

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-001940-MR

GLADYS LOU BURRIS

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE STEPHEN A. HAYDEN, JUDGE
ACTION NO. 95-CI-00839

THOMAS GIBBS

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, COMBS, AND TACKETT, JUDGES.

TACKETT, JUDGE: Gladys Lou Burris appeals from the judgment of the Henderson Circuit Court, which granted a judgment notwithstanding the verdict (JNOV) to Thomas Gibbs, her supervisor at Tri-State Machining, Inc., who discharged her from her employment for having sought workers' compensation benefits. The court held that Gibbs could not be held personally liable for actions of the corporation. Burris appeals, arguing that the court incorrectly applied the law in granting Gibbs relief. We affirm.

Burris was discharged from her employment on March 9, 1995, after seeking workers' compensation benefits for a back injury sustained at work. Gibbs, who discharged Burris, also owns ninety percent of the stock in the corporation. Burris filed this action against Gibbs personally and the company, Tri-State Machining, Inc. At trial, the jury awarded Burris \$148,540.00, of which \$75,000 was punitive damages. After the trial, Gibbs moved for a JNOV, arguing that there is no law to support an award against an individual officer, agent, or employee of a corporation for a violation of the Kentucky Civil Rights Act or for the tort of wrongful discharge. Relying on Wathen v. General Electric Co., 115 F.3d 400 (6th Cir. 1997), the circuit court granted a partial JNOV, holding that neither the KCRA nor Title VII provides for individual liability for wrongful discharge, instead serving to make sure that corporations are held liable for the acts of their agents. Accordingly, the court vacated that portion of the judgment holding Thomas Gibbs personally liable. The trial court rejected the other issues presented in the motion, and the employer has not appealed that ruling. This appeal followed.

We note at the outset that the Appellees have failed to file a brief in this matter. Burris has filed a motion for reversal of judgment, to treat the failure to file a brief as a

confession of error and to summarily reverse the judgment. We decline to do so, and deny the motion.

On appeal, Burris argues that the court misapplied the law relating to individual liability. Burris argues that there is nothing prohibiting an individual agent of a corporation from being held liable for wrongful discharge. We disagree. Reviewing the authorities submitted to the trial court in consideration of the motion, we conclude that the applicable state law does not provide for liability of an individual corporate officer in cases of wrongful discharge.

One of the key authorities relied on by the trial court is Wathen v. General Electric Co., 115 F.3d 400 (6th Cir. 1997). In that case, the Sixth Circuit, interpreting both Kentucky law and Title VII of the Civil Rights Act of 1964, concluded after lengthy analysis that the intent of the drafters was to exclude individual supervisors and officers from personal liability. “. . . [I]ndividual liability is inconsistent both with the original remedial provision of Title VII, which provided for reinstatement and back pay, and with the 1991 amendments . . . which added monetary damages with limits depending on employer size.” Id. at 404. Noting that the Kentucky Civil Rights Act mirrors the federal statute, the court concluded that they must be interpreted the same way, and in the absence of any guiding state authority, followed the

interpretation of several other federal circuits in construing this statute, while noting that a minority of circuits construe the statute to provide for individual liability. Burris argues that this Court should interpret the statute literally and narrowly, as the courts in the minority of circuits have done. Burris offers no authority that interprets the Kentucky statute in this manner; therefore, we are compelled to follow the well-reasoned opinion of the Sixth Circuit in Wathen.

For the foregoing reasons, the judgment of the Henderson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

William D. Nesmith
Henderson, Kentucky