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Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001975-MR

JERRY FIELDS

APPELLANT

v. APPEAL FROM TAYLOR CIRCUIT COURT
HONORABLE ALLAN RAY BERTRAM, JUDGE
ACTION NO. 13-CI-00144

RICK BENNINGFIELD, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY AS
TAYLOR COUNTY JAILER; EDDIE
“HACK” MARCUM, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY
AS TAYLOR COUNTY JAILER;
TAYLOR COUNTY FISCAL COURT;
EDDIE ROGERS, TAYLOR COUNTY
JUDGE EXECUTIVE; JAMES JONES,
MAGISTRATE; JOHN GAINES,
MAGISTRATE; TOMMY CORBIN,
MAGISTRATE; MATT PENDLETON,
MAGISTRATE; ED GORIN, MAGISTRATE;
AND RICHARD PHILLIPS, MAGISTRATE

APPELLEES

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: J. LAMBERT, NICKELL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Jerry Fields appeals from a November 24, 2015, order of the Taylor Circuit Court granting summary judgment for Rick Benningfield, individually, and in his official capacity as Taylor County Jailer; Eddie “Hack” Marcum, individually and in his official capacity as Taylor County Jailer; Taylor County Fiscal Court; Eddie Rogers, Taylor County Judge Executive; James Jones, Magistrate; John Gaines, Magistrate; Tommy Corbin, Magistrate; Matt Pendleton, Magistrate; Ed Gorin, Magistrate; and Richard Phillips, Magistrate (collectively referred to as appellants) on Fields’ wrongful termination of employment claim as an employee of the Taylor County Jail. For the reasons stated, we reverse and remand.

I. BACKGROUND

Fields began his employment with the Taylor County Jail (Jail) effective November 1, 2008. Fields’ initial title was deputy jailer; in March 2009, Fields was promoted to sergeant (although he did not receive an increase in pay because of budget constraints). At that time, the Taylor County Jailer was appellee Rick Benningfield and the chief deputy jailer was Kevin Wilson. In early June of 2009, Fields discussed the possibility of decreasing his hours to part-time in order to

spend more time on his dairy farm; but, he ultimately decided to remain as a full-time employee so that he could maintain his health benefits.

On June 11, 2009, Fields was injured on the job when he assisted in restraining an unruly inmate at the Jail. He filed for and received worker's compensation benefits during his extended medical leave. Fields had surgery to repair the injury (a tear in his rotator cuff) in August 2009. Fields testified that, in follow up visits post-surgery, his doctor informed him that there was a second, deeper tear in that shoulder. Fields never had the recommended additional surgery. He was only released to perform light duty work, with no lifting over 20 pounds, no repetitive or overhead work, and he was to avoid restraint situations (associated with work as a corrections officer).

Benningfield (Jailer) informed Fields that the Jail had no light duty work and that every deputy was required to be able to subdue a prisoner. Meanwhile, the Jailer had to use two or more part-time employees in lieu of Fields to cover Fields' duties on the duty roster. Fields was required to report his medical status periodically to the Jailer and maintain his medical leave excuses.

On March 10, 2010, medical leave for Fields expired. According to the depositions of the Jail's witnesses, attempts to reach Fields were unsuccessful. On March 15, 2010, a notice of termination letter signed by chief deputy Wilson was sent to Fields via U. S. mail (first class). The letter, from which we quote, stated five reasons for the termination:

1. Doctors excuse expired as of 03-10-2010.

2. FMLA leave - you are not eligible for this because you had not worked 1 year prior to leave starting.
3. Cervical neck injury you are claiming as your injury at this time is not related to the shoulder injury that workman comp. claim started with.
4. No attempt has been made to contact the Taylor County Detention Center.
5. Failure to contact employer on status of injury.

This letter is also to inform you that your health insurance, dental and life insurance will expire on 03-31-2010.

Any further questions need to be addressed to the County Attorney.

Fields received the letter on March 20, 2010, and contacted Eddie Rogers, the County Judge Executive, shortly thereafter. Rogers informed Fields that he was entitled to a post-termination hearing and Fields was referred to the county attorney to pursue the hearing. Fields did not avail himself of that opportunity. Fields also admitted in his deposition that he had received copies of the personnel policies manual and had in fact signed written acknowledgements of receiving the handbooks. Grievance procedures were outlined in those documents.

The worker's compensation claim was settled in 2011. Fields initially filed suit in federal court in 2011, asserting various claims including violation of his Fourteenth Amendment due process rights and pendent state claims of wrongful discharge and retaliation. The United States District Court for the Western District of Kentucky granted judgment for the defendants and the Sixth Circuit Court of Appeals affirmed that decision in 2013.¹

¹ *Fields v. Benningfield*, No. 1:11CV-00041-JHM, 2012 WL 5497918, at *2 (W.D. Ky. Nov. 13, 2012), *aff'd*, 544 F. App'x 626 (6th Cir. 2013).

This action was filed in Taylor Circuit Court on April 12, 2013, pursuant to Kentucky Revised Statute (KRS) 342.197 (1) (“No employee shall be harassed, coerced, discharged, or discriminated against in any manner whatsoever for filing and pursuing a lawful claim under this chapter.”). In other words, Fields alleged he was wrongfully terminated for filing a workers’ compensation claim in Kentucky in violation of KRS 342.197. The defense filed a motion for summary judgment. After the parties briefed the issues, and oral argument was held, the Taylor Circuit Court granted appellees’ motion for summary judgment stating only that there were “no genuine issues as to any material facts,” without any discussion of the workers’ compensation claim. This appeal followed.

II. STANDARD OF REVIEW

The standard of review upon appeal of an order granting summary judgment is “whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996) (citing Kentucky Rules of Civil Procedure (CR) 56.03). And, it is imperative that the record is viewed in a light most favorable to the nonmoving party and that “all doubts are to be resolved in his favor.” *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991).

Based upon our review of the record on appeal, including appellant’s prehearing conference statement, the parties’ briefs on appeal, and the related

decisions of the federal courts previously referenced, we conclude that only one viable issue has been raised in this appeal, namely whether appellant's employment was terminated for filing a workers' compensation claim in violation of KRS 342.197. To the extent that appellees argue that this issue is precluded by *res judicata* by virtue of the federal decisions in their favor, that argument is without merit. The federal courts did not address the state law wrongful termination claim under KRS 342.197.² All constitutional due process claims, whether they were asserted under federal or state law, have been resolved in favor of appellees in accordance with the federal decisions. Our review thus proceeds accordingly.

III. ANALYSIS

(i) Immunity Defense

Appellees argue that the claim asserted by appellant on appeal is barred by some form of immunity, whether it be absolute sovereign immunity or individual qualified official immunity. We do not reach appellees' arguments on this issue as we conclude as a matter of law that KRS 342.197 constitutes a waiver of immunity for claims against any governmental entity or government employer who violates the statute.

KRS 342.630(2) clearly provides that the state of Kentucky and its agencies, as well as all counties and cities, are deemed employers subject to KRS Chapter 342 as concerns workers' compensation. Accordingly, employees of these

² We note that the United States District Court for the Western District of Kentucky dismissed Jerry Fields' state law claims without prejudice, upon resolution of the due process claims.

government entities are subject to the workers' compensation laws. KRS

342.640(3).

KRS 342.197(1), which is a statutory exception to the general rule in Kentucky that employees are terminable at will, provides that Kentucky employees will not be discriminated against for pursuing workers' compensation claims against their employer, which includes termination of employment. Fields is an employee under KRS 342.640(3), and Taylor County is an employer required to comply with KRS Chapter 342 under KRS 342.630(2). Moreover, KRS 342.197(3) states “[a]ny individual injured by any act in violation of the provisions of subsection (1) or (2) of this section shall have a civil cause of action in Circuit Court to enjoin further violations, and to recover the actual damages sustained by him, together with the costs of the law suit, including a reasonable fee for his attorney of record.”

The statutory scheme of KRS Chapter 342 therefore establishes that the Kentucky General Assembly broadly intended for there to be no distinction regarding the application of KRS Chapter 342 between government and private employees. KRS 342.197 sweepingly, and without any exceptions, provides that “[n]o employee” may be retaliated against for seeking workers' compensation benefits. Given that plain statutory language, we cannot judicially add an exemption for county or government employees. *See, e.g., Lindall v. Ky. Ret. Sys.*, 112 S.W.3d 391 (Ky. App. 2003). Given the overall structure and language of KRS Chapter 342, we conclude the General Assembly did not intend to leave government employees without a recourse upon being wrongfully terminated from employment

for filing a workers' compensation claim due to some form of government immunity.

Though the question of whether KRS 342.197 is a waiver of immunity is an apparent matter of first impression in Kentucky, our conclusion is in accord with the Kentucky Supreme Court's analogous interpretation of the Kentucky Civil Rights Act (KCRA) in *Department of Corrections v. Furr*, 23 S.W.3d 615 (Ky. 2000). The KCRA does not contain an express waiver of immunity, and in *Furr*, the Commonwealth asserted that it had sovereign immunity against a gender discrimination suit. The Court in *Furr* analyzed the terms of the KCRA and then concluded that the KCRA waived immunity "by overwhelming implication[.]" *Furr*, 23 S.W.3d at 618. In forceful language directly applicable to the case at hand, the court held the KCRA would be "hollow words indeed" if it did not protect against "acts of discrimination committed by the Commonwealth itself, or in its name." *Id.* at 617.

We conclude that the clear and unequivocal language of KRS Chapter 342 provides that immunity has been waived "by overwhelming implication" for claims brought under KRS 342.197 against government entities and officials. *Id.* Any contrary conclusion would render the protections of KRS 342.197 afforded to government employees in Kentucky to be meaningless.

(ii) Employment Wrongful Termination Claim – KRS 342.197

Having concluded that Fields' workers' compensation retaliation claim against appellees is not foreclosed by immunity, we must now determine whether

appellees were nonetheless entitled to summary judgment. Because there are genuine issues of disputed material facts from the record below, we conclude appellees were not entitled to summary judgment.

Kentucky courts use a burden shifting approach to claims for violations of KRS 342.197(1). *See, e.g., Dollar General Partners v. Upchurch*, 214 S.W.3d 910 (Ky. App. 2006). Once a prima facie case is established, the employer must then show a nonretaliatory reason for the adverse employment action. *Id.* The case then proceeds for the plaintiff to prove their case to the trier of fact. *Id.* However, an extended discussion of the intricacies of that three-part standard in relation to this case is unnecessary because there are clear issues of material fact which preclude summary judgment.

Appellees, to support Fields' termination, primarily rely upon the assertion that Fields failed to update the Jail sufficiently regarding his medical status while he was on medical leave and receiving workers' compensation benefits. Appellees also stress that Fields failed to provide medical documentation showing that he needed to remain off work past his termination date. Indeed, we do not see such medical documentation in the record on appeal. In addition, Fields did not request any type of post-termination hearing before either the Jailer and/or the county judge-executive.

However, Fields also has presented evidence below which, if believed by a fact-finder, could establish that his termination violated KRS 342.197, including the following:

- Fields testified that he came to the Jail after each doctor's visit to update his employer, including in late February 2010, shortly before his termination.
- After the injury, Fields alleges the Jailer told Fields that he (Benningfield) would like to fire him (Fields) but could not do so because Fields was receiving workers' compensation benefits.
- Instead of giving a notice of intent to terminate employment to Fields, as would have been proper under the relevant county employee manuals, Chief Deputy Wilson sent Fields a letter informing him he had been fired effective five days prior to the date of the letter which could arguably have been intended to deprive Fields of his right to seek a pretermination hearing with the Jailer and/or the county judge-executive (where he presumably would have had the opportunity to present medical proof that he needed to remain off work).
- Fields was apparently the only Jail employee who had ever been terminated by notice through the mail at the time of his termination.
- Wilson, by his own admission, had no personal knowledge of many of the allegations contained in the termination letter that he signed.
- Benningfield testified that Fields was the first Jail employee during Benningfield's term as jailer who was injured on the job seriously enough to be off work.

- Once it became known that Fields required surgery from his work-related injury, both Benningfield and Wilson avoided Fields, and no one from the Jail thereafter called to check on him.

Fields' burden of proof to avoid a directed verdict at trial is only that he establish he was a protected employee who filed a workers' compensation claim, whereupon an adverse employment action was taken and Fields' workers' compensation claim was a substantial and motivating factor in the decision to terminate his employment. *Dollar General Partners*, 214 S.W.3d 910. Based upon our review, there are substantial disputed facts in this case in regard to whether Fields' termination was motivated by the filing of a workers' compensation claim. Given these factual disputes, entry of summary judgment was improper on Fields' wrongful discharge claim against appellees under KRS 342.197 in this case.

IV. Conclusion

For the foregoing reasons, the summary judgment of the Taylor Circuit Court is reversed and remanded for further proceedings consistent with this opinion.

NICKELL, JUDGE, CONCURS.

LAMBERT, J., JUDGE, DISSENTS.

BRIEF FOR APPELLANT:

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Bowling Green, Kentucky

BRIEF FOR APPELLEES:

Winter R. Huff
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