

Summary of SC90249, *Daniel Margiotta v. Christian Hospital Northeast Northwest d/b/a Christian Hospital, and BJC Health System*

Appeal from St. Louis County, Judge Mark D. Seigel

Argued and submitted Nov. 4, 2009; opinion issued Feb. 9, 2010

Attorneys: Margiotta was represented by Ferne P. Wolf, D. Eric Sowers and M. Beth Fetterman of Sowers & Wolf LLC in St. Louis, (314) 744-4010; and the hospital was represented by JoAnn T. Sandifer, Mark G. Arnold, Michael P. Nolan and Christine F. Miller of Husch Blackwell Sanders LLP in St. Louis, (314) 480-1500.

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 man appeals the grant of summary judgment to his former employer, arguing his termination was prohibited by the public-policy exception to the at-will employment doctrine. In a 6-1 decision written by Chief Justice William Ray Price Jr., the Supreme Court of Missouri affirmed the trial court's judgment, holding the employer was entitled to judgment as a matter of law. The exception does not apply here because the man failed to cite any specific constitutional provision, statute, regulation or rule proscribing the acts or omissions he reported to his superiors. In a dissenting opinion, Judge Richard B. Teitelman would hold there is no requirement to cite a specific legal authority being violated when there is a clear violation of public policy, here policy ensuring patient safety. He would let the man's case proceed to a jury.

Facts: Daniel Margiotta worked as an at-will medical image technician in the CT scan unit of Christian Hospital Northeast Northwest from April 2005 until his termination in December 2007. The hospital alleges it terminated Margiotta for an incident two days earlier in which he reportedly yelled at co-workers in front of a patient and threw a pillow across a room, knocking a canister off the wall. Margiotta denies the incident was violent or that he was aggressive and, in contrast, alleges he was terminated because he continuously reported incidents of safety violations pertaining to patient care to his supervisors. First, he claims that, in June or July 2005, he reported to supervisors that patients were being left unattended in the hospital's hallways. Second, during the fall of 2005, he complained the hospital only was using one orderly to transfer a patient from the stretcher to the CT scanning table, which, in one incident, led to a patient being dropped. Third, between July and September 2005, he reported that a pregnant woman underwent a CT scan, which he considered unsafe. Margiotta alleges the hospital retaliated against him for reporting these incidents by terminating him and sued the hospital for wrongful termination of an at-will employee under a federal and a state regulation. The trial court granted summary judgment in the hospital's favor, finding, first, that Margiotta did not prove his reporting of violations was the exclusive cause of his termination and, second, that the regulations at issue were not clear mandates of public policy. Margiotta appeals.

AFFIRMED.

Court en banc holds: It is well-settled law in Missouri that generally, an employer may terminate an at-will employee for any reason or no reason. This doctrine, however, is limited in

certain respects. For example, 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 may not be terminated for refusing to perform an illegal act or for reporting wrongdoing or violations of law to superiors or third parties. The public policy on which this exception is based must be an explicit constitutional provision, statute, regulation based on statute or rule promulgated by a governmental body, and a wrongful discharge action must be based on such authority. For Margiotta to prevail on his claim that he falls into the whistleblowing theory of wrongful discharge, he must show he reported to his superiors serious misconduct that constitutes a violation of the law and of well-established and clearly mandated public policy. The violation need not result in criminal sanctions or civil fines, injunctions or disciplinary action against a professional license. The inquiry, instead, is whether the authority clearly prohibits the conduct at issue in the action. Here, Margiotta directs this Court to no specific regulations that proscribe the conduct at issue but instead cites only general regulations. The first, 42 C.F.R. 482.12(c)(2), empowers patients to assert their right to receive care in a safe setting but neither requires specific conduct by an employee nor proscribes the three incidents Margiotta reported. The second, 19 C.S.R. 30-20(K)(3), does not apply here because it deals with building safety, not patient treatment. As such, Margiotta asks this Court to grant him protected status for making complaints about acts or omissions he merely believes to be violations of law or public policy. The public-policy exception to the at-will doctrine, however, is not so broad. This Court will not force a legal duty on parties who have agreed to an at-will relationship or a contractual employment relationship absent a sufficiently definite constitutional provision, statute, regulation based on statute or rule promulgated by a governmental body that clearly gives notice to the parties of its requirements. The hospital was entitled to summary judgment as a matter of law.

Dissenting opinion by Judge Teitelman: The author would reverse the grant of summary judgment to the hospital. By requiring a plaintiff to identify a regulation that specifically proscribes the reported conduct, the principal opinion eliminates wrongful discharge actions based on conduct that, while not specifically proscribed by a regulation, is nonetheless clearly contrary to the purpose of the regulation. If a regulation were required to prohibit the employer from discharging the employee, there would be no need for a common law wrongful discharge action because the employee's remedy would flow from the alleged violation of the regulation. Here, the regulations Margiotta cites express a clear and important public policy requiring hospitals to take steps to ensure patient safety, and there is no dispute that dropping patients poses a threat to public safety. Margiotta should be given an opportunity to prove his case to a jury.