

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000283-MR

WILLIE LOVE TALLEY

APPELLANT

v.

APPEAL FROM ANDERSON CIRCUIT COURT
HONORABLE CHARLES R. HICKMAN, JUDGE
ACTION NO. 14-CI-00168

RONALD MCCAULEY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, J. LAMBERT AND THOMPSON, JUDGES.

COMBS, JUDGE: Willie Love Talley appeals from an order of the Anderson Circuit Court dismissing his action against Ronald McCauley for tortious interference with his employment relationship. We conclude that Talley failed to establish the essential elements of his claim. Consequently, we affirm.

The following facts are not in dispute. In August 2013, Talley began work as a used-automobile sales representative for Fox Auto Superstore. Before it

ceased operations in April 2014, Fox Auto had locations in both Lawrenceburg, Kentucky, and in Nicholasville, Kentucky. Talley indicated in his complaint that he worked at both locations. Fox Auto was operated by Richard Foxworthy.

Foxworthy and his associate, Ronald McCauley, organized a six-day sales promotion at Fox Auto's Lawrenceburg location. McCauley brought used vehicles from the Nicholasville facility to sell at the event. Talley worked selling vehicles at the Lawrenceburg location during the first day of the sales event and sold four automobiles. Talley was then assigned to work at Fox Auto's Nicholasville location for the remainder of the sales event.

On May 27, 2014, Talley filed a complaint alleging that McCauley had tortiously interfered with his employment by "inducing and coercing" his employer to prohibit him (Talley) from working at the Lawrenceburg sales event. Without answering the complaint, McCauley filed a motion to dismiss, asserting as his defense Talley's failure to state a claim upon which relief can be granted. In his motion for judgment on the pleadings, McCauley indicated that he was also entitled to judgment as a matter of law under the provisions of CR¹ 56. In support of his motion for summary judgment, McCauley filed the affidavit of Richard Foxworthy. In response, Talley filed his own affidavit and copies of print advertisements promoting Fox Auto's six-day sales event in Lawrenceburg.

In an order entered on December 2, 2014, the Anderson Circuit Court granted the motion to dismiss. The court determined that although Talley's

¹ Kentucky Rules of Civil Procedure.

complaint raised a claim of unlawful interference with a contract, he failed to allege the existence of a contract of employment. The court denied Talley's motion to set aside the order, and this appeal followed.

Talley argues on appeal that the trial court erred by dismissing his complaint on the basis that it does not state a claim for which relief can be granted since the complaint referred to McCauley's interference with his rights under a contract. Talley contends that employment of any kind always implies the existence of a contractual relationship between the employee and the employer for remuneration and that this relationship was central to the allegations contained in his complaint.

Before addressing the merits of Talley's contention, we must establish our standard of review. While McCauley filed a motion for judgment on the pleadings, he also presented an affidavit to the trial court in support of his alternative motion for summary judgment. Talley filed his own affidavit and several exhibits. Since matters outside the pleadings were presented to and not excluded by the trial court, the motion to dismiss was effectively converted to one for summary judgment pursuant to the provisions of CR 12.2. *McCray v. City of Lake Louisville*, 332 S.W.2d 837, (Ky.1960). As a result, we must examine the pleadings, *together with the affidavits and exhibits*, to determine whether McCauley has shown that there is no genuine issue as to any material fact and that he is entitled to judgment as a matter of law. CR 54.03; *Hoke v. Cullinan*, 914 S.W.2d 335 (Ky.1995). We must view the evidence of record in a light most

favorable to Talley as the party opposing the motion. *Steelvest, Inc., v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky.1991).

To establish that McCauley unlawfully interfered with Talley's employment arrangement, Talley must show: (1) that a contract existed; (2) that McCauley had knowledge of the contract; (3) that McCauley intended to cause a breach of that contract; (4) that McCauley's actions did indeed cause a breach; (5) that Talley suffered damages as a result of the breach; and (6) that McCauley had no privilege or justification to excuse his conduct. *Snow Pallet, Inc., v. Monticello Banking Co.*, 367 S.W.3d 1 (Ky.App. 2012).

Talley has never alleged that he was anything other than an at-will employee of Fox Auto. The characteristics defining that particular employment relationship, coupled with the absence of an allegation that Talley was in some other manner entitled to work at the Lawrenceburg sales event, lead us to conclude that Foxworthy retained the discretion to assign Talley to work at either car lot location or at neither of them. Foxworthy did not breach any contract provision by assigning Talley to the Nicholasville car lot for the duration of the sales event because Talley had no contractual right to be assigned to the sales event.

The only agreement that might conceivably have been breached under Talley's at-will employment arrangement was one for the exchange of remuneration for services provided. Talley did not establish the existence of a breach of any agreement for remuneration of his services to Fox Auto, which is an

essential element of his claim. Thus, Talley's claim of unlawful interference with a contract failed as a matter of law. *Snow Pallet, Inc., supra.*

Talley received an adequate opportunity to present all the evidence that he desired to present in this matter. The trial court did not err in its application of the law, and the undisputed evidence demonstrated that McCauley was entitled to summary judgment. Consequently, the trial court did not err by dismissing the action against him.

We affirm the judgment of the Anderson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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