

RENDERED: MAY 26, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-001035-MR

PAT BRADLEY

APPELLANT

v. APPEAL FROM FLOYD CIRCUIT COURT
HONORABLE JOHN DAVID CAUDILL, JUDGE
CIVIL ACTION NO. 03-CI-01055

JERRY FANNIN, INDIVIDUALLY,
AND IN HIS OFFICIAL CAPACITY AS
MAYOR OF PRESTONSBURG, KENTUCKY;
AND CITY OF PRESTONSBURG, KENTUCKY

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; MINTON, JUDGE; HUDDLESTON, SENIOR
JUDGE.¹

MINTON, JUDGE: Pat Bradley appeals from the judgment following
a directed verdict granted to Jerry Fannin and the City of
Prestonsburg, Kentucky ("the City"), at the close of Bradley's
case in the trial of her breach of contract and wrongful
discharge claims against Fannin and the City. Finding no error
in the trial court's ruling, we affirm.

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by
assignment of the Chief Justice pursuant to Section 110(5)(b) of the
Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Bradley was hired as the Executive Director of the Mountain Arts Center ("the Center"), which is owned by the City, in March 2002. At the time she was hired, Bradley purportedly received an unsigned letter from Robert Meyer, Chairman of the Mountain Arts Center Management Commission, stating that "[b]ecause of the critical nature of this [director] position, your first six months of employment will be a 'working test period[.]' Upon satisfactory completion of this first six months, your employment will be considered as [sic] permanent." Bradley served as director of the Center until Fannin, Mayor of the City, terminated her in July 2003.

Bradley sued Fannin, in both his official and individual capacities, and the City for breach of contract and wrongful discharge. According to Bradley, the letter from Meyer constituted a binding contract for permanent employment, which Fannin violated when he terminated her. Further, Bradley contended Fannin violated the public policies against official misconduct and abuse of public trust when he terminated her.

Eventually, Bradley also filed a parallel suit in federal court. After filing that action, she sought to have her Floyd Circuit Court case voluntarily dismissed; but the defendants objected, and the Floyd Circuit Court denied her motion for voluntary dismissal. We denied Bradley's petition

for writ of prohibition,² and the Floyd Circuit Court case proceeded to trial. On the morning of trial, Bradley renewed her motion to dismiss the action. This time, the defendants withdrew their objection to a voluntary dismissal. But when the defendants voiced their assent to dismissal, Bradley withdrew her motion to dismiss; and the case proceeded to trial. At the close of Bradley's case-in-chief, the trial court granted Fannin and the City a directed verdict on all of Bradley's claims. Bradley filed this appeal. Bradley's brief contends that her federal case has now been dismissed on res judicata grounds.

Although she complains of other alleged trial errors, in the argument section of her brief, Bradley contends only that the trial court erred by granting a directed verdict against her on her breach of contract and wrongful discharge claims.

Before we may address the merits of Bradley's arguments, we must identify the proper standard of review. "Under Kentucky law, a directed verdict is appropriate when, drawing all inferences in favor of the nonmoving party, a reasonable jury could only conclude that the moving party was entitled to a verdict."³ When ruling on a motion for a directed verdict, a court "must draw all fair and reasonable inferences

² Case No. 2005-CA-000505-OA, Order issued April 1, 2005.

³ Buccholtz v. Dugan, 977 S.W.2d 24, 26 (Ky.App. 1998).

from the evidence in favor of the party opposing the motion."⁴ A reviewing court may not disturb a trial court's decision on a motion for directed verdict unless that decision is clearly erroneous.⁵

Employment in Kentucky is generally considered at will, which means that "an employer may discharge his at-will employee for good cause, for no cause, or for a cause that some might view as morally indefensible."⁶ Thus, Bradley's breach of employment contract claim is doomed unless she can demonstrate that her employment was not terminable at will.

Bradley contends that the March 2002 letter from Meyer created a contract of employment because it stated that her employment would be "permanent" after she had successfully worked for six months. We seriously question whether this unsigned letter purportedly from the arts commission chair can overcome the presumption in favor of at-will employment, a concept that is firmly rooted in both Kentucky law and reflected in the City's personnel policies and procedures. And Meyer testified that he had no authority to bind the City to a contractual employment relationship with Bradley.

⁴ Bierman v. Klapheke, 967 S.W.2d 16, 18 (Ky. 1998).

⁵ *Id.*

⁶ Firestone Textile Co. Div. Firestone Tire and Rubber Co. v. Meadows, 666 S.W.2d 730, 731 (Ky. 1983).

But even if we assume for the sake of argument that Meyer's letter to Bradley did create a contract of employment, Bradley's breach of contract claim cannot prevail because it is also well-settled law in Kentucky that "a contract for permanent employment which is not supported by any consideration other than the obligation of services to be performed on the one hand and wages to be paid on the other is a contract for an indefinite period, and, as such, is terminable at the will of either party."⁷ Bradley has not presented any evidence that would remove her alleged contract of employment from this general rule. This means that her employment was subject to being terminated at will, despite the alleged contract's description of her employment as "permanent." Furthermore, the fact that the "contract" relied upon by Bradley mentions an "annual salary" did not convert the contract to an ironclad one-year contract of employment because "the use of the expression 'annual salary' is common business practice in at-will employment. Without more, all salaried employees would have at least a one-year contract instead of traditional at-will employment. A reasonable person would not interpret an employer's quote of an annual salary as an offer of employment

⁷ Edwards v. Kentucky Utilities Co., 286 Ky. 341, 150 S.W.2d 916, 917-918 (1941).

for one year."⁸ Since Bradley's breach of contract claim must fail as a matter of law, the trial court's decision to grant a directed verdict to Fannin and the City was not clearly erroneous.

We turn next to the propriety of the directed verdict on Bradley's wrongful discharge claim. Bradley's brief on this issue is not clear. As we construe her arguments, she contends that she was terminated because she clashed with Fannin on things such as his alleged receipt of complimentary tickets for events at the Center. Thus, according to Bradley, her termination violated the public policy against public officials, such as Fannin, using public funds and property for personal reasons.

As said before, Bradley's employment was terminable at will. But the Kentucky Supreme Court has recognized narrow exceptions to the employment-at-will doctrine. And the Kentucky Supreme Court has limited these judicially-created public policy exceptions to the following two situations: "First, 'where the alleged reason for the discharge of the employee was the failure or refusal to violate a law in the course of employment.' Second, 'when the reason for a discharge was the employee's exercise of a right conferred by well-established legislative

⁸ McNutt v. Mediplex of Kentucky, Inc., 836 F.Supp. 419, 421 (W.D.Ky. 1993).

enactment.'"⁹ Bradley's situation meets neither of those requirements.

The crux of Bradley's argument is that Fannin acted improperly by obtaining over \$500 in complimentary tickets to a concert at the Center. However, Bradley has not shown that Fannin violated any applicable policy, statute, rule, or constitutional provision when he accepted free tickets to events at the Center. The record reflects that Bradley admitted that the Center never officially adopted a policy on complimentary tickets that would have rendered Fannin's receipt of complimentary tickets improper. Indeed, Bradley admitted that the Center routinely gave complimentary tickets for events to a variety of people. Additionally, Bradley admitted that she never questioned Fannin about his receipt of complimentary tickets. Instead, Bradley testified that she had approved each previous request for complimentary tickets that Fannin made to her. Finally, there is no question that Fannin had the authority to terminate Bradley because an ordinance enacted approximately two months before Bradley's termination gave the mayor the right to hire and fire Center employees.¹⁰ Thus, we

⁹ Grzyb v. Evans, 700 S.W.2d 399, 402 (Ky. 1985) (quoting Suchodolski v. Michigan Consolidated Gas Co., 316 N.W.2d 710, 711-712 (Mich. 1982)).

¹⁰ Similarly, this power to hire employees negates Bradley's contention that the mayor acted improperly by rehiring an employee who had previously quit the Center.

agree with the trial court that Bradley "failed to demonstrate that either Mayor Fannin or the City of Prestonsburg retaliated against her for exercising a right conferred by well-established legislative enactment or for refusing to violate a public policy as set out in the Constitution or a statute." Accordingly, we find that the trial court's decision to grant a directed verdict against Bradley was not clearly erroneous.

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

ALL CONCUR.

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BRIEF FOR APPELLEE JERRY
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BRIEF FOR APPELLEES JERRY
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