Docket No. 64822
Supreme Court of Michigan

Suchodolski v. Gas Co.

412 Mich. 692 (Mich. 1982) · 316 N.W.2d 710
Decided Mar 2, 1982

Docket No. 64822.

Argued April 7, 1981 (Calendar No. 4).

693 Decided March 2, 1982. *693

Donnelly Associates, P.C. (by *Timothy G. Hagan)*, for plaintiff.

Dykema, Gossett, Spencer, Goodnow Trigg (by *Seth M. Lloyd* and *Richard L. Hurford)* for defendant.

PER CURIAM.

At issue in this appeal is whether the circuit court properly granted summary judgment as to the plaintiff's claim that his discharge from his employment with Michigan Consolidated Gas Company was improper as contrary to public policy. The Court of Appeals affirmed the judgment for the defendant. We agree that summary judgment was appropriate and affirm.

I

The plaintiff began working for Michigan Consolidated Gas Company in September, 1972, as a senior auditor. He was discharged in January, 1976, and brought this action in 1978, stating various theories of recovery in a six-count complaint. Only one count is relevant to the present appeal.[1] Count V of the complaint said, in 694 part: *694

[1] The circuit court entered judgment for the defendant on all six counts. The Court of Appeals reversed the decision as to the count claiming age discrimination on the authority of our decision in *Strachan v Mutual Aid Neighborhood Club, Inc*, 407 Mich. 928 (1979), *rev'g* 81 Mich. App. 165; 265 N.W.2d 66 (1978), but affirmed as to the other five counts.

The plaintiff has not appealed the judgment as to four of the counts.

"34. That plaintiff, in the course of his employment for defendant corporation, had discovered and reported poor internal management of defendant corporation.

"35. That plaintiff was terminated for attempting to report and correct such questionable procedures as the shifting of losses from appliance sales to the rate payers, uncollectable accounts receivable and the selling of automobiles and office equipment to employees of defendant corporation for very low prices.

"36. That defendant's discharge of plaintiff for attempting to report and correct the aforementioned practices was retaliatory and against the public policy of this state."

In affirming the summary judgment, the Court of Appeals noted that a "public policy" exception has developed to the general rule that either party to an employment contract for an indefinite term may terminate it at any time for any reason. The Court discussed at length the decision in *Sventko v Kroger Co*, 69 Mich. App. 644; 245 N.W.2d 151 (1976). In that case, the plaintiff claimed that she was discharged because she had filed a claim for

workers' compensation benefits. The Court held that this stated a claim for which relief could be granted.

However, in an unpublished per curiam opinion, the Court of Appeals found *Sventko* inapplicable:

"We think that the *Sventko* case is factually distinguishable from the present case which involves a corporate management dispute and no clear mandate of public policy."

We granted leave to appeal.

II

In general, in the absence of a contractual basis 695 *695 for holding otherwise, either party to an employment contract for an indefinite term may terminate it at any time for any, or no, reason. See generally *Toussaint v Blue Cross Blue Shield of Michigan*, 408 Mich. 579; 292 N.W.2d 880 (1980). However, an exception has been recognized to that rule, based on the principle that some grounds for discharging an employee are so contrary to public policy as to be actionable. Most often these proscriptions are found in explicit legislative statements prohibiting the discharge, discipline, or other adverse treatment of employees who act in accordance with a statutory right or duty.[2]

[2] *E.g.*, MCL 37.2701; MSA 3.548(701) (Elliott-Larsen Civil Rights Act); MCL 37.1602; MSA 3.550(602) (Handicappers' Civil Rights Act); MCL 408.1065; MSA 17.50(65) (Occupational Safety and Health Act); MCL 15.362; MSA 17.428(2) (The Whistleblowers' Protection Act).

The courts have also occasionally found sufficient legislative expression of policy to imply a cause of action for wrongful termination even in the absence of an explicit prohibition on retaliatory discharges. Such a cause of action has been found to be implied where the alleged reason for the discharge of the employee was the failure or refusal to violate a law in the course of employment. Thus, in *Trombetta v Detroit, T I R Co*, 81 Mich. App. 489; 265 N.W.2d 385 (1978), the Court said that it would have been impermissible to discharge an employee for refusing to falsify pollution control reports that were required to be filed with the state.[3]

[3] See also *Petermann v International Brotherhood of Teamsters, Chauffeurs, Warehousemen Helpers of America, Local 396*, 174 Cal.App.2d 184; 344 P.2d 25 (1959) (discharge because employee refused to give false testimony before legislative committee); *McNulty v Borden, Inc*, 474 F. Supp. 1111 (ED Pa, 1979) (discharge for refusal to participate in illegal price-fixing scheme).

696 In addition, the courts have found implied a *696 prohibition on retaliatory discharges when the reason for a discharge was the employee's exercise of a right conferred by a well-established legislative enactment. See, *e.g., Sventko v Kroger Co, supra; Hrab v Hayes-Albion Corp*, 103 Mich. App. 90; 302 N.W.2d 606 (1981). Both cases involved allegations of discharges in retaliation for having filed workers' compensation claims.[4]

[4] Most of the cases in other jurisdictions also involve allegations of discharge in retaliation for filing workers' compensation claims. *E.g., Frampton v Central Indiana Gas Co*, 260 Ind. 249; 297 N.E.2d 425 (1973); *Kelsay v Motorola, Inc*, 74 Ill.2d 172; 384 N.E.2d 353 (1979).

The plaintiff relies on two sources to establish that a "public policy" would be violated by allowing his discharge to stand. First, he argues that the Code of Ethics of the Institute of Internal Auditors is such an expression of public policy. Second, he points to the extensive regulation of the accounting systems of public utilities by the Public Service Commission. *E.g.*, MCL 483.113; MSA 22.1323. He maintains that his complaints about the internal accounting practices of the defendant, which he alleges led to his discharge,

related to matters that could have interfered with the Public Service Commission's ability to perform its regulatory functions.

We agree with the Court of Appeals that this case involves only a corporate management dispute and lacks the kind of violation of a clearly mandated public policy that would support an action for retaliatory discharge. The code of ethics of a private association does not establish public policy. Nor is the regulation of public utilities sufficient to sustain the plaintiff's action. The regulation of the accounting systems of utilities is not, as is the workers' compensation statute, 697 directed *697 at conferring rights on the employees. Finally, we note that the plaintiff does not claim that his discharge arose from his refusal to falsify reports or documents required by the Public Service Commission.

The judgment of the Court of Appeals is affirmed.

COLEMAN, C.J., and KAVANAGH, WILLIAMS, LEVIN, FITZGERALD, RYAN, and BLAIR MOODY, JR., JJ., concurred.

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