2015 IL App (1st) 143078-U
No. 1-14-3078
Order filed October 20, 2015

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

JEFF WEEKS and RICH SCHWEISS, Plaintiffs-Appellants, v. IOWA PACIFIC HOLDINGS, LLC d/b/a IOWA PACIFIC, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 2014 L 2264 The Honorable Patrick J. Sherlock, Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Pierce and Justice Simon concurred in the judgment.

ORDER

¶ 1 *Held*: Plaintiffs, former at-will employees of defendant, failed to state a claim for retaliatory discharge where they alleged defendant fired them for supporting the formation of a labor union.

¶ 2 Does Illinois law recognize a cause of action for retaliatory discharge if an employee is terminated by a private employer for union organizing activities? Applying long-established Illinois law, we must answer in the negative. To prevail, plaintiffs would need to show that

defendant's conduct violated a clear mandate of public policy and they have wholly failed to do so.

Background

¶ 3 Defendant Iowa Pacific operates a railroad company registered in Illinois. At different times in 2012, Iowa Pacific hired plaintiff Jeff Weeks as an engineer and plaintiff Rich Schweiss as a conductor. Neither of them had an employment contract with Iowa Pacific. Weeks and Schweiss allege that they met or exceeded Iowa Pacific's legitimate performance expectations.

¶ 4 In February 2013, Iowa Pacific's employees began trying to unionize. Iowa Pacific opposed, but did not obstruct, these efforts. Weeks and Schweiss favored forming a union, and Iowa Pacific knew of their support. In May 2013, Iowa Pacific's employees voted on whether to have a union. Weeks and Schweiss voted for unionization and claim that Iowa Pacific ascertained how they voted.

¶ 5 Iowa Pacific terminated Schweiss on the day of the vote. Later, Iowa Pacific charged Weeks with disciplinary violations he alleges stemmed from his union support. In October 2013, Iowa Pacific fired Weeks without explanation. Later, Iowa Pacific claimed it fired Weeks for cause.

¶ 6 Weeks filed a one-count lawsuit against Iowa Pacific alleging retaliatory discharge for his pro-union support. Iowa Pacific moved to dismiss for failure to state a claim under section 2-615 of the Code of Civil Procedure. 735 ILCS 5/2-615 (West 2015). Iowa Pacific argued that as an employee at-will, it could terminate Weeks for any reason or no reason so long as the termination did not violate a clear mandate of public policy. It further argued that because no

policy protected Weeks' right to unionize or support unionization, his complaint failed to state a claim for retaliatory discharge.

¶ 7 Before any hearing on the motion, Weeks amended the complaint to add Schweiss as a plaintiff. Schweiss alleged a claim for retaliatory discharge as well. Iowa Pacific again moved to dismiss under section 2-615 on the same grounds as before. The trial court granted Iowa Pacific's motion to dismiss. Plaintiffs timely appealed.

Standard of Review

¶ 8 We review a motion to dismiss *de novo*. *R & B Kapital Development, LLC v. North Shore Community Bank & Trust Co.*, 358 Ill. App. 3d 912, 920 (2005). A motion to dismiss requires a showing that the complaint contains no set of facts which, if established, could entitle the plaintiff to relief. *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 86 (1996) (citing *Urbaitis v. Commonwealth Edison*, 143 Ill. 2d 458, 475 (1991)). In evaluating an order dismissing a complaint for failure to state a claim, we accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006).

Analysis

¶ 9 Illinois is an employment at-will state. *Harrison v. Sears, Roebuck & Co.*, 189 Ill. App. 3d 980, 987 (1989); *Thierry v. Carver Community Action Agency of Knox County, Inc.*, 212 Ill. App. 3d 600, 603 (1991). The law presumes at-will status for an employee hired without a written or oral employment contract expressly stating the duration of employment. *Id.* At-will employment allows an employer to fire an employee with or without a reason. *Irizarry v. Illinois Central R.R. Co.*, 377 Ill. App. 3d 486, 488 (2007). Retaliatory discharge claims constitute a narrow exception to Illinois' general rule of at-will employment. *Id.* To establish

a cause of action for retaliatory discharge, Weeks and Schweiss must each establish (1) discharge; (2) in retaliation for his activities; and (3) violation of a clear mandate of public policy. *Zimmerman v. Buchheit of Sparta, Inc.*, 164 Ill. 2d 29, 35 (1994); *Hinthorn v. Roland's of Bloomington, Inc.*, 119 Ill. 2d 526, 529 (1988) (citing *Barr v. Kelso-Burnett Co.*, 106 Ill. 2d 520, 529 (1985)).

¶ 10 Whether a discharge violates a clear mandate of public policy raises a question of law. *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 501 (2009). A clear mandate of public policy affects the citizens of Illinois collectively and strikes at the heart of citizens' social rights. *Palmateer v. International Harvester Co.*, 85 Ill. 2d 124, 130 (1981). Evidence of this policy may be found in the Illinois constitution, statutes, or judicial decisions. *Turner*, 233 Ill. 2d at 501.

¶ 11 Citing a constitutional or statutory provision in a complaint by itself does not suffice to state a cause of action for retaliatory discharge. *Id.* at 505. Rather, an employee in alleging retaliatory discharge must articulate the clearly mandated public policy with specificity. *Ulm v. Memorial Medical Center*, 2012 IL App (4th) 110421, ¶ 21 (citing *Turner*, 233 Ill. 2d at 503). Moreover, the mandated public policy must be substantive enough to put employers on notice that employment decisions relating to the policy may expose them to liability. *Id.*

¶ 12 Illinois courts have recognized just two situations in which a private company's termination of an employee violates clearly mandated public policy (*Irizarry*, 377 Ill. App. 3d at 488): (i) when an employer discharges an employee for making, or planning to make, a claim under the Worker's Compensation Act (20 ILCS 305/1 *et. seq.* (West 2015); *Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172, 190 (1978)); and (ii) when an employer terminates an employee for reporting illegal or improper conduct. (*Palmateer*, 85 Ill. 2d at 135).

¶ 13 Even where statutes bear on public policy considerations, Illinois courts hesitate to expand retaliatory discharge. See *Barr*, 106 Ill. 2d at 525 (embracing narrow interpretation of common law claim for retaliatory discharge); see also *Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455, 468 (1999) (hesitating to imply for nursing home employees a private retaliatory discharge action under statute without explicit legislative authority).

¶ 14 Finally, Illinois courts reject other alleged public policies as insufficient to support a claim for retaliatory discharge. See, *e.g.*, *Barr*, 106 Ill. 2d at 527-28 (involving right to free speech for private employees); *Gould v. Campbell's Ambulance Service Inc.*, 111 Ill. 2d 54, 55-57 (1986) (protesting uncertified coworker's employment); *McCluskey v. Clark Oil & Refining Corp.*, 147 Ill. App. 3d 822, 826 (1986) (involving right to marry coworker).

¶ 15 Weeks and Schweiss allege that Iowa Pacific fired them for supporting the formation of a union. They rely on two sources of Illinois law: (i) this court's opinion in *Temple v. Board of Education of School District No. 94, Cook County*, 192 Ill. App. 3d 182, 188 (1989); and (ii) the free speech protections in Article 1, § 4 of the Illinois constitution. IL. Const. 1970 art. 1, § 4. Their arguments fail, however, because neither *Temple* nor the Illinois constitution applies to private employers.

¶ 16 In *Temple*, a tenured teacher sued his former school district for terminating him in response to his union organizing efforts. *Temple*, 192 Ill. App. 3d at 183. The school district told the teacher, who had worked in the district for over 15 years, that he was fired for economic reasons. Non-tenured teachers and junior tenured teachers, however, kept their jobs. We found that the school board's decision to terminate the teacher arbitrary and capricious (*id.* at 186), holding the school district liable for retaliatory discharge on the basis

that the teacher exercised his right to assembly under Article I, § 5 of the Illinois constitution. *Id.*

¶ 17 Weeks and Schweiss rely heavily on *Temple,* arguing that the Illinois constitution protects their activities from retaliatory discharge. Although *Temple* involved a claim for retaliatory discharge in relation to unionization, its holding does not apply because Iowa Pacific is a private company and not a government body. The Illinois constitution does not protect citizens' rights, including the right to free speech, from the acts of private companies. *E.g.*, *Barr*, 106 Ill. 2d at 526 ("The constitutional guarantee of free speech is only a guarantee against abridgement by the government, Federal or State; the Constitution does not provide protection or redress against private individuals or corporations."); *Rozier v. Saint Mary's Hospital*, 88 Ill. App. 3d 994, 997 (1980) (plaintiff failed to state a claim for retaliatory discharge where private employer forced her to choose between her freedom of speech and her job). See, *e.g.*; *Methodist Medical Center of Illinois v. Taylor*, 140 Ill. App. 3d 713, 717 (1986); (equal protection and due process clauses under both Illinois and U.S. constitutions stand as a prohibition against governmental action, not action by private individuals); *People v. Smith*, 72 Ill. App. 3d 956, 964 (1979) (neither U.S. nor Illinois constitutions protect citizens from invasions of privacy by private individuals or companies).

¶ 18 A school district, as a quasi-municipal corporation created by the state, acts as an administrative arm in the establishment of free schools. *Board of Education of Bremen High School District No. 228 v. Mitchell*, 387 Ill. App. 3d 117, 120 (2008). As a government body, courts frequently have held school districts liable for violating the constitutional rights of their employees. *Temple v. Board of Education of School District No. 94, Cook County*, 192 Ill. App. 3d 182 (1989); *Ashcraft v. Board of Education of Danville Community Consolidated*

School District No. 118 of Vermilion County, 83 Ill. App. 3d 938 (1980); *Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274, 275 (1977).

¶ 19 Iowa Pacific, a private company, is not subject to the protections described in the Illinois constitution and applied in *Temple*. *Barr*, 106 Ill. 2d at 526. Thus, Weeks and Schweiss have failed to demonstrate that their discharge violated the public policy that *Temple* and the Illinois constitution mandate.

¶ 20 Moreover, nothing obligated Iowa Pacific to provide Weeks and Schweiss with a reason for terminating them. In *Temple*, on the other hand, contractual and statutory requirements subjected the school to give its reasons, and those reasons could not be arbitrary, unreasonable, or capricious. *Temple*, 192 Ill. App. 3d at 183. As at-will employees, Weeks and Schweiss possessed no similar right and Iowa Pacific's reasons for terminating them are inconsequential.

¶ 21 Finally, Weeks' and Schweiss' opening and reply briefs present, in a perfunctory manner, their argument regarding the free speech protection in the Illinois constitution. Without some effort at developing this argument, we consider it forfeited. We are entitled to cohesive arguments with citation to pertinent authorities. See Ill. S. Ct. R. 341(h) (7) (eff. Feb. 6, 2013); *Bartlow v. Costigan*, 2014 IL 115152, ¶ 52.

¶ 22 Affirmed.