

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000021-MR

JERRY R. FELDPAUSCH

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE THOMAS O. CASTLEN, JUDGE
ACTION NO. 99-CI-01115

HAYDEN & MARTIN, INC.;
VINCENT B. HAYDEN, AND
CHARLES MARTIN

APPELLEES

OPINION
AFFIRMING IN PART,
REVERSING IN PART AND REMANDING
** **

BEFORE: BARBER, DYCHE, AND TACKETT, JUDGES.

TACKETT, JUDGE: Jerry Feldpausch appeals from the judgment of the Daviess Circuit Court denying him punitive damages against Hayden & Martin, Inc. and denying his request to impose individual liability on Charles Martin and Vincent Hayden. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

Feldpausch was employed at the Days Inn in Owensboro, Kentucky when his friend, Hayden, approached him about taking a new job. Hayden, who owned a construction company, had decided to go into the hotel business with Martin. Because neither Hayden nor Martin had any experience in running a hotel, they proposed that Feldpausch come to work for them as the manager of a hotel which they planned to build in Beaver Dam, Kentucky. On July 20, 1998, the parties entered into a contract wherein Feldpausch was hired as manager for the new Days Inn being built in Beaver Dam. The term of his employment was for five years, at an annual salary of \$36,000.00, plus benefits. The contract included provisions which would allow him to be terminated for excessive use of alcohol which impaired his ability to perform his duties. The contract was signed by Hayden and Martin as officers of Hayden & Martin, Inc. and also individually.

Throughout the period of his employment by Hayden & Martin, Inc., Feldpausch experienced conflict with both Hayden and his daughter, Donna Howard, who was employed as marketing director for the hotel. They accused him of drinking on the job and having an affair with a female employee. In addition, Feldpausch felt that Hayden and Howard undermined his authority with his employees by ordering him to reinstate an employee whom he had fired and by encouraging the employees to complain to Hayden directly about Feldpausch's performance as manager. On

March 9, 1999, Hayden and Martin held a conference with Feldpausch to discuss their dissatisfaction with his job performance.

At that conference, the three of them reviewed a letter detailing Hayden's complaints about Feldpausch. The letter stated that Feldpausch had underestimated the cost of the Furniture, Fixture and Equipment package for the hotel by approximately \$150,000.00, ordered incorrect quantities of bathroom tile and carpet, and purchased inferior blankets. In addition, Hayden found fault with Feldpausch's hiring and training of employees, and the cost and quality of the food served at the continental breakfast. However at the conclusion of the conference, Feldpausch remained in their employ as manager of the hotel.

The next serious conflict between the parties occurred in August 1999. The executive housekeeper, Annette Fort, terminated an employee named Billie Edge for walking out during her shift. Feldpausch had been in the process of training Edge to work the front desk; therefore, he rehired her for that position. Fort was very upset with this decision, and she expressed her displeasure to the other housekeepers as well as to Hayden. Some of the housekeepers got together and drew up a document stating that they would all quit if Edge were rehired. This document was signed and faxed to Hayden. Once again,

Feldpausch was called into Hayden's office; however, this time it was to receive a letter signed by both Hayden and Martin stating that he was terminated from his position due to "numerous breaches of our Employment Agreement. . ."

Feldpausch filed suit against Hayden & Martin, Inc., as well as Vincent Hayden and Charles Martin individually, alleging breach of his employment contract and requesting compensatory and punitive damages. A jury returned a unanimous verdict in favor of Feldpausch for the maximum amount permitted on each item of compensatory damages submitted. The trial court granted the defendants' motion for a directed verdict as to punitive damages; however, following the verdict for the plaintiff, the jury was permitted to consider the issue of punitive damages in order to eliminate the necessity of a retrial after the appeal. Nine members of the jury voted to award \$100,000.00 in punitive damages. In its final judgment, the trial court declined to award punitive damages or reimbursement for toll expenses, denied Feldpausch's request for pre-judgment interest on mileage and health insurance reimbursements, and refused to hold Vincent Hayden and Charles Martin liable for damages in their individual capacity. This appeal followed.

Feldpausch first argues that the trial court erred in granting the defendants' motion for a directed verdict on the

issue of punitive damages. The theory of the case which he presented at trial was that Hayden lured Feldpausch away from his employment of eighteen years by offering him a five-year contract at a salary of \$36,000.00, plus benefits, to come to work for Hayden & Martin. According to Feldpausch, he accompanied Hayden to the bank prior to the construction loan being approved because the lender required Hayden & Martin to employ a manager with some knowledge of the hotel business. Feldpausch maintains that, once the loan was approved, Hayden and Howard started criticizing his job performance, undermining his authority with his employees, and spreading slanderous rumors regarding his drinking on the job and having an affair. Fort, the executive housekeeper who replaced Feldpausch as manager, testified to Donna Howard's statement that they were paying Feldpausch too much and wanted to get out of the contract. Feldpausch contends that all of this evidence demonstrates that his employers entered into the contract in bad faith in that they intended from the beginning to nullify their contractual obligations to him once the business was up and running.

Hayden & Martin's trial counsel made a motion for a directed verdict on the issue of punitive damages at the close of the plaintiff's case and again at the conclusion of the trial. During the ensuing bench conferences, the trial court

stated an understanding that punitive damages could not be awarded in an action for breach of contract. It appears that the trial court relied on Kentucky Revised Statute (KRS) 411.184 which restricts punitive damages to cases where the defendant acted with "flagrant indifference to the rights of the plaintiff and with a subjective awareness that such conduct will result in death or bodily harm." However, the Kentucky Supreme Court determined that the statute's restriction on punitive damages was an unconstitutional infringement under the jural rights doctrine. Williams v. Wilson, Ky., 972 S.W.2d 260 (1998). The Williams court upheld the standard for awarding punitive damages previously articulated in Horton v. Union Light, Heat, and Power Co., Ky. 690 S.W.2d 382 (1985) which required conduct that was outrageous "because of the defendant's evil motive or his reckless indifference to the rights of others." Id. at 389. (Citations omitted.) These cases were discussed, among others, during both counsels' arguments to the bench. Nevertheless, the trial court granted the second motion for directed verdict while apparently maintaining the view that punitive damages were not proper in a case involving contracts.

As mentioned however, in an attempt to avoid a retrial in the event the decision was reversed, the trial court bifurcated the issues and allowed the jury to deliberate on the issue of punitive damages once they had found in favor of the

plaintiff. The jury instruction on punitive damages used language identical to the standard stated in Horton. A nine-member majority of the jury found in favor of Feldpausch on the issue of punitive damages and awarded him \$100,000.00.

In the final judgment, the trial court declined to award punitive damages without further explanation. Feldpausch argues that the trial court's determination that he was not entitled to punitive damages was erroneous under our decision in Holliday v. Campbell, Ky. App., 873 S.W.2d 839 (1994), which states as follows:

The essence of the question as to whether the dispute is merely contractual or whether there are tortious elements justifying an award of punitive damages depends first on whether there is proof of bad faith and next whether the proof is sufficient for the jury to conclude that there was "conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others."

Id. at 841. (Citations omitted.) He contends that Hayden and his daughter slanderously gossiped about him and falsely accused him of drunkenness and an affair conducted at the hotel. Clearly, this sort of behavior on the part of his employer could be considered tortious above and beyond the act of breaking the contract. Consequently, upon proof that Hayden slandered Feldpausch, while acting in bad faith, and that such conduct was outrageous, the jury would properly be allowed to consider

punitive damages. In addition, although Feldpausch does not cite Faulkner Drilling Co. v. Gross, Ky. App., 943 S.W.2d 634 (1997), we held that punitive damages are proper in a contracts case where fraud in the inducement is shown. Therefore, if the evidence introduced at trial indicated that Hayden never intended to honor his contractual obligations to Feldpausch when he induced him to sign an employment contract with Hayden & Martin, Inc., such proof would also entitle him to have the jury consider punitive damages.

After having carefully reviewed the videotaped record, it is clear the trial court erroneously determined that Feldpausch could not recover punitive damages for a breach of contract under any circumstances. Consequently, that portion of the trial court's judgment which denied the award of punitive damages is vacated and the case is remanded for a determination of whether Feldpausch is entitled to punitive damages under the standards found in either Holliday or Faulkner Drilling. Since the jury was allowed to deliberate on the issue of punitive damages, the trial court's denial of that award has the character of a judgment notwithstanding the verdict. A motion for judgment notwithstanding the verdict is governed by the same considerations as a motion for directed verdict. Casinelli v. Begley, Ky. App., 433 S.W.2d 651 (1968). Therefore, on remand, the trial court must determine whether the jury's decision to

award punitive damages was flagrantly against the evidence "so as to indicate that it was reached as a result of passion or prejudice." Sand Hill Energy, Inc. v. Ford Motor Co., 83 S.W.3d 483 (2002). (Citations omitted.)

Feldpausch next appeals the trial court's refusal to hold Vincent Hayden and Charles Martin liable in their individual capacities. Feldpausch bases this argument on the fact that there are two signature lines for each of them. Under one line, their capacity as officers of Hayden & Martin is printed and under the other line the word "individually" is printed after each of their names. KRS 371.065 sets forth the requirements for an enforceable guaranty, which include a written instrument, signed by the guarantors, and containing language which specifies their maximum aggregate liability as well as the date on which the guaranty terminates. The initial draft of the contract, prepared by Feldpausch's attorney, contained such a guaranty provision. However, after he presented the contract to Hayden, an attorney for Charles Martin reviewed it and made revisions which included striking the guaranty language and reducing the length of the employment period from ten years to five years. This revised contract was the one which the parties signed and which governed their relationship. KRS 371.065 contains very specific requirements,

which are not met by this contract, in order to enforce individual liability against a guarantor.

Feldpausch also contends that the defendants should be estopped from arguing that they are not individually liable due to detrimental reliance. The trial court heard evidence on this issue in the form of avowal testimony. Feldpausch testified that he believed the signature lines under Hayden's and Martin's names which stated that they were signing "individually" meant that they were each liable for damages in the event the contract was breached. He also stated that he would not have entered into this contract if he had understood that only Hayden & Martin, Inc. was liable for damages due to of his concern about the corporation remaining solvent. Feldpausch gave the only testimony on this issue and he never indicated that Hayden and Martin actively misled him as to their status as guarantors. After reviewing the evidence, we cannot say that any promises were made to induce his alleged detrimental reliance. Consequently, we believe that the trial court correctly determined that the provisions of the contract did not meet the requirements in KRS 371.065, and therefore declined to hold Hayden and Martin liable as individuals.

In addition, Feldpausch argues that the trial court erred in refusing to award reimbursement for toll expenses in accordance with the jury's verdict. The contract provided that

Feldpausch would receive "reimbursement of automobile mileage at the rate approved by the IRS and other expenses reasonably related to the performance of his job duties." His use of a toll road to and from work had accumulated \$288.00 in toll expenses. We agree with the trial court's determination that the contract did not provide for reimbursement for toll expenses since driving to and from work was not an activity reasonably related to the performance of Feldpausch's job duties.

Finally, Feldpausch contends that the trial court improperly refused to order pre-judgment interest on the jury's awards for medical insurance premiums and mileage. The claims for medical insurance and travel mileage are unliquidated damages because their amounts were not specified in the contract, but rather, were determined through the evidence introduced at trial. Consequently, only post-judgment interest may be assessed against the defendants. Atlantic Painting & Contracting, Inc. v. Nashville Bridge Co., Ky., 670 S.W.2d 841 (1984).

In summation, the trial court properly refused to hold Vincent Hayden and Charles Martin individually liable for damages, refused to accept the jury's decision to award toll expenses, and refused to assess pre-judgment interest for the amounts of the medical insurance and mileage claims. However, because the trial court incorrectly determined that punitive

damages were not available in an action for breach of contract, we reverse this portion of the judgment and remand the case for a new determination on the issue of punitive damages in accordance with the standards set forth in Horton.

Consequently, the judgment of the Daviess Circuit Court is affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEES:

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