

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

CHRISTA REED

Appellant

v.

THE CURATORS OF THE UNIVERSITY OF MISSOURI, ET AL.

Respondents

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DOCKET NUMBER WD79371

DATE: November 15, 2016

Appeal From:

Circuit Court of Boone County, MO
The Honorable Jodie Asel, Judge

Appellate Judges:

Division One
Thomas H. Newton, P.J., Cynthia L. Martin, and Edward R. Ardini, Jr., JJ.

Attorneys:

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Co-Counsel for Appellant

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**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

CHRISTA REED, Appellant, v. THE CURATORS OF THE
UNIVERSITY OF MISSOURI, ET AL., Respondents

WD79371

Boone County

Before Division One Judges: Newton, P.J., Martin, and Ardini, JJ.

Reed worked as a veterinary technician at the Missouri University Veterinary Health Center. In the ophthalmology department, Reed was supervised by ophthalmology clinicians on her service as well as their supervisors. During the course of her employment, Reed was evaluated by all of the service's faculty and resident clinicians. Initially, Reed received positive scores and mixed comments with suggestions for improvement. As time went on, Reed's performance evaluations reflected an increase in performance deficiencies resulting in a suspension, probation, and ultimate termination. During the course of her employment, Reed filed a series of internal grievances, two of which allege that her suspension and termination were executed in retaliation for reports of potential fiscal irregularities. After her termination, Reed filed suit against the University and two of her supervising physicians. This suit alleged five counts: wrongful discharge in violation of public policy based on breach of contract (Count I) against the university, tortious interference of a business expectancy (Count II) against the physicians and violations of the Missouri Human Rights Act (Counts III, IV, and V) on the basis of age against all defendants. At trial, after the conclusion of Reed's evidence, the trial court granted the university's motion for directed verdict on the wrongful discharge and tortious interference claims. Reed appeals.

AFFIRMED.

Division One holds:

In the first point, Reed argues that the trial court erred in granting the university's motion for directed verdict on Count I because it found that the claim was a tort and that the university was entitled to sovereign immunity. We disagree.

Legally, the Curators of the University of Missouri is a public entity with the status of a governmental body, meaning it is immune from liability in tort absent an express statutory provision. As an at-will employee, Reed may seek relief for wrongful termination only if she was terminated for being a member of a protected class or if her termination falls into the narrowly tailored public policy exception, both claims arising under tort law. Reed asserts that her claim does not fall into the university's granted sovereign immunity because her termination is based on a contract. Although Reed asserts that a contract existed on the basis of a signed appointment notification and the existence of an anti-retaliation policy, Reed fails to explain how these documents alter her at-will employment status to create an employment contract. Thus, Reed's wrongful termination claim is one of tort, and the trial court was correct in granting the directed verdict because the university has sovereign immunity on this claim. Point denied.

In the second point, Reed argues that the trial court erred in granting the university's motion for directed verdict on Count I because it found that the university's anti-retaliation policy did not contain specific binding promises creating a bilateral contract. We disagree.

Generally, employee handbooks are not considered contracts because they are self-imposed and lack the traditional contract requirements. Thus, terms and conditions of at-will employment are not enforceable at law. Reed bases her assertions on her appointment notification form and the university anti-retaliation policy. The language of Reed's appointment notification form simply explains that she is an at-will employee, not stating any clear or definite promises regarding the terms and conditions of her employment. The anti-retaliation policy encourages employees to report university-related misconduct, stating that any retaliation for reports will be a distinct violation of university policy. Because the policy does not require Reed to report misconduct and does not provide any promises or conditions altering her at-will employee status, the trial court did not err in granting the university's motion for directed verdict on Count I. Point denied.

In the third point, Reed argues the trial court erred in granting the physicians' motion for directed verdict because they were acting outside of their scope of employment by retaliating against her.

A claim of tortious interference cannot be upheld against supervisors because, as supervisors, their actions merge with those of the corporation. Thus, an action for tortious interference will only lie against a third party. Here, the supervising physicians were accused of retaliation for giving Reed negative performance reviews, creating a hostile work environment and attempting to have Reed terminated. As outlined in *Farrow v. Saint Francis Medical Center*, 407 S.W.3d 579 (Mo. banc 2013), because the physicians were her supervisors, they had a right to criticize her work performance and suggest termination. Therefore, because the physicians were acting in their role as Reed's supervisors, Reed's claim for tortious interference with business expectancy fails. Point denied.

In the fourth point, Reed argues the trial court erred in granting the university's motion for directed verdict on Count I because the university's motion failed to state specific grounds as required by Rule 72.01(a).

Rule 72.01(a) allows a party to move for directed verdict at the close of the evidence offered by an opponent by filing a motion stating specific grounds. This motion may be considered in conjunction with the arguments of counsel. Here, the university's motion explained that Missouri does not recognize a wrongful discharge claim on the basis of breach of contract, the university is entitled to sovereign immunity from Reed's wrongful discharge claim, and Reed failed to make a submissible breach of contract claim. The motion also recited facts undisputed at trial establishing that Reed was an at-will employee and provided relevant portions of the anti-retaliation policy. These assertions were accompanied by arguments of counsel. Thus, because the motion provided grounds and facts specific to this case and the motion was considered with the arguments presented at trial, the motion was compliant with Rule 72.01(a). Point denied.

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