

[Cite as *Riser v. Ohio Dept. of Edn.*, 2005-Ohio-175.]

IN THE COURT OF CLAIMS OF OHIO

DARRYL RISER :

Plaintiff : CASE NO. 2003-05411
Judge J. Warren Bettis

v. :
DECISION

OHIO DEPARTMENT OF :
EDUCATION :

Defendant :

: : : : : : : : : : : : : : : :

{¶ 1} Plaintiff brought this action against defendant, Ohio Department of Education (ODE), alleging wrongful termination of employment, loss of severance pay, defamation, and failure to reimburse him for expenses that he paid on behalf of Riser Military Academy (RMA), a community school¹ established under R.C. Chapter 3314. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} Plaintiff testified that he was the developer, founder, and operator of RMA and that the State Board of Education² agreed to sponsor the school. The State Board of Education and the governing authority of RMA executed a community school contract that began on July 1, 1999, with an expected termination date of June 30, 2004. (Plaintiff's Exhibit A4.) According to ODE, RMA opened in the fall of 1999 and operated for a few months despite

¹Community schools are independently governed public schools that are funded from state revenues according to the provisions of R.C. Chapter 3314. Pursuant to R.C. 3314.02(C)(1)(d), each community school has a public sponsor. R.C. 3314.03 requires that the community school's sponsor and governing authority enter into a contract that outlines a comprehensive educational plan.

²Pursuant to R.C. 3301.13, ODE is the administrative unit charged with implementing the policies and directives of the State Board of Education.

overwhelming problems with building renovations that were necessary to create classrooms, with lack of books and materials, and with various health and safety concerns. Plaintiff served as a member of the governing board and as superintendent of the school. During October, November, and December 1999, ODE met with plaintiff and conducted site visits to investigate complaints that ODE had received from parents and teachers of students enrolled at RMA. After determining that there were numerous health and safety violations that could not be remedied in a timely fashion, ODE notified RMA in early 2000 that it intended to terminate the community school contract, effective July 5, 2000.³ (Plaintiff's Exhibit A17.)

{¶ 3} A hearing was held before the state board on February 16, 2000, where additional contract violations by RMA were discussed. The allegations against RMA included failure to provide computer technology; failure to purchase books, materials, and supplies; failure to offer breakfast and lunch service; failure to complete construction within the school building; and failure to hire properly certified teachers. Plaintiff, as superintendent of the school, was given ample opportunity to respond to the allegations and to present witness testimony. The committee subsequently recommended to the Board of Education that the school contract be terminated. An audit of RMA was conducted at the request of ODE and the results confirmed that RMA failed to keep proper records documenting cash disbursements, expense/receipt ledgers, and monthly banking transactions, or to submit the requisite monthly

³The parties acknowledged in their respective post-trial briefs that prior to trial this court granted defendant's motion for partial summary judgment on the claims asserted by plaintiff concerning his status as a third-party beneficiary to the community school contract.

contributions for the teachers to State Teachers Retirement System (STRS). Due to poor fiscal management that resulted in a lack of sufficient operating funds, the school was forced to close early in the spring of 2000. Plaintiff asserted that after the community school failed, he expended personal monies for certain debts that remained outstanding. Plaintiff maintained that agencies such as STRS and the Bureau of Workers' Compensation obtained judgments against RMA but that he was not held personally responsible for the judgments. Notwithstanding this admission, plaintiff stated that he made several payments to creditors as a gesture of good will because people in the community viewed him as personally responsible for the debts of the school.

{¶ 4} At trial, plaintiff argued that he was a state employee, that ODE was his employer and that, accordingly, ODE should not only reimburse him for his expenses but also provide him with severance pay. Plaintiff further maintained that ODE personnel made derogatory statements about him that he claimed amounted to defamation. Defendant asserted that plaintiff cannot prevail on any of his causes of action because: 1) ODE was not his employer, it was merely the sponsor of the community school; 2) plaintiff was an employee of RMA, not ODE; 3) plaintiff was not legally liable for the expenses he voluntarily paid; and 4) plaintiff failed to identify any defamatory statements allegedly communicated about him by ODE personnel.

{¶ 5} Plaintiff references twenty factors identified by the Internal Revenue Service to distinguish whether an employer-employee relationship exists, as evidence to bolster his theory that he is a common-law employee of ODE. In comparing some of these characteristics to his own circumstances, plaintiff asserts

that defendant controlled the time, place, and manner for the school's operation; designated the hours and days of work; and allocated funds which were used, in part, to pay his salary. Thus, plaintiff concludes that by virtue of ODE's control over his working conditions, he was an ODE employee.

{¶ 6} Defendant maintains that plaintiff was never an employee of ODE inasmuch as plaintiff never applied for a position or filled out an application. ODE contends that plaintiff prepared and signed his own paychecks for work that he performed as an employee of RMA and that his salary was determined by the governing authority of RMA. In essence, ODE argues that the authority functioned as plaintiff's supervisor, not ODE. Further, ODE maintains that any indirect control exercised over plaintiff was authorized either by the community school contract or by statute, and that any such control was directed through RMA. Indeed, ODE insists that plaintiff was statutorily barred from dual employment with ODE and a community school.⁴ Defendant contends that plaintiff continues to blur the distinction between RMA and himself.

⁴R.C.102.04(A) states that:

“(A) Except as provided in division (D) of this section, no person elected or appointed to an office of or employed by the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts, shall receive or agree to receive directly or indirectly compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter that is before the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts. ***“(D) A public official who is appointed to a nonelective office or a public employee shall be exempted from division (A), (B), or (C) of this section if both of the following apply:“(1) The agency to which the official or employee wants to sell the goods or services, or before which the matter that involves the rendering of his services is pending, is an agency other than the one with which he serves;“(2) Prior to rendering the personal services or selling or agreeing to sell the goods or services, he files a statement with the appropriate ethics commission, with the public agency with which he serves, and with the public agency before which the matter is pending or that is purchasing or has agreed to purchase goods or services.”

{¶ 7} Upon review of all the evidence submitted, the court finds that plaintiff failed to prove, by sufficient credible evidence, that he was an employee of ODE. To the contrary, the court finds that plaintiff was employed solely by RMA. Plaintiff admitted that the only money he received directly from ODE was in the form of reimbursement for travel expenses to attend a training seminar. Plaintiff acknowledged that, after the school closed, he had some limited conversations with ODE board members but that he was not offered or promised severance pay.

{¶ 8} In his post-trial brief, plaintiff cites R.C. 4115.13 (C) and (H) as authority for his claim that defendant owes him severance pay. The court finds that plaintiff's reasoning is less than clear. Plaintiff apparently contends that ODE is liable to him for "intentional misclassification of employees for the purpose of reducing wages." Plaintiff argues that ODE categorized him as an independent contractor instead of as an employee. However, the court finds that plaintiff's reliance on the statute is misplaced. R.C. Chapter 4115 concerns prevailing wage law as it relates to construction of public works and, as such, is inapplicable to the instant action.

{¶ 9} In addition, the court finds no support for plaintiff's position that ODE must reimburse him for monies he paid to creditors of RMA. Although plaintiff voluntarily paid money to various creditors, the court finds that he was not legally required to do so and that ODE is not liable for the reimbursement of such expended funds. Pursuant to statute, neither the sponsor nor the governing authority may be held liable for the debts of a community school. See R.C. 3314.07 and 3314.071.⁵ Accordingly, the court

⁵According to the language of R.C.3314.07(E), "[a] sponsor of a community school and the officers,

finds that all of plaintiff's claims based on his alleged employment with ODE are without merit.

{¶ 10} Plaintiff also asserts a claim against defendant for defamation. To establish a claim for defamation, plaintiff must prove by a preponderance of the evidence that a false publication caused injury to his reputation, or exposed him to public hatred, contempt, ridicule, shame, or disgrace, or affected him adversely in his trade or business. *Ashcroft v. Mt. Sinai Medical Ctr.* (1990), 68 Ohio App.3d 359, 365.

{¶ 11} Absent a "publication" of some sort made by defendant, plaintiff cannot establish a prima facie case of defamation. *Froehlich v. Ohio Dept. of Mental Health*, 123 Ohio Misc.2d 1, 2003-Ohio-1277.

{¶ 12} At trial, plaintiff insisted that ODE personnel made derogatory comments about him with malice and reckless disregard for the truth, that defendant's personnel uttered such statements about him to others, and that such statements amounted to defamation. Plaintiff produced copies of local television newscasts wherein the school's viability and teaching methods were questioned. Plaintiff claims that ODE employees were responsible for the unflattering portrayal that he received during the media broadcasts. However, defendant denied any responsibility for the content of the newscasts and further denied that it published or

directors, or employees of such a sponsor are not liable in damages in a tort or other civil action for harm allegedly arising from either of the following: "(1) A failure of the community school or any of its officers, directors, or employees to perform any statutory or common law duty or responsibility or any other legal obligation; "(2) An action or omission of the community school or any of its officers, directors, or employees that results in harm."

R.C. 3314.071 states, in pertinent part, that "[n]o officer, director, or member of the governing authority of a community school incurs any personal liability by virtue of entering into any contract on behalf of the school."

communicated any defamatory comments about plaintiff to others. None of the witnesses who testified could recall overhearing any defamatory statements made by ODE personnel. In addition, the court finds that plaintiff failed to identify the specific statement or statements that he alleges are defamatory. Upon review of all the testimony and evidence presented, the court finds that plaintiff's evidence is insufficient to meet his burden on his claim of defamation.

{¶ 13} In his post-trial brief, plaintiff also alleges that defendant engaged in the intentional infliction of emotional distress when it sought to terminate the community school contract and thus, deprive plaintiff of his income. The following elements must be met in order to sustain a claim for intentional infliction of emotional distress:

{¶ 14} "(1) that the actor either intended to cause emotional distress or knew or should have known that actions taken would result in serious emotional distress to the plaintiff, (2) that the actor's conduct was so extreme and outrageous as to go beyond all possible bounds of decency and was such that it can be considered as utterly intolerable in a civilized community, (3) that the actor's actions were the proximate cause of the plaintiff's psychic injury, and (4) that the mental anguish suffered by the plaintiff is serious and of a nature that no reasonable man could be expected to endure it. *** Serious emotional distress requires an emotional injury which is both severe and debilitating." *Burkes v. Stidham* (1995), 107 Ohio App.3d 363, 375, citing *Ashcroft v. Mt. Sinai Medical Ctr.*, supra.

{¶ 15} The Supreme Court of Ohio has emphasized that "mere insults, indignities, threats, annoyances, petty oppressions, or

J. WARREN BETTIS
Judge

Entry cc:

Darryl Riser
2993 Stonebluff Drive
Columbus, Ohio 43232

Plaintiff, Pro se

Peggy W. Corn
Assistant Attorney General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

Attorneys for Defendant

Mindy A. Worly
Assistant Attorney General
Attorney General's Office
Education Section
30 East Broad Street, 16th Fl.
Columbus, Ohio 43215

SJM/cmd
Filed January 3, 2005
To S.C. reporter January 19, 2005