

II. Jurisdiction

This Court has jurisdiction to review “any final judgment of a superior court[.]” N.C.G.S. § 7A-27(b)(1) (2023).

III. Standard of Review

We review a motion for a directed verdict de novo. *Lambert v. Town of Sylva*, 259 N.C. App. 294, 299 (2018). “Whether a trial court has subject matter jurisdiction is a question of law, reviewed de novo on appeal.” *Robertson v. Steris Corp.*, 234 N.C. App. 525, 529 (2014) (cleaned up).

IV. Discussion

Plaintiff argues that the trial court erred by (1) granting defendants' motion for a directed verdict on all of his claims, and (2) granting defendants' motion taxing costs. We address each argument in turn.

A. Directed Verdict

Plaintiff first contends the trial court erred in granting defendants' motion for a directed verdict on the underlying breach of contract and wrongful termination claims. Specifically, plaintiff argues that defendants breached the June agreement

by failing to pay him bonuses and employment benefits.² “The question raised by a motion for directed verdict is whether the evidence is sufficient to go to the jury. . . . It is only when the evidence is insufficient to support a verdict in the non-movant’s favor that the motion should be granted.” *Dockery v. Hocutt*, 357 N.C. 210, 216–17 (2003) (cleaned up). “Generally, if there is more than a scintilla of evidence supporting each element of the nonmoving party’s claim, the motion for directed verdict . . . should be denied.” *Clark v. Clark*, 280 N.C. App. 384, 393 (2022) (cleaned up). “Evidence presented at trial that only raises a mere possibility or conjecture is insufficient to withstand a motion for directed verdict[.]” *Felts v. Liberty Emergency Serv., P.A.*, 97 N.C. App. 381, 383 (1990). We review the evidence in the light most favorable to the nonmoving party. *McDonnell v. Guilford Cnty. Tradewind Airlines*, 194 N.C. App. 674, 677 (2009).

1. Breach of Contract for Failure to Pay Bonuses

Plaintiff first contends that the trial court erred by granting defendants’ motion for a directed verdict on his breach of contract claim because the contract established that he was entitled to bonuses.

“The elements of a claim of breach of contract are (1) existence of a valid contract and (2) breach of the terms of that contract.” *Howe v. Links Club Condo. Ass’n, Inc.*, 263 N.C. App. 130, 138 (2018) (citation omitted). “A contract, express or

² Plaintiff only relies on the June agreement to support his breach of contract claim; he does not rely upon the December offer.

implied, requires assent, mutuality, and definite terms.” *Schlieper v. Johnson*, 195 N.C. App. 257, 265 (2009) (citing *Horton v. Humble Oil & Refining Co.*, 255 N.C. 675, 679 (1961)). “When the language of the contract is clear and unambiguous, construction of the agreement is a matter of law before the court and the court cannot look beyond the terms of the contract to determine the intention of the parties.” *Lynn v. Lynn*, 202 N.C. App. 423, 431 (2010) (cleaned up). “Ultimately, [a plaintiff] must present evidence of a specific agreement that entitles him to a bonus” to prevail on a breach of contract claim for failing to pay a bonus. *Schlieper*, 195 N.C. App. at 266.

Here, the June agreement, which plaintiff contends defendants breached, made no mention of paying bonuses. Even if the agreement were an enforceable contract, which we address in the following section, we do not read it to include terms that do not exist on the face of the document. *See Lynn*, 202 N.C. App. at 431.³ Accordingly, the trial court did not err by granting the motion for directed verdict on the breach of contract claim because there was no evidence presented that established a contractual right to be paid bonuses.

2. Breach of Contract for Failure to Pay Benefits

Plaintiff further argues that defendants breached the June agreement by not paying plaintiff the benefits specified in the June agreement. However, defendants

³ Similarly, plaintiff’s reliance on a September 2017 email and the testimony of defendants’ Chief Medical Officer is misplaced because this Court “cannot look beyond the terms of the [purported] contract,” i.e., the June agreement, “to determine the intention of the parties.” *Lynn*, 202 N.C. App. at 431.

contend that the June agreement was unenforceable because plaintiff failed to satisfy the condition precedent in the agreement.

“A condition precedent is a fact or event, occurring subsequently to the making of a valid contract, that must exist or occur before there is a right to immediate performance, before there is a breach of contract duty, before the usual judicial remedies are available.” *Chemical Realty Corp. v. Home Fed. Savs. and Loan Ass’n of Hollywood*, 84 N.C. App. 27, 37 (1987) (cleaned up). There must be language clearly showing that the contract will not be enforced if the condition is not satisfied. See *Harlee v. Harlee*, 151 N.C. App. 40, 47 (2002).

Here, the June agreement specified that it would be void if “employment was not initiated within 90 days of the anticipated start date” of 1 July 2017. Plaintiff did not initiate employment with Goshen during this period because Goshen did not own the practice until December 2017, which was outside the agreement’s specified time period. To support that the condition was met, plaintiff primarily relies on his own assertions that Goshen owned the practice when he began working in July. The only other evidence that plaintiff uses to support his contention is the testimony of Teresa Oudeh, Dr. Oudeh’s wife and an employee of Dr. Oudeh’s practice. Teresa Oudeh’s testimony tends to show that defendants were in the process of acquiring Dr. Oudeh’s practice, and implementing changes to Dr. Oudeh’s practice, such as changing the record keeping process, between June and December 2017.

However, Teresa Oudeh confirmed that “the practice continued to operate as

Dr. Oudeh’s practice” until 4 December 2017. Accordingly, Teresa Oudeh’s testimony at most shows that although defendants were actively involved in the practice in preparation for fully taking it over, they did not complete that process until December 2017.

Compared with record evidence supporting that Dr. Oudeh owned the practice until December 2017—including the December offer, plaintiff’s 2017 tax return listing Dr. Oudeh as his employer from July to December 2017, and plaintiff’s paychecks from that period paid by Dr. Oudeh—even in the light most favorable to plaintiff, his evidence fails to raise more than conjecture that he initiated employment with Goshen during the specified window to make the contract enforceable. *See Felts*, 97 N.C. App. at 383. Therefore, the trial court did not err by granting defendants’ motion for directed verdict on plaintiff’s breach of contract claims.

3. Wrongful Termination

Plaintiff next contends the trial court erred in granting the motion for directed verdict because there was sufficient evidence that defendants wrongly terminated him. However, plaintiff concedes that he was an at-will employee when he was terminated.

Absent “a contractual agreement between an employer and an employee establishing a definite term of employment, the relationship is presumed terminable at the will of either party without regard to the quality of performance of either

party.” *Kurtzman v. Applied Analytical Indus., Inc.* 347 N.C. 329, 331 (1997) (citation omitted). An “at-will employ[ee] may be terminated for no reason, or for an arbitrary or irrational reason[.]” *Imes v. City of Asheville*, 163 N.C. App. 668, 670 (2004) (cleaned up). Thus, “[i]n general, an at-will employee in this state may not maintain a claim for wrongful discharge.” *Deerman v. Beverly Cal. Corp.*, 135 N.C. App. 1, 4 (1999) (citations omitted).

There are, however, “narrow exceptions” to this general rule, which are “grounded in considerations of public policy designed either to prohibit status-based discrimination or to ensure the integrity of the judicial process or the enforcement of the law.” *Kurtzman* 347 N.C. at 333–34. For instance, an employer cannot terminate an employee “based on impermissible considerations[.]” as defined by federal or state law, “such as the employee’s race, sex, religion, national origin, or disability, or in retaliation for filing certain claims against the employer.” *Id.* at 331 (citations omitted).

Additionally, our Supreme Court “has recognized a public policy exception to the employment at-will rule.” *Id.* (citations omitted).

Public policy has been defined as the principle of law which holds that no citizen can lawfully do that which has a tendency to be injurious to the public or against the public good. Public policy is violated when an employee is fired in contravention of express policy declarations contained in the North Carolina General Statutes.

Schwartz v. St. Jude Med., Inc., 270 N.C. App. 720, 726–27 (2020) (cleaned up). “[T]he

employee has the burden of pleading and providing that the employee's dismissal occurred for a reason that violates public policy." *Kranz v. Hendrick Auto. Grp., Inc.*, 196 N.C. App. 160, 162 (2009) (citation omitted).

Plaintiff asserts that he was terminated in violation of two public policies and identifies two cases from this Court's precedent to support his contention. First, in *Deerman*, an at-will nurse was employed by a nursing home, when a patient was "losing weight, having hallucinations, psychiatric symptoms and acute distress[.]" 135 N.C. App. at 2. When the physician did not respond to the nurse's or patient's calls, or otherwise treat the patient, the nurse advised the patient's family to "reconsider the choice in physicians in that the appropriate treatment had not been provided for [the patient] by [the] physician. *Id.* at 3.

This Court extensively examined the provisions set forth in the Nursing Practice Act, which was enacted to "ensure minimum standards of competency and to provide the public safe nursing care," and relevant administrative regulations, and concluded that nurses were required to "assess[] a patient's health, which entails a responsibility to communicate, counsel, and provide accurate guidance to clients and their families." *Id.* at 6–8 (citing N.C.G.S. § 90-171.20(7) (1993); 21 NCAC 36.0224(h) (1994) (cleaned up)). Therefore, the termination of the nurse for giving advice which was "proffered in fulfillment of the foregoing responsibilities" may have violated "the public policy of this state to ensure the public a minimum level of safe nursing care." *Id.* at 8, 12.

Plaintiff's reliance on *Deerman* is misplaced. The analysis and holding of *Deerman* is expressly limited to the public policy set forth by the General Assembly regarding *nursing* standards, not any medical practitioner.⁴ And because the public policy exceptions are narrow exceptions to the general rule, we decline to interpret *Deerman* in a way which would “destroy and swallow up the rule.” *Yadkin Lumber Co. v. Bernhardt*, 162 N.C. 460, 489 (1913).

Next, plaintiff contends that he was wrongfully terminated because “[w]hen a geographic area is underserved by physicians, the law in North Carolina is that covenants not to compete enforced against physicians by terminating them is against public policy[.]” Plaintiff solely relies on *Iredell Digestive Disease Clinic v. Petrozza*, 92 N.C. App. 21 (1988) to support this proposition. In *Iredell*, we held that the trial court correctly denied the plaintiff-medical practice’s preliminary injunction to enforce a covenant not to compete in the employment agreement with a gastroenterologist after they terminated the doctor because there were only two in the area. *Id.* at 27–31. Because “the public health and welfare would be harmed if there were only one gastroenterologist in Statesville,” the public interest outweighed the freedom to contract in this situation. *Id.* at 29. Thus, the “covenant not to compete [was] void as against public policy.” *Id.* at 31.

⁴ Even if we were to interpret *Deerman* as plaintiff would have us, plaintiff has made no argument that any of the circumstances that may have justified the *Deerman* nurse’s referral of the patient to another physician exist here. Indeed, plaintiff denies referring Goshen’s patients to another practice entirely.

Once again, plaintiff asks us to interpret a case too broadly. Read properly, *Iredell* stands for the proposition that it may be against public policy to terminate a specialist and enforce a covenant not to compete when the practitioner is one of only two specialists in that area. Plaintiff does not argue, nor does the record indicate, that this is situation in the present case. Therefore, the trial court did not err in granting defendants' motion for a directed verdict on the wrongful termination claim.

4. Compensatory and Punitive Damages

Plaintiff argues because he was wrongfully terminated, a jury could have awarded compensatory damages for lost wages and emotional distress and punitive damages. Because plaintiff's underlying claims failed on the merits, these arguments are now moot. *See Blakeley v. Town of Taylortown*, 233 N.C. App. 441, 447–51 (2014) (determining that plaintiff was only entitled to compensatory damages when they were successful on the merits); *Sellers v. Morton*, 191 N.C. App. 75, 85 (2008) (holding that when a plaintiff was not entitled to compensatory damages, “the trial court did not err in concluding as a matter of law that [the] plaintiff was not entitled to punitive damages.”).

B. Costs

Finally, plaintiff asserts that the trial court erred in granting defendants' motion for costs after he appealed its judgment. “To the party for whom judgment is given, costs shall be allowed as provided in Chapter 7A and this Chapter.” N.C.G.S. § 6-1 (2023). However, once “an appeal is perfected . . . it stays all further proceedings

in the court below upon the judgment appealed from[.]” N.C.G.S. § 1-294 (2023). As a result, the “trial court lacks jurisdiction to enter an award of costs under N.C. Gen. Stat. § 6-1 once notice of appeal has been filed as to the judgment.” *Swink v. Weintraub*, 195 N.C. App. 133, 160 (2009).

Here, plaintiff filed his notice of appeal of the judgment on 4 April 2024. Therefore, the trial court no longer had jurisdiction over the matter when it granted defendants’ motion for costs on 22 April 2024. Accordingly, we vacate the trial court’s order taxing costs and remand.

V. Conclusion

The trial court did not err by granting defendants’ motion for a directed verdict because plaintiff did not produce more than a scintilla of evidence that either: (1) he was employed by defendants within the necessary time period for the June agreement to become an enforceable contract, or (2) he was terminated in violation of any public policy. However, because the trial court did not have jurisdiction over the matter when it granted defendants’ motion taxing costs to plaintiff, we vacate that portion and remand for further proceedings.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

Judges TYSON and CARPENTER concur.

Report per Rule 30(e).