

Summary of SC89925, *Michael Keveney v. Missouri Military Academy*

Appeal and cross-appeal from Audrain County, Judge Keith Sutherland
Argued and submitted Nov. 4, 2009; opinion issued Feb. 9, 2010

Attorneys: The academy was represented by Ian P. Cooper and Katherine L. Nash of Tueth Kenney Cooper Mohan & Jackstadt PC in St. Louis, (314) 880-3600; and Keveney was represented by Michelle Dye Neumann and Gregory A. Rich of Dobson, Goldberg, Berns & Rich LLP in St. Louis, (314) 621-8363.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A teacher fired by an academy after insisting that suspected physical abuse of a student be reported to state authorities appeals the trial court's dismissal of certain of his claims, and the academy appeals the jury's award of damages to the teacher for breach of contract. In a unanimous decisions written by Judge Richard B. Teitelman, the Supreme Court of Missouri affirmed the trial court's judgment in part, reversed it in part and remanded (sent back) the case for further proceedings. Because the teacher's evidence was sufficient to satisfy the elements of his breach of contract claim, the trial court correctly overruled the academy's motions for directed verdict and judgment notwithstanding the verdict. Contract employees such as the teacher may pursue an action for wrongful discharge in violation of public policy. Because the teacher has stated a claim for wrongful discharge for refusing to perform an illegal act (failing to report suspected abuse to state authorities), the trial court erred in dismissing his claim for wrongful discharge in violation of public policy.

Facts: Michael Keveney worked at Missouri Military Academy as a teacher pursuant to a written employment contract providing that the academy could terminate Keveney's employment for cause. In October 2003, the academy terminated Keveney for cause. Keveney filed a lawsuit against the academy alleging wrongful discharge and breach of contract and seeking punitive damages and damages for emotional distress. Specifically, he alleged his termination resulted from his insistence that his superiors report to the division of family services evidence that a student was being abused physically. He alleges his superiors refused to report the bruises on the student's arms to the division and told him his job would be jeopardized if he reported to the division. He was discharged the same day he reported the suspected abuse to his superiors. The circuit court dismissed Keveney's wrongful discharge claim and did not submit his claim for punitive damages or damages for emotional distress to the jury for his breach of contract claim. The jury awarded Keveney \$13,300 in damages for breach of contract. Keveney appeals, and the academy cross-appeals.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

Court en banc holds: (1) As discussed in *Fleshner v. Pepose Vision Institute*, SC90032, Slip op. at 14 (Mo. banc Feb. 9, 2010), Missouri recognizes the public-policy exception to the at-will employment rule. Under this exception, an at-will employee who has been discharged by an employer in violation of a clear mandate of public policy has a cause of action against the

employer for wrongful discharge. To date, Missouri courts have declined to extend the wrongful discharge cause of action to contract employees but have not offered a detailed justification for allowing an at-will employee to recover for wrongful discharge while denying the same limited remedy to a contract employee. There are at least three reasons for allowing contract employees to pursue an action for wrongful discharge in violation of public policy. First, limiting the wrongful discharge cause of action to at-will employees implicitly rests on the incorrect assumption that the constitutional, statutory or regulatory interests at issue can be limited through private contracts. Second, when an employer's actions violate not only the employment contract but also clear and substantial public policy, the employer is liable for two breaches, one in contract and one in tort; the employer must bear the consequences of its actions. Third, allowing contract employees to pursue a claim for wrongful discharge places them on the same footing as at-will employees while also encouraging employers to refrain from coercing employees into a dilemma of choosing between their livelihoods and reporting serious misconduct in the workplace. Accordingly, contract employees can pursue a claim for wrongful discharge.

(2) The circuit court erred in dismissing Keveney's claim for wrongful discharge in violation of public policy because he has stated a claim for wrongful discharge for refusing to perform an illegal act. The standard of review requires this Court to take Keveney's allegations as true. When he observed the student's bruises and suspected abuse, he was under a clear and specific statutory obligation on teachers – and clear public policy mandate – to report that abuse to the division. Section 210.115, RSMo 2000. If he failed to report the abuse, he was subject to criminal liability under section 210.165, RSMo 2000. Keveney further alleges that he insisted the abuse had to be reported even though his superiors told him his job would be in jeopardy if he reported the suspected abuse to the division. These allegations satisfy the requirement that he refused to perform an illegal act – namely, failing to report suspected abuse as required by section 210.115. Following this exchange, the academy terminated Keveney's employment contract. This allegation satisfies the requirement that Keveney allege his discharge was caused by his refusal to perform an illegal act or engage in conduct that violates public policy.

(3) The circuit court did not err in overruling the academy's motions for directed verdict and judgment notwithstanding the verdict on Keveney's breach of contract claim. The applicable standard of review requires this Court to focus on the evidence presented by Keveney, not the academy. The jury – which is the sole judge of the credibility of witnesses and the weight to give their testimony – resolved the factual dispute about Keveney's behavior during his discussion with his superiors in favor of Keveney and found that he performed the duties required by his employment contract. His evidence was sufficient to satisfy the elements of his breach of contract claim.