

RENDERED: APRIL 27, 2018; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000345-MR

DEBRA MARSHALL

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 15-CI-00276

MONTAPLAST OF NORTH AMERICA, INC.

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, JOHNSON, AND TAYLOR, JUDGES.

DIXON, JUDGE: Debra Marshall appeals from an order of the Franklin Circuit Court dismissing her complaint pursuant to CR¹ 12.02. Finding no error, we affirm.

¹ Kentucky Rules of Civil Procedure.

Marshall was employed by Montaplast of North America, Inc. for approximately sixteen years. On January 29, 2015, Marshall informed some of her coworkers that one of their supervisors was a registered sex offender; shortly thereafter, Montaplast terminated Marshall's employment. Marshall filed a complaint in Franklin Circuit Court alleging wrongful discharge in violation of public policy. Marshall asserted her termination was contrary to the public policy that citizens should be able to freely access information regarding registered sex offenders, as evidenced by Kentucky's sex offender registration statutes. Montaplast moved to dismiss the complaint pursuant to CR 12.02(f), asserting Marshall's claim failed as a matter of law. The trial court subsequently granted the motion and dismissed Marshall's complaint. This appeal followed.

A motion to dismiss for failure to state a claim should be granted only if "it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim." *Pari-Mutuel Clerks' Union v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977). "In making this decision, the circuit court is not required to make any factual determination; rather, the question is purely a matter of law." *James v. Wilson*, 95 S.W.3d 875, 883-84 (Ky. App. 2002).

In *Grzyb v. Evans*, 700 S.W.2d 399, 400-01 (Ky. 1985), the Kentucky Supreme Court recognized a narrow public policy exception to the terminable-at-

will doctrine when the termination is “contrary to a fundamental and well-defined public policy as evidenced by . . . a constitutional or statutory provision.” The public policy exception gives rise to a cause of action for wrongful termination

only (1) where there are explicit legislative statements prohibiting the discharge, (2) where the alleged reason for the discharge . . . was the employee’s failure or refusal to violate a law in the course of employment, or (3) when the reason for the discharge was the employee’s exercise of a right conferred by well-established legislative enactment.

Mitchell v. University of Kentucky, 366 S.W.3d 895, 898 (Ky. 2012) (citations and internal quotation marks omitted). Furthermore, the policy underlying the action must be “clearly defined by statute and directed at providing statutory protection to the worker in his employment situation.” *Grzyb*, 700 S.W.2d at 400.

Marshall argues her complaint set forth an actionable claim against Montaplast for wrongful discharge because her termination was contrary to public policy as evidenced by KRS² 17.500 *et seq.* Marshall emphasizes KRS 17.510 and KRS 17.580 require a sex offender to submit certain information to be displayed “for public dissemination” on the registry website. She further points out KRS 17.580(5)(b) provides immunity from criminal and civil liability for “any person” who, in good faith, disseminates information from the registry website. According to Marshall, these statutes prohibited Montaplast from terminating her for

² Kentucky Revised Statutes.

exercising her right to disseminate sex offender registry information to her coworkers. In contrast, Montaplast contends Marshall's claim must fail because the sex offender registration statutes do not provide protection to Marshall in her employment situation, as required by *Grzyb, supra*.

“The concept of an employment-related nexus is critical to the creation of a clearly defined and suitably controlled cause of action for wrongful discharge.” *Grzyb*, 700 S.W.2d at 402 (internal quotation marks omitted). In *Shrout v. The TFE Group*, 161 S.W.3d 351, 355 (Ky. App. 2005), this Court affirmed the dismissal of a wrongful discharge claim premised on the Omnibus Transportation Employee Testing Act of 1991. The Court concluded the legislation provided a benefit to the safety of the general public; consequently, the statute's “primary purpose” was not to protect workers in the employment setting. *Id.*

After careful consideration, we agree with Montaplast that the registration statutes do not support Marshall's wrongful discharge claim. KRS 17.547 makes clear those who are immune from suit pursuant to the provisions of KRS 17.500 to KRS 17.580 and KRS 17.991. They include: law enforcement agencies; independent contractors acting under the direction of law enforcement; state and county officials; approved providers; and employees of law enforcement agencies. Clearly, the legislature had no intent to include private employers and

employees within the provisions of KRS 17.500 *et seq.* Consequently, we conclude Marshall simply cannot establish that the registration statutes are directed at providing “protection to the worker in his employment situation.” *Grzyb*, 700 S.W.3d at 400. Accordingly, we find no error in the trial court’s dismissal of Marshall’s complaint.

For the reasons stated herein, the order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Joshua S. Harp
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Oliver B. Rutherford
Louisville, Kentucky