

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

Laurel Matthews, M.D.

Court of Appeals No. S-13-012

Appellant

Trial Court No. 10CV441

v.

Exigence of Fremont, LLC, et al.

DECISION AND JUDGMENT

Appellees

Decided: December 30, 2013

* * * * *

Laurel A. Matthews, pro se.

Brian D. Sullivan and Kenneth P. Abbarno, for appellee
Exigence of Fremont, LLC.

Rebecca E. Shope, Terrance K. Davis and Katherine S. Decker,
for appellee Memorial Hospital.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Sandusky County Court of
Common Pleas, which granted motions for summary judgment filed by appellees,

Exigence of Fremont, LLC (“Exigence”) and Fremont Memorial Hospital (“Memorial”), and dismissed an amended complaint filed by appellant, Laurel Matthews, M.D., J.D. For the following reasons, we hereby affirm the trial court’s judgment.

{¶ 2} The record contains the following undisputed facts. On December 1, 2009, appellant and Exigence entered into an agreement whereby appellant agreed to provide medical services in an emergency room setting to certain hospitals designated by Exigence. In return, Exigence agreed to reimburse appellant for working 12-hour shifts at one or more designated hospitals according to a schedule that was published several months in advance.

{¶ 3} Pursuant to her agreement with Exigence, appellant worked four 12-hour shifts at Memorial in December 2009. However, during her third and fourth shifts on December 12 and 13, 2009, issues arose that caused the nursing staff at Memorial to complain to Dr. Robert Marshall, Memorial’s Vice President of Professional Affairs and Administrator on Call. Those complaints called appellant’s professional conduct into question. After speaking with several members of the nursing staff on duty during those shifts, Marshall decided to report those issues to John Yanes, who was Memorial’s CEO at the time. At Yanes’ direction, Marshall reported the issues to Irene Nye at Exigence. In response to Marshall’s concerns, Nye promised to investigate the issues. She also agreed, at Marshall’s request, to temporarily remove appellant from Memorial’s ER schedule while the investigation was pending.

{¶ 4} On December 30, 2009, after Exigence completed its investigation, appellant was notified that her services were no longer needed by Exigence. At the same time, Exigence notified Memorial that its contract with appellant was terminated.

{¶ 5} On April 12, 2010, appellant filed a complaint against Exigence and Memorial. Count 1 of the complaint alleged breach of contract by Exigence, for which appellant demanded payment of damages in excess of \$25,000. In Count 2 of the complaint, appellant alleged that Memorial “intentionally and without justification caused Exigence to breach the terms of the Contract and terminate the relationship between [appellant] and Exigence.” In addition to seeking damages from Memorial and Exigence for lost wages, appellant also sought court costs, interest, and attorneys’ fees.

{¶ 6} On May 7, 2010, appellant filed her first amended complaint, in which she essentially set forth the same causes of action against Memorial and Exigence. Attached to the amended complaint were copies of the agreement between appellant and Exigence, and a letter from appellant’s attorney to Exigence, dated February 3, 2010. In the letter, appellant’s attorney stated that, as a result of Exigence’s breach of the agreement, appellant suffered monetary losses of \$40,000. The letter also stated that a restrictive covenant in the agreement was too broad in scope and duration, given the circumstances under which appellant’s association with Exigence was terminated.

{¶ 7} On May 14, 2010, Exigence filed a motion to dismiss the amended complaint on the basis of improper venue. In support, Exigence stated that, pursuant to paragraph 9.6 of the agreement, the parties agreed that any disputes between them would

be governed by New York law and that any actions thereon would be brought in Erie County, New York. On May 17, 2010, Memorial filed an answer to the amended complaint. Appellant filed a response to Exigence's motion to dismiss on May 28, 2010, to which Exigence filed a reply on June 7, 2010. On June 23, 2010, the trial court denied Exigence's motion.

{¶ 8} On July 6, 2010, Exigence filed an answer to the amended complaint and a counterclaim, in which it asserted that it was appellant who breached the terms of the agreement, and also alleged that the filing of the amended complaint amounts to "frivolous conduct" that unnecessarily caused Exigence to incur "attorney fees, court costs, and other damages." On August 3, 2010, appellant filed a motion to dismiss the counterclaim, to which Exigence filed a reply on August 20, 2010.

{¶ 9} Exigence filed a motion for summary judgment on May 27, 2011, in which it stated that appellant was not entitled to judgment as a matter of law. In support, Exigence argued that, pursuant to the terms of the Physician Services Agreement ("Agreement"), it had the right to dismiss appellant because she was removed from the schedule at Memorial pending the investigation. Attached to Exigence's motion was a copy of the Agreement, and the affidavit of Exigence Senior Practice Manager Irene Nye.

{¶ 10} Article VIII of the Agreement states, in relevant part, that:

8.1 Events of Termination. This Agreement shall be terminated immediately, unless an alternative time frame is stated hereunder, upon the happening of any of the following events:

* * *

(iii) If any Designated Facility requests Physician's removal from the schedule of physician staffing * * *.

{¶ 11} Nye stated in her affidavit that “[i]n December 2009, Fremont Memorial Hospital, through its representative, requested Dr. Laurel Matthews’ removal from the schedule of physician staffing at the hospital.”

{¶ 12} On June 1, 2011, Memorial filed a motion for summary judgment, in which it stated that appellant cannot support her claim of tortious interference against Memorial as a matter of law. Attached to Memorial’s memorandum in support were the affidavits of Memorial’s Administrator, Dr. Marshall, and its CEO John C. Yanes, and appellant’s discovery deposition.

{¶ 13} In his affidavit, Yanes stated that he was informed by Marshall of “potentially serious problems” involving appellant’s professional performance in December 2010. Yanes stated that, in response, he instructed Marshall to report the concerns to Exigence. He stated that he agreed with Marshall’s suggestion to remove appellant from the hospital schedule while the matter was investigated. Yanes further stated that he intended to make a decision about appellant’s return to the schedule after the investigation was complete, and he did not demand that appellant be permanently removed from the schedule. Yanes also said that he had no reason to disbelieve Nye’s statement that appellant did not have a contract with Exigence.

{¶ 14} Attached to Yanes' affidavit was a letter from Nye to Marshall and Yanes, in which Nye stated that Exigence did not have a contract with appellant, and that appellant had been told she "is no longer considered a potential candidate" to work at Memorial based on feedback during her "trial period" at the hospital. Also attached were copies of several reports written by Memorial employees who observed appellant's behavior. In those reports, appellant was characterized as "disheveled," "loud," "unprofessional," "irate," and "threatening" when talking to personnel at the Cleveland Clinic on the telephone, and engaging in the use of inappropriate language when discussing the medical condition of a gynecological patient when others could overhear the conversation.

{¶ 15} Marshall stated in his affidavit that he was informed of "potentially serious problems involving Dr. Matthews" following her mid-December shifts. Specifically, Marshall stated that he was told appellant focused exclusively on a patient that she wanted to admit to the Cleveland Clinic, while the rest of the emergency room was left unattended. Matthews also stated that appellant was heard yelling on the phone in a "belligerent" tone. After being so informed, Marshall stated that he contacted Nye, who said that Exigence would investigate the issue. Marshall also stated that he suggested appellant's removal from the schedule pending results of the investigation, which Yanes approved. He was later informed that appellant had no contract with Exigence, and that she would no longer be working at Memorial. Attached to Marshall's affidavit were the same documents used to support Yanes' affidavit.

{¶ 16} Appellant filed what purported to be a combined response to Memorial’s and Exigence’s summary judgment motions on June 29, 2011. However, the substance of appellant’s response was addressed only to Memorial’s summary judgment motion. In that response, appellant argued that sufficient issues of material fact exist to prevent summary judgment. Specifically, appellant argued that Memorial had knowledge of the existence of her contract with Exigence by virtue of the fact that she “was showing up and providing ER services,” and because Exigence was paying her professional malpractice premiums. In addition, appellant argued that, without a contract, her employment with Exigence would have been in violation of federal law.

{¶ 17} Appellant further argued that she was “warned” by Exigence employee Sami Manirath that Yanes’ and Memorial’s attorneys did not want her to work for Memorial, and that her removal from the schedule was not done in response to “any sworn statements by any direct witnesses to the situation.” Appellant also argued that Marshall removed her from the schedule without discussing the matter with her personally, and there were no “clinical reasons” for her removal. In support, appellant relied on her own deposition testimony, in which she denied exhibiting “unprofessional” conduct, said that her voice was loud because she attempted to “modulate” it in order to be heard over the noise created by nearby construction, and complained that she was easily overheard because the treatment rooms were in “unavoidable close proximity to others.”

{¶ 18} Memorial filed a reply on July 11, 2011, in which it asserted that the issues raised in appellant’s reply, even if in dispute, are immaterial. In support, Memorial states that “[n]othing in the Hospital’s Motion relies on [appellant] having acted improperly during her December 2009 shifts.” In addition, Memorial asserts that appellant’s claims are based on hearsay and speculation.

{¶ 19} On July 20, 2011, Exigence filed a supplemental reply in support of its summary judgment motion,¹ in which it argued that appellant did not timely address the legal issues raised in its summary judgment motion. Specifically, Exigence argued that appellant’s response filed on June 29, 2011, addressed only the issues raised in Memorial’s summary judgment motion. In addition, Exigence argued that no issues of material facts exist and, therefore, appellant “has no basis to dispute the legal merits of Exigence’s claim that it is entitled to judgment as a matter of law.”

{¶ 20} On July 21, 2011, the trial court granted Memorial’s summary judgment motion and dismissed the complaint against Memorial. On July 29, 2011, the trial court granted Exigence’s summary judgment motion and dismissed the complaint against Exigence. A combined notice of appeal was filed in both cases on August 19, 2011 (“first appeal”). On September 28, 2012, we found that the trial court had not yet ruled on Exigence’s counterclaims. Accordingly, we found that the trial court’s orders were

¹ Exigence filed a reply in support of summary judgment on July 18, 2011, which was subsequently withdrawn.

not final and appealable and dismissed the appeal on that basis. *Matthews v. Exigence of Fremont, LLC*, 6th Dist. Sandusky No. S-11-035, 2012-Ohio-4490.

{¶ 21} On October 25, 2012, appellant renewed her motion to dismiss Exigence’s counterclaims, which Exigence opposed on November 5, 2012. On February 28, 2013, Exigence filed a notice of voluntary dismissal of its counterclaim, making this case final and appealable. On March 18, 2013, a combined notice of appeal was re-filed in this case No. S-13-012 (“second appeal”).

{¶ 22} We note at the outset that an appellate court reviews a trial court’s granting of summary judgment de novo, applying the same standard used by the trial court. *Lorain Natl. Bank v. Saratoga Apts.*, 61 Ohio App.3d 127, 129, 572 N.E.2d 198 (9th Dist.1989); *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Summary judgment will be granted when there remains no genuine issue of material fact and, when construing the evidence most strongly in favor of the non-moving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. Civ.R. 56(C).

{¶ 23} Initially, the party seeking summary judgment bears the burden of informing the trial court of the basis for the motion and identifying portions of the record demonstrating an absence of genuine issues of material fact as to the essential elements of the non-moving party’s claims. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996). The motion may be filed with or without supporting affidavits. Civ.R. 56(A). Thereafter, the burden shifts to the non-moving party to show why summary judgment is

inappropriate. Civ.R. 56(E). “If the non-movant fails to respond, or fails to support its response with evidence of the kind required by Civ.R. 56(C), the court may enter summary judgment in favor of the moving party.” *Snyder v. Ford Motor Co.*, 3d Dist. Allen No. 1-05-41, 2005-Ohio-6415, ¶ 11; Civ.R. 56(E).

{¶ 24} Appellant sets forth two assignments of error on appeal, which will each be addressed separately in light of the summary judgment standard set forth above. In her first assignment of error, appellant asserts that:

The trial court committed reversible error in granting defendant-appellee’s motion for summary judgment because construing all reasonable inferences in favor of plaintiff-appellant it is reasonable to conclude upon the disputed material facts that Exigence breached its contract with plaintiff-appellant Matthews.

{¶ 25} In support of her first assignment of error, appellant argues that she had an “enforceable contract with Exigence to provide physician services at Memorial” and that Exigence breached the terms of that contract when it terminated her employment. Appellant also argues that a material issue of fact remains as to whether her termination was done at Memorial’s request.

{¶ 26} It is well-established in Ohio that “the construction of a written contract is questions of law, which [is reviewed] de novo.” *Ashtabula Co. Med. Ctr. v. Leke*, 11th Dist. Ashtabula No. 2008-A-0061, 2009-Ohio-3408, ¶ 18, quoting *In re All Kelly & Ferraro Asbestos Cases*, 104 Ohio St.3d 605, 821 N.E.2d 159, 2004-Ohio-7104, ¶ 28.

The court's goal in construing issues involving contractual interpretation is to ascertain and effectuate the intent of the parties. *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 797 N.E.2d 1256, 2003-Ohio-5849, ¶ 11. Generally, Ohio courts recognize the presumption that "the intent of the parties to a contract is within the language used in the written instrument." *Saunders v. Mortensen*, 101 Ohio St.3d 86, 2004-Ohio-24, 801 N.E.2d 452, ¶ 9, citing *Kelly v. Med. Life Ins. Co.*, 31 Ohio St.3d 130, 509 N.E.2d 411 (1987), paragraph one of the syllabus. In cases where the terms of the contract are clear and unambiguous, there is no need for courts to, in effect, create a new contract. *Id.*; *Alexander v. Buckeye Pipeline Co.*, 53 Ohio St.2d 241, 246, 374 N.E.2d 146 (1978).

{¶ 27} Article VIII, Section 8.1 of the Agreement provides for appellant's immediate termination in the event that any facility covered by the Agreement removes her from the schedule. The Agreement does not state that appellant must be "permanently" removed from the hospital's schedule in order to trigger her termination. As set forth above, Yanes and Marshall both stated that they wanted appellant suspended from her duties at Memorial while an investigation was performed by Exigence, and they did not know that appellant was permanently terminated until they were so informed by Exigence.

{¶ 28} On consideration of the foregoing we find that, pursuant to the plain, unambiguous language of the Agreement, appellant's suspension from Memorial's ER schedule was sufficient to justify Exigence's decision to terminate appellant's employment under the Agreement. The trial court did not err by granting summary

judgment to Exigence and dismissing appellant's breach of contract claim. Appellant's first assignment of error is, therefore, not well-taken.

{¶ 29} In her second assignment of error, appellant asserts that:

The trial court's grant of summary judgment to Memorial was an abuse of discretion because Matthews has introduced specific facts showing that the question of whether or not Memorial tortuously [sic] interfered with plaintiff-appellant's contract with Exigence is a genuine triable issue.

{¶ 30} In support of her second assignment of error, appellant argues that Memorial was aware of her contract with Exigence because Memorial had an "exclusive contract" with Exigence to staff its emergency room. Appellant further argues that a question of fact remains as to whether or not Memorial sought appellant's permanent removal from the schedule, which precludes summary judgment in this case. Appellant supports her arguments with her own testimony that Memorial was aware she had a contract with Exigence, and further speculates that, because Exigence provided physicians to work at Memorial, the hospital must have been aware of the specific terms of those arrangements.

{¶ 31} As set forth above, our review of the trial court's decision in a summary judgment action is de novo. *Lorain Natl. Bank*, 61 Ohio App.3d at 129. In deciding a summary judgment case, it is "[t]he substantive law [that] determines whether a genuine issue of material fact remains." *Jones v. Wheelersburg Local School Dist.*, 4th Dist. Scioto No. 12CA3513, 2013-Ohio-3685, ¶ 28. (Citations omitted.) "Only disputes over

facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Id.*, quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

{¶ 32} The Ohio Supreme Court has held that the elements of tortious interference with contract are: “(1) the existence of a contract, (2) the wrongdoer’s knowledge of the contract, (3) the wrongdoer’s intentional procurement of the contract’s breach, (4) lack of justification, and (5) resulting damages.” *Kenty v. Tansamerica Premium Ins. Co.*, 72 Ohio St.3d 415, 650 N.E.2d 863 (1995), paragraph two of the syllabus. “Only improper interference with a contract is actionable.” *Fred Siegel Co., L.P.A. v. Arter & Hadden*, 85 Ohio St.3d 171, 176, 707 N.E.2d 853 (1999).

{¶ 33} In this case, it is undisputed that Marshall and Yanes asked to have appellant removed from the hospital’s ER schedule pending Exigence’s investigation of allegations that appellant exhibited unprofessional conduct while working at Memorial. As discussed elsewhere in this decision, an Agreement existed, which governed appellant’s employment at Memorial. However, appellant has presented no evidence, other than expressing her own opinion, to show that Marshall and/or Yanes were aware of the any of the terms of that Agreement, much less Article VIII, Section 8.1, which provided for appellant’s immediate termination in the event that she was removed from the hospital’s schedule for any reason. In addition, while unresolved issues remain regarding whether or not the underlying allegations regarding appellant’s conduct in the

ER were true, they are not relevant to the issue of whether Memorial improperly interfered with appellant's contract with Exigence when it asked for her to be suspended pending an investigation of those charges.

{¶ 34} This court has reviewed the entire record that was before the trial court and, upon consideration thereof, finds that the trial court did not err by granting summary judgment to Memorial and dismissing appellant's claim for intentional interference with a contract. Appellant's second assignment of error is not well-taken.

{¶ 35} On consideration whereof, this court finds no other genuine issue of fact remains and, after considering the evidence presented in the light most favorable to appellant, appellees Memorial and Exigence are entitled to summary judgment as a matter of law.

{¶ 36} The judgment of the trial court is affirmed. Pursuant to App.R. 24, costs of these proceedings are assessed to appellant, Laurel Matthews.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.