No. 491A88
Supreme Court of North Carolina

Coman v. Thomas Manufacturing Co.

325 N.C. 172 (N.C. 1989) · 381 S.E.2d 445
Decided Jul 1, 1989

No. 491A88

Filed 26 July 1989

Master and Servant 10.2 — wrongful discharge — employment at will — bad faith and public policy exceptions The trial court erred by dismissing plaintiff's action for wrongful termination of his at-will employment as a truck driver after plaintiff refused to violate U.S. Department of Transportation regulations by driving excessive hours and falsifying records. This case comes within the reasoning of Sides v. Duke University, 74 N.C. App. 331, and, although plaintiff specifically alleges that defendant's acts violated the regulations of the Federal Department of Transportation, this conduct also violated the public policy of North Carolina as established by 19A NCAC 3D .0801 (1988), N.C.G.S. 20-397, and N.C.G.S. 20-384. This Court has never held that an employee at will could be discharged in bad faith; to the contrary, Haskins v. Royster, 70 N.C. 601 [70 N.C. 600] (1874), recognized the principle that a master could not discharge his servant in bad faith.

Am Jur 2d, Master and Servant 48.3, 54.

APPEAL by plaintiff pursuant to N.C.G.S. 7A-30 (2) from the decision of a divided panel of the Court of Appeals, 91 N.C. App. 327, 371 S.E.2d 731 (1988), affirming dismissal of plaintiff's complaint by Ross, J., at the 25 January 1988 session of Superior Court, DAVIDSON County. Heard in the Supreme Court 15 March 1989.

Larry L. Eubanks, David F. Tamer, and J. Wilson Parker for plaintiff-appellant.

Petree Stockton Robinson, by W. R. Loftis, Jr., Penni P. Bradshaw, Kenneth S. Broun, and Robin E. Shea, for defendant-appellee.

J. Michael McGuinness for North Carolina Civil Liberties Union Legal Foundation, amicus curiae.

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J. Wilson Parker and Deborah Leonard Parker for North Carolina Academy of Trial Lawyers, Lacy H. Thornburg, Attorney General, by Jane P. Gray, Special Deputy Attorney General, for North Carolina Department of Justice, Ralf F. Haskell, Special Deputy Attorney General, for John C. Brooks, North Carolina Commissioner of Labor, amicus curiae.

Weinstein Sturges, P.A., by John J. Doyle, Jr. and Joyce W. Wheeler, for North Carolina Trucking Association, amicus curiae.

Maupin Taylor Ellis Adams, P.A., by Robert A. Valois, Thomas A. Farr, and Elizabeth D. Scott, for Capital Associated Industries, Inc., amici curiae.

Justice MEYER dissenting.

MARTIN, Justice.

Plaintiff seeks to recover damages from defendant for wrongfully terminating his at-will employment. The trial judge dismissed the action upon defendant's motion pursuant to Rule 12 (b) (6) of the North Carolina Rules of Civil Procedure for failure to state a claim upon which relief may

be granted. The North Carolina Court of Appeals affirmed, and upon appeal to this Court, we reverse.

This being a dismissal pursuant to Rule 12 (b)(6), we look to the allegations of plaintiff's complaint. Essentially, the complaint alleges that plaintiff began working for defendant, a North Carolina corporation, in 1978. He became a full-time employee in 1984 as a long-distance truck driver, hauling goods in defendant's vehicles to various points in the United States and Canada. Plaintiff was based at defendant's plant in Davidson County. The driving operations of the defendant are governed by the United States Department of Transportation. Its regulations provide that a driver, such as plaintiff, cannot drive a vehicle for longer than a ten-hour shift, which must be followed by a rest period of at least eight hours. A driver must also maintain accurate logs of all travel including route traversed, mileage, and amount of time in service. Defendant required plaintiff, and other drivers, to violate the Department's regulations by driving for periods of time in excess of that allowed by the regulations. Plaintiff was also instructed by his employer that he would have to falsify the logs required by the regulations to show that defendant was in compliance with the regulations. Plaintiff was also informed that he would have to continue to drive for periods of time in violation of the regulations if he chose to retain his employment. Upon
174 plaintiff's refusal to violate the *174 regulations, he was told that his pay would be reduced at least fifty percent, such reduction being tantamount to a discharge of plaintiff.

Rule 12 (b)(6) and its application are now familiar learning to the bench and bar. See generally Sutton v. Duke, 277 N.C. 94, 176 S.E.2d 161 (1970); W. Shuford, N.C. Civil Practice and Procedure 12-10 (3d ed. 1988). It would serve no useful purpose to again repeat the rules applicable to such decisions. Although plaintiff may have some additional remedy in the federal courts, [1] the courts of North Carolina cannot fail to provide a forum to determine a valid cause of action. N.C. Const. art. I, sec. 18 (1984) (open courts clause).

[1] We note that neither party alleged in the pleadings or argued in its brief before the Court of Appeals or this Court the constitutional issue of preemption by the federal government under the supremacy clause. U.S. Const. art. VI, sec. 2. Nor does the record show that this issue was resolved by the trial judge or the Court of Appeals. Constitutional issues will not be reviewed by this Court unless it affirmatively appears from the record that the issue was raised and passed upon in the court below. Comr. of Insurance v. Rate Bureau, 300 N.C. 381, 269 S.E.2d 547, reh'g denied, 301 N.C. 107, 273 S.E.2d 300 (1980); Management, Inc. v. Development Co., 46 N.C. App. 707, 266 S.E.2d 368, disc. rev. denied, appeal dismissed, 301 N.C. 93, 273 S.E.2d 299 (1980). This is in accord with the decisions of the Supreme Court of the United States. Edelman v. California, 344 U.S. 357, 97 L.Ed. 387 (1953). The issue is not before this Court.

A brief look at the history of the employee-at-will doctrine is appropriate. The English rule prior to our revolution was that an employment without a particular time limitation was presumed to be a hiring for a year. 1 W. Blackstone, Commentaries *425. Reasonable notice was required before an employer or employee could terminate the employment. This was said to be in response to the shortage of laborers resulting from the Black Death.

After the revolution, American courts followed the English rule with respect to agricultural and domestic workers, but with the industrial revolution and the development of freedom of contract, our courts moved towards the at-will doctrine. The formulation of the rule was principally the work of Horace Wood, who published in 1877 a work on master-servant relations stating the rule. Subsequent adoption of

the rule by the courts greatly facilitated the development of the American economy at the end of the nineteenth century. See generally A. Hill, "Wrongful Discharge" and the Derogation of the At-Will Employment Doctrine, 31 Labor Relations and Public Policy Series, University of
175 Pennsylvania (1987). *175

Ordinarily, an employee without a definite term of employment is an employee at will and may be discharged without reason. Still v. Lance, 279 N.C. 254, 182 S.E.2d 403 (1971). However, the employee-at-will rule is subject to certain exceptions. Statutes may proscribe the discharge of an at-will employee in retaliation for certain protected activities, e.g., filing workers' compensation claims, N.C.G.S. 97-6.1 (1985); engaging in labor disputes, N.C.G.S. 95-83 (1985); filing Occupational Safety and Health Act claims, N.C.G.S. 95-130 (8) (1985). See also 1 L. Larson, Unjust Dismissal 10.34 (1989).

Our present task is to determine whether we should adopt a public policy exception to the employee-at-will doctrine. [2] Our Court of Appeals, in Sides v. Duke University, 74 N.C. App. 331, 328 S.E.2d 818, disc. rev. denied, 314 N.C. 331, 333 S.E.2d 490 (1985), applied the public policy exception. In Sides, the court was reviewing the dismissal of plaintiff's complaint on a Rule 12 (b) (6) motion. Sides, an employee at will, alleged that she was discharged from her employment for her refusal to testify untruthfully or incompletely in a court action against Duke Hospital. The Court of Appeals held that the complaint stated a cause of action.

> [2] 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. Petermann v. International Brotherhood of Teamsters, 174 Cal.App.2d 184, 344 P.2d 25 (1959).

We approve and adopt the following language from Sides:

> [W]hile there may be a right to terminate a contract at will for no reason, or for an arbitrary or irrational reason, there can be no right to terminate such a contract for an unlawful reason or purpose that contravenes public policy. A different interpretation would encourage and sanction lawlessness, which law by its very nature is designed to discourage and prevent.

Sides v. Duke University, 74 N.C. App. at 342, 328 S.E.2d at 826 (1985).

We hold that the case at bar comes within the reasoning of Sides and that the complaint states a cause of action for wrongful discharge. Certainly perjury and subornation of perjury differ from operating a truck in violation of federal law and falsifying federal records. However, both offend
176 the public policy of North Carolina. *176

Although plaintiff specifically alleges that defendant's acts violated the regulations of the federal Department of Transportation, this conduct also violated the public policy of North Carolina. N.C.G.S. 20-384 provides that the Division of Motor Vehicles may promulgate highway safety rules and regulations for interstate and intrastate motor carriers in North Carolina. This has been done in the North Carolina Administrative Code, which provides that the rules and regulations adopted by the federal Department of Transportation in 49 C.F.R. 390-398 shall apply on the highways of North Carolina. 19A NCAC 3D .0801 (1988). Thus, according to plaintiff's allegations when defendant discharged plaintiff, it violated the federal regulations and the public policy of North Carolina as established in the Administrative Code. Further evidence of the public policy of our state regarding the safety of the highways is found in N.C.G.S. 20-397, which provides criminal penalties for seeking to evade or defeat such regulations.

Moreover, it is the public policy in this jurisdiction that the safety of persons and property on or near the public highways be protected. See N.C.G.S. 20-384 (1988 Cum. Supp.); Harrell v. Scheidt, Comr. of Motor Vehicles, 243 N.C. 735, 92 S.E.2d 182 (1956). Highway safety is one of the paramount concerns of both this state and the nation. At this writing more than 600 people have been killed on the highways of North Carolina during 1989. Actions committed against the safety of the traveling public are contrary to this established public policy.

The state public policy implications in the case at bar are compelling. Our legislature has enacted numerous statutes regulating almost every aspect of transportation and travel on the highways in an effort to promote safety. The actions of defendant, as alleged, impair and violate this public policy. Plaintiff allegedly was faced with the dilemma of violating that public policy and risking imprisonment, N.C.G.S. 20-397, or complying with the public policy and being fired from his employment. Where the public policy providing for the safety of the traveling public is involved, we find it is in the best interest of the state on behalf of its citizens to encourage employees to refrain from violating that public policy at the demand of their employers. Providing employees with a remedy should they be discharged for refusing to violate this public policy supplies that encouragement.

This Court has never held that an employee at will could be discharged in bad faith. To the contrary,
177 in Haskins v. Royster, *177 70 N.C. 601 [70 N.C. 600] (1874), this Court recognized the principle that a master could not discharge his servant in bad faith. Thereafter, this Court stated the issue to be whether an agreement to give the plaintiff a regular permanent job was anything more than an indefinite general hiring terminable in good faith at the will of either party. Malever v. Jewelry Co., 223 N.C. 148, 25 S.E.2d 436 (1943) (emphasis added). [3]

3 Regrettably, the dissent appears to misread Haskins and Malever as well as this opinion. Clearly, the Haskins opinion recognizes the good-faith exception, and Chief Justice Stacy in Malever uses the phrase an indefinite general hiring "terminable in good faith" at the will of either party, citing "35 Am. Jur. 460 and 39 C.J. 41." This Court is addressing the issue for the first time, and because this Court, not the legislature, adopted the employee-at-will doctrine in the first instance, it is entirely appropriate for this Court to further interpret the rule. Further, it is important to note that this Court is applying the doctrine in the light of the established public policy and not changing public policy to suit the rule.

Numerous courts have recognized wrongful discharge theories characterized either as the bad faith exception to the at-will doctrine or under the implied covenant of good faith and fair dealing. See Mitford v. LaSala, 666 P.2d 1000 (Alaska 1983); Cleary v. American Airlines, Inc., 111 Cal.App.3d 443, 168 Cal.Rptr. 722 (1980); Fortune v. National Cash Register Co., 373 Mass. 96, 364 N.E.2d 1251 (1977); Kerr v. Gibson's Products Co. of Bozeman, 733 P.2d 1292 (Mont. 1987); Monge v. Beebe Rubber Co., 114 N.H. 130, 316 A.2d 549 (1974); 1 L. Larson, Unjust Dismissal 3.05 (1989); H. Perritt, Employee Dismissal Law and Practice 1.2, 4.11, 4.23 (2d ed. 1987); Note, Protecting At Will Employees Against Wrongful Discharge: The Duty To Terminate Only In Good Faith, 93 Harv. L. Rev. 1816 (1980). Bad faith conduct should not be tolerated in employment relations, just as it is not accepted in other commercial relationships.

Our decision today is in accord with the holdings of most jurisdictions. About four-fifths of the states now recognize some form of cause of action for wrongful discharge. McGuinness, The Doctrine of Wrongful Discharge in North Carolina: The Confusing Path from Sides to Guy and the Need for Reform, 10 Campbell L. Rev.

217 (1988). The case of McClanahan v. Remington Freight Lines, 517 N.E.2d 390 (Ind. 1988), is on all fours with the present appeal. There, the employee refused to drive his employer's truck in violation of law. The Indiana Supreme Court held plaintiff had stated a cause of action for wrongful discharge for refusing to commit an unlawful act. Otherwise, the court held,
178 illegal conduct *178 by employers and employees would be encouraged. See also Shaw v. Russell Trucking Line, Inc., 542 F. Supp. 776 (W.D. Pa. 1982) (public policy exception allowed where employee refused to drive overweight truck); Palmer v. Brown, 242 Kan. 893, 752 P.2d 685 (1988) (employee fired for disclosing medicaid fraud); Phipps v. Clark Oil Refining Corp., 408 N.W.2d 569 (Minn. 1987) (employee fired for refusal to violate Clean Air Act), Schriner v. Meginnis Ford Co., 228 Neb. 85, 421 N.W.2d 755 (1988) (employee reporting illegal activities of employer); Ludwick v. This Minute of Carolina Inc., 287 S.C. 219, 337 S.E.2d 213 (1985) (South Carolina Supreme Court followed Sides in allowing public policy exception to terminable-at-will doctrine).

Academic scholars also support our action today. See, e.g., 1 L. Larson, Unjust Dismissal 6.01-7.09 (1989); RIA Guide to the Law of Wrongful Termination, 110, 201-110, 273 (1989); A. Hill, "Wrongful Discharge" and the Derogation of the At Will Employment Doctrine, 31 Labor Relations and Public Policy Series, University of Pennsylvania (1987); McGuinness, The Doctrine of Wrongful Discharge in North Carolina: The Confusing Path from Sides to Guy and the Need for Reform, 10 Campbell L. Rev. 217 (1988); Note, Sides v. Duke Hospital: A Public Policy Exception to the Employment-at-Will Rule, 64 N.C. L. Rev. 840 (1986).

Although we do not bottom our opinion upon federal public policy, many courts have held that violations of federal public policy may form the basis for a wrongful discharge action in state courts. E.g., Kilpatrick v. Delaware County S.P.C.A., 632 F. Supp. 542 (E.D. Pa. 1986); McNulty v. Borden, Inc., 474 F. Supp. 1111 (E.D. Pa. 1979); Harless v. First National Bank, 162 W. Va. 116, 246 S.E.2d 270 (1978).

In reaching our decision, we have not turned a deaf ear to the warning that we may have spawned a deluge of spurious claims. Our courts have abundant authority to protect employers from frivolous claims, particularly by the imposition of sanctions against attorneys and parties pursuant to Rule 11 of the Rules of Civil Procedure.

The decision of the Court of Appeals is reversed.

Reversed.

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