2013 IL App (1st) 123538-U

SIXTH DIVISION
AUGUST 30, 2013

No. 1-12-3538

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHRISTOPHER MEDINA, Plaintiff-Appellant, v. LIFE HOME HEALTH CARE, INC. and CECILIA BUENAFLOR, Defendants-Appellees.	))))))))))	Appeal from the Circuit Court of Cook County. No. 10 CH 50474 Honorable Sophia H. Hall, Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* Where an employee at will fails to do his job days before his scheduled jury duty and is terminated, we cannot say that it would be against the manifest weight of the evidence for the trial court to conclude that he was not fired as a result of his attendance at jury duty.

¶ 2 Plaintiff Christopher Medina was employed by defendant Life Home Health Care, Inc. (LHHC), a home health care agency, whose stock is wholly owned by defendant Cecilia Buenaflor. In January 2009, plaintiff received a summons to report for jury duty on February 11, 2009. Shortly after plaintiff fulfilled his jury duty, defendants terminated his employment.

Plaintiff filed a lawsuit, alleging: (1) that defendants' termination of plaintiff violated the Illinois Jury Act (705 ILCS 305/1 *et seq.* (West 2008)); and (2) that defendants committed the tort of retaliatory discharge because they terminated plaintiff as a result of plaintiff reporting for jury duty. After a bench trial, the trial court found in defendants' favor on both counts, finding that defendants had countered the inferences raised by plaintiff that he had been terminated in retaliation for serving his jury duty. Plaintiff appeals. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 I. Complaint and Answer

¶ 5 Plaintiff filed his first complaint on November 29, 2010, which did not specifically allege any cause of action. Plaintiff filed a first amended complaint on August 25, 2011, in which he alleges that defendants violated the Illinois Jury Act (705 ILCS 305/1 *et seq.* (West 2008)) (the Jury Act) and committed the tort of retaliatory discharge when defendants terminated plaintiff in response to plaintiff serving jury duty.

¶ 6 Plaintiff alleges the following facts in the first amended complaint. During plaintiff's tenure as an employee of LHHC, his immediate supervisor was Teresa Holmes, Buenaflor's sister. Plaintiff received a jury summons in January 2009 and he showed the summons to both Buenaflor and Holmes "more than three weeks prior to February 11, 2009," the date of his jury duty. Plaintiff reminded Holmes of his jury duty on Monday, February 9, 2009.

¶ 7 Plaintiff reported to jury duty at the Daley Center on February 11, 2009, and was present from 8 a.m. until 3 p.m. During that time, Holmes telephoned plaintiff four to five times. Plaintiff was not allowed to receive calls in the jury waiting room, so he "went into a booth" and

returned Holmes' call.

¶ 8 The following day, February 12, Holmes told plaintiff that he would have to attend a meeting the next day, February 13. At the meeting, Buenaflor and Holmes informed plaintiff that he was being terminated for not informing Holmes "in an 'appropriate and timely manner' about jury duty, not making a pertinent schedule for a patient on that date, and not being productive enough with respect to patients to be re-admitted to the company."

¶ 9 Plaintiff alleges that he had never received "a verbal reprimand, written warning, suspension, corrective action plan, last chance agreement, or any disciplinary measure for the approximately two years" he was employed by LHHC. Plaintiff concludes that he had been terminated in response to his jury duty attendance, in violation of the Jury Act, and that the termination constituted retaliatory termination.

¶ 10 Defendants Buenaflor and LHHC each filed separate answers to the amended complaint, containing the following pertinent statements:

> "Plaintiff was fired because Plaintiff: (i) was inefficient with respect to the performance of his job duties; (ii) failed to prepare accurate and timely reports, despite being admonished several times that he needed to improve his performance in this regard; (iii) was not productive enough with regard to the readmission of patients; (iv) failed to track clients, which resulted in some clients being lost to other home health care agencies; and (v) failed to communicate information regarding the arrangement of

transportation for a patient serviced by Life Home Health Care, Inc."

Defendants deny that plaintiff was terminated for his jury duty and raise three affirmative defenses to each claim. Defendants claim: (1) that plaintiff's claim for damages is barred because plaintiff failed to diligently seek other employment after termination, or otherwise failed to mitigate his damages; (2) that plaintiff's employment was terminated for the five reasons asserted in the answer; and (3) that plaintiff failed to provide reasonable notice of his required jury duty and did not deliver a copy of the summons for jury duty. Defendants claim in their third affirmative defense that defendants "did not learn that Plaintiff had been summoned for jury duty until the day Plaintiff performed the jury duty, and then only because Teresa Holmes telephoned Plaintiff in order to ascertain his whereabouts and why he had not reported for work."

¶ 11 II. Undisputed Facts

¶ 12 The parties filed a statement of agreed facts, which is summarized here. Buenaflor is the administrator and sole shareholder of LHHC, a home health agency. Plaintiff was employed as an intake coordinator by LHHC from April 23, 2007, until his termination on February 28, 2009. In January 2009, plaintiff received a jury summons, requiring him to appear at the Daley Center for jury duty on February 11, 2009. On February 13, 2009, plaintiff attended a meeting with Buenaflor in which she informed him that he was terminated following a two-week period in which he would be required to train his replacement. Plaintiff then sent a letter to Buenaflor which stated the following:

"Last Friday the thirteenth of February, you spoke with me

> saying that I would be fired due to the following reasons: (a) that I did not inform my immediate supervisor of my jury duty in an appropriate and timely manner, which led to (b), that I was not able to make a pertinent schedule for a patient that particular day of jury duty, and (c) that I had not been productive enough with respect to the volume of patients expected to be re-admitted to this company. In this regard, I would like to request your good office to issue me in writing such reasons for firing me, which you have verbally presented.
>
> I look forward to your favorable response. Otherwise, it will be reasonable on my part to presume that the verbal reasons given above are, indeed, the exact reasons and grounds for my permanent dismissal from the company."

On February 28, 2009, the date of plaintiff's termination, Buenaflor provided plaintiff with the following written statement:

> "You have been terminated for the following reasons:
>
> (1) Failure to do reports clearly as required by the administrator and to submit them on time. [Several times, you were made aware of] your lapses but still there was no satisfactory improvement.
>
> (2) Not productive enough with respect to the volume of

patients expected to be re-admitted.

(3) Failure to keep track of some clients, which resulted in losing them to other agencies.

(4) Failure to endorse to the Field Nurse, QA Supervisor and to immediate supervisor some important information regarding the arrangement of transportation for a patient.

Those lapses show your inefficiency in your job, which cannot be tolerated. *It has never been company policy to terminate people due to performance of jury duty*.

As stated in your exit interview last Friday, 13th of February, your termination would take effect on February 28, 2009." (Emphasis added.)

¶ 13 III. Trial

¶ 14 The case proceeded to a bench trial, and the following witnesses testified.

¶ 15 A. Plaintiff's Testimony

¶ 16 Plaintiff testified that he was employed as an intake referral coordinator by LHHC for two years. His duties included coordinating transportation for patients by arranging vehicles to transport patients from their homes to their doctor's office. When arranging transportation for patients, plaintiff was required to contact the Illinois Department of Public Health (IDPH) to obtain an approval number, then provide the approval number to transportation providers and set up transportation for patients to medical providers. Generally, transportation providers used by LHHC require an IDPH approval number 24 hours prior to an arranged transportation.

¶ 17 Plaintiff received a jury summons in January 2009. A week after he received the summons, he took the summons to LHHC's human resources department, and the human resources representative informed him that he should inform his supervisor. Plaintiff then showed the summons to Buenaflor, who told him to provide a copy of the summons to Holmes. Plaintiff provided Holmes with a copy of the summons, and she told him to "remind" her about the summons closer to the date of jury duty. Plaintiff testified that he reminded Holmes on Monday, February 9, 2009, two days before he was scheduled to appear for jury duty. Holmes told plaintiff to "make sure everything was in order."

¶ 18 On February 9, plaintiff received a transportation request for a patient in the mid-afternoon. Plaintiff called IDPH to obtain an approval number, but the IDPH computer systems were down and plaintiff was unable to obtain an approval number. Plaintiff telephoned multiple transportation providers because he "wanted to have a transportation provider ready" for when he received the approval number, but plaintiff was ultimately unable to obtain an approval number from IDPH. Plaintiff telephoned IDPH again the next day, but the computer systems were still down. Plaintiff was still unable to obtain an approval number, but "by then it had already been past the 24-hour notice [period] that most medical transportation providers required."

¶ 19 Plaintiff informed his quality assurance (QA) supervisor that the IDPH computer systems were down. Plaintiff also left a "Post-It" note on Holmes' desk informing her that he had not been able to arrange transportation for the patient.

¶ 20 On February 11, 2009, plaintiff was present at the Daley Center for jury duty. While he was there, he received "four or five [cell phone] calls" from LHHC. Plaintiff found a private

booth and telephoned Holmes. Plaintiff described the telephone conversation:

> "[Holmes] told me that [I was] supposed to be in the office and arrange transportation for a patient *** . And I told her that I informed her that I would have jury duty twice and that I left a Post-It memo on her desk that I wasn't able to arrange transportation for the patient.
>
> And she told me that [I] didn't inform [her] that [I] had jury duty and [I] should have been able to arrange the transportation for the patient."

¶ 21 Plaintiff returned to work on February 12 and met with Holmes, who told him that he should have been able to arrange transportation for the patient. Holmes informed plaintiff that he would have to attend a meeting with Buenaflor the following day. Plaintiff described Holmes as angry, and said that she was yelling at him. Plaintiff attended the meeting with Buenaflor and Ellie Ceniza, another LHHC employee, the next day. At the meeting, Buenaflor told plaintiff that he was terminated for the following reasons: (1) plaintiff did not inform his immediate supervisor of his jury duty in a timely manner; (2) "not being in the office because of jury duty because [plaintiff] was not able to arrange transportation for [the patient]"; and (3) plaintiff was not "productive enough with the volume of patients that they expected to be readmitted." Plaintiff remained at LHHC for two additional weeks to train his successor.

¶ 22 Plaintiff testified that LHHC had a quota for readmitting patients, but he could not remember what the quota was. Plaintiff explained that the readmitting protocol required him to

telephone past patients and inquire as to how they were feeling and whether they were satisfied with the services provided by LHHC. However, he could not recommend to patients that they be readmitted, and stated that he "had no control over how many patients can be readmitted or whether or not a patient wanted to be readmitted."

¶ 23 Prior to the February 13 meeting, plaintiff had never been verbally reprimanded for his job performance. He had never received any written warnings about his job performance, and he was never subject to performance reviews. LHHC held monthly meetings at which performance issues were discussed, but plaintiff testified that employees were not individually addressed. Rather, the administrators spoke generally about performance issues, without attributing issues to specific employees.

¶ 24 Plaintiff described LHHC's leave of absence policy, which required employees to fill out a leave of absence form and submit it to either Buenaflor or the employee's immediate supervisor. Employees submitted the forms if they were absent due to sickness or if they requested time off. Plaintiff had previously filled out leave of absence forms for days he was absent from work; sometimes he submitted the form prior to his absence, other times he submitted the form after returning from his absence. Plaintiff did not submit a leave of absence form for February 11 until after that date.

¶ 25 After his employment with LHHC was terminated, plaintiff found subsequent employment and was employed part time at the time of trial. Plaintiff also received unemployment benefits.

¶ 26 On cross-examination, plaintiff testified that during his employment with LHHC, plaintiff

was required to fill out patient reports. Plaintiff testified that he was never informed that his reports were inaccurate, but he was told that some of his reports needed to be "adjusted to fit." Plaintiff explained that sometimes a supervisor requested that he add information to a report, and that he would comply. When plaintiff reminded Holmes on February 9 that he had jury duty in two days, he testified that she told him "just make sure everything is in order before then." Plaintiff had never before been unable to obtain an approval number for a patient transportation request.

¶ 27 Plaintiff did not fill out a leave of absence form prior to attending jury duty because "nobody instructed [him] to" fill one out. However plaintiff testified that he was aware that he was required to fill out a leave of absence form either before or after his absence. LHHC paid plaintiff for the day he attended jury duty.

¶ 28 When plaintiff met with Holmes on February 12, she denied that she had received a "Post-It" note informing her of plaintiff's inability to arrange transportation for a patient. No one informed plaintiff that he could not attend jury duty, and no one at LHHC reacted angrily when plaintiff informed them of his summons. Plaintiff was not aware of any other LHHC employees who had served on a jury or who had been discharged for attending jury duty.

¶ 29 On redirect examination, plaintiff testified that, throughout his entire tenure at LHHC, he had never had a "no-show, no-call," which plaintiff's counsel defined as a failure to be present at work and a failure to call in and notify the employer of an absence.

¶ 30 B. Buenaflor's Testimony

¶ 31 Defendant Buenaflor was called as an adverse witness for plaintiff. She testified that she is the sole shareholder of LHHC and could not recall whether or not plaintiff had ever been subject to a performance evaluation. Buenaflor "remember[ed] very clearly" that she had to specifically inform plaintiff at the monthly meetings when performance issues were discussed that some of the reports he filed were not satisfactory because they lacked sufficient information. Buenaflor testified that plaintiff's reports would temporarily improve after he was informed that he needed to provide more information, but his performance would inevitably regress. Buenaflor never provided plaintiff written warnings regarding his performance, but she provided him verbal warnings instead.

¶ 32 Plaintiff's counsel asked Buenaflor why, if plaintiff's failure to satisfactorily fill out reports was an ongoing issue, she waited until February 13, 2009, to fire him, and Buenaflor responded that plaintiff's issue with the reports was "not the real issue" in deciding his termination. Buenaflor testified that plaintiff "was no-call, no-show" on February 11, 2009, when he failed to arrange transportation for a patient, and LHHC had to arrange for a taxi to transport the patient to her doctor's appointment. If LHHC been unable to provide transportation, it would have had a detrimental effect on the business of the agency. Buenaflor testified that plaintiff failed to inform anyone that he was unable to arrange for transportation for the patient. Buenaflor testified that plaintiff was not terminated for his previous poor performance or because he attended his jury duty. He was fired because he failed to inform anyone that he was unable to provide transportation for a patient. Buenaflor could not recall if plaintiff ever had a no-call, no show situation prior to February 11, 2009.

¶ 33 Buenaflor could not recall a time when the IDPH computer systems had been down prior to the dates at issue, but testified that, had plaintiff informed her or another supervisor that the systems were down, LHHC could have arranged transportation for the patient prior to the date of the jury duty.

¶ 34 Buenaflor testified that she could not recall plaintiff informing her that he received a jury summons. When asked whether it was possible that she had forgotten that plaintiff had informed her of his summons, she responded that she is "not in charge of these things," and stated that LHHC has an office manager who takes care of such matters.

¶ 35 Buenaflor testified that on the day plaintiff was absent, no one knew where he was, and that they would not have called him if they had known he was serving jury duty. Buenaflor consulted an attorney before drafting the letter that she sent to plaintiff providing the reasons for which he was terminated. When asked why she included the statement in the letter that it "has never been company policy to terminate people due to performance of jury duty," she stated that no one brought up jury duty as one of the reasons plaintiff was fired, and stated that she did not "foresee a lawsuit based on [plaintiff's] termination."

¶ 36 Defense counsel did not cross-examine Buenaflor after her testimony as an adverse witness, but recalled her during the defense's case-in-chief. Defense counsel questioned Buenaflor about the letter she sent to plaintiff, which stated that it was not company policy to terminate employees for serving on jury duty, and the following exchange occurred:

> "Q. Did [plaintiff] do something to prompt you to have that language included in this letter?

A. [Plaintiff] sent me an email that he wants written reasons why he was terminated. *So at the time I was already thinking, maybe there's going to be a lawsuit.*

Q. Over what?

A. Over him being terminated because he went to jury duty." (Emphasis added.)

¶ 37 Defense counsel presented Buenaflor with a document that purported to be minutes from a weekly meeting. Buenaflor testified that she directed the document to be prepared, but did not prepare it herself, and that LHHC has a policy of keeping and maintaining records of weekly meetings.

¶ 38 Plaintiff objected to the admission of the document in evidence, arguing that it was unauthenticated. The trial court allowed plaintiff to conduct a voir dire of the document. When asked why the document was not signed, Buenaflor testified that she does not sign the minutes, which were not printed on LHHC stationery, and the following exchange occurred:

"Q. So why don't you use [LHHC] letterhead on your weekly minutes?

A. I don't find the need to write the minutes. You know, there's a lot of people in that meeting and a lot of people would – you know, like if you look at here, there's an attendance list and certainly those people who are there in the minutes of the meeting would testify that they are the exactly [*sic*] the minutes we

had."

The trial court admitted the minutes as a business record over plaintiff's objection.

¶ 39 C. Teresa Holmes' Testimony

¶ 40 Teresa Holmes was also called as an adverse witness for plaintiff. In 2009, Holmes was the scheduling coordinator of LHHC and was plaintiff's direct supervisor. She recalled that plaintiff informed her of his jury summons some time in January 2009, but she could not remember exactly when. She testified that plaintiff informed her of his jury duty one time only, and that it was not possible that he had done so more than once. Plaintiff did not remind her that he had jury duty and that she did not learn that he had jury duty on February 11 until he telephoned her from the Daley Center. She did not recall plaintiff leaving a "Post-It" note on her desk regarding the lack of transportation for a patient.

¶ 41 Holmes telephoned plaintiff while he was serving jury duty on February 11 because he had failed to arrange transportation for a patient. Holmes testified that plaintiff told her that he "forgot" about arranging transportation for the patient. She was upset because he was a "no-call, no-show, and he forgot to arrange a patient's transportation." Holmes resolved the patient transportation issue by arranging for a taxicab to transport the patient to her medical appointment. Holmes believed that, because plaintiff was a "no-call, no-show" on February 11, 2009, he should be terminated, and she recommended his termination.

¶ 42 On cross-examination, Holmes testified that when plaintiff informed her of his jury summons, she told him that he was required to fill out a leave of absence form. She did not receive a form prior to February 11, nor did she ever receive a copy of the jury summons.

¶ 43 D. Ruby Siscar's Testimony

¶ 44 After plaintiff rested his case, defense counsel called two LHHC employees to testify. The first employee, Ruby Siscar, testified that she has worked for LHHC for seven years. In that time, she has requested time off to serve jury duty, and was granted leave to do so. She requested leave by filling out a leave of absence form and submitting it to the human resources office. Buenaflor approved her leave. No adverse action was taken against her for attending jury duty, and she was paid for the day she was absent.

¶ 45 E. William de la Victoria's Testimony

¶ 46 LHHC employee William de la Victoria has been employed at LHHC for more than five years, and is the payroll manager who provided plaintiff with the leave of absence form plaintiff filled out for the day he was absent to attend jury duty.

¶ 47 F. Plaintiff's Rebuttal Testimony

¶ 48 Plaintiff testified on rebuttal that when he was unable to obtain an approval number for the transportation of the patient, plaintiff informed the QA supervisor of the patient in addition to leaving a "Post-It" note on Holmes' desk.

¶ 49 G. Trial Court's Decision

¶ 50 The trial court issued a written decision, finding in favor of defendants and against plaintiff. The trial court found in count I that plaintiff claimed defendants violated the Jury Act by discharging him because of his jury service, and that, in count II, plaintiff claimed that defendants committed the tort of retaliatory discharge because they fired plaintiff in violation of the State of Illinios' public policy of supporting jury service. The trial court considered the

testimony and the exhibits in evidence and found that plaintiff was an at-will employee that failed to satisfy his burden to prove by a preponderance of the evidence that he was discharged because of his jury service. "This proof is required under both the Jury Act and the tort of retaliatory discharge." "The parties' testimony is consistent that [plaintiff] advised defendants that he was to appear for jury service on February 11, 2009. The parties' evidence is contradictory as to whether [plaintiff] left a copy of the jury summons with Buenaflor or Holmes." The trial court found that defendants countered the inference that plaintiff had been terminated in retaliation for serving his jury duty because defendants "offered the uncontradicted fact that Holmes had requested that [plaintiff] have his work done before he went to jury service, and that [plaintiff] did not obtain transportation for [the patient] for the day of his jury service – the work that he was to have done." The trial court further found that defendants offered uncontradicted evidence that another employee, Siscar, had served jury duty without retaliation, and that plaintiff received payment for the day he served jury duty. After considering the evidence as a whole, the trial court found that plaintiff did not prove by a preponderance of the evidence that his jury service was the cause of his termination.

¶ 51 ANALYSIS

¶ 52 Plaintiff raises four issues on appeal and argues: (1) that the trial court "failed to adequately apprehend that the case turns entirely on notice"; (2) that plaintiff's termination resulted from his "scheduled appearance" at jury duty, in violation of the Jury Act; (3) that the trial court made evidentiary errors in its findings of fact; and (4) that the trial court did not properly consider evidence of defendants' "sudden dissatisfaction" with plaintiff's performance.

For the following reasons, we affirm the trial court's decision.

¶ 53 I. Standard of Review

¶ 54 "In a bench trial, it is the function of the trial judge to weigh evidence and make findings of fact." *Kalata v. Anheuser-Busch Companies, Inc.*, 144 Ill. 2d 425, 433 (1991). In cases where the evidence is close, where findings of fact must be determined based on the credibility of the witnesses, a court of review will defer to the trial court's factual findings unless they are against the manifest weight of the evidence. *Kalata*, 144 Ill. 2d at 433. The standard of review in this case is manifest weight of the evidence. "A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence." *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995).

¶ 55 II. The Jury Act and At-Will Employment

¶ 56 The Jury Act states that "[a]ny person who is not legally disqualified to serve on juries, and has been duly summoned for jury duty ***, shall be given time off from employment to serve upon the jury for which such employee is summoned." 705 ILCS 305/4.1(a) (West 2008). "An employee shall give his employer reasonable notice of required jury service." 705 ILCS 305/4.1(a) (West 2008). "No employer shall discharge, threaten to discharge, intimidate or coerce any employee by reason of the employee's jury service, or the attendance or scheduled attendance in connection with such service, in any court of this State." 705 ILCS 305/4.1(b) (West 2008). "As used in this Section, 'reasonable notice of required jury service' means that the employee summoned for jury duty must deliver to the employer a copy of the summons within 10

days of the date of issuance of the summons to the employee." 705 ILCS 305/4.1(c) (West 2008).

¶ 57 In Illinois, a noncontracted employee is one who serves at the employer's will, and the employer may discharge such an employee for any reason or no reason. *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 500 (2009). "The accepted general rule is that in an employment at will there is no limitation on the right of an employer to discharge an employee." *Price v. Carmack Datsun, Inc.*, 109 Ill. 2d 65, 67 (1985). However, an exception to the general rule of at-will employment arises when there has been a retaliatory discharge of the employee. *Turner*, 233 Ill. 2d at 500 (citing *Price*, 109 Ill. 2d at 67). To prove a valid cause of action for retaliatory discharge, an employee must prove that "(1) the employer discharged the employee, (2) in retaliation for the employee's activities, and (3) that the discharge violates a clear mandate of public policy." *Turner*, 233 Ill. 2d at 500. Our Illinois Supreme Court has held that "[a]lthough there is no precise line of demarcation dividing matters that are the subject of public policies from matters purely personal, a survey of cases in other States involving retaliatory discharges show that a matter must strike at the heart of a citizen's social rights, duties, and responsibilities before the tort will be allowed." *Palmateer v. International Harvester Co.*, 85 Ill. 2d 124, 130 (1981). The supreme court included in its list of examples of actions that could trigger retaliatory discharge the refusal to evade jury duty. *Palmateer*, 85 Ill. 2d at 130 (citing *Nees v. Hocks*, 536 P.2d 512, 516 (Or. 1975); *Reuther v. Fowler & Williams, Inc.*, 386 A.2d 119, 120-21 (Pa. Super. Ct. 1978)).

¶ 58 III. Notice

¶ 59 Plaintiff first argues that the trial court "failed to adequately apprehend that the case turns entirely on notice." The Jury Act requires that claimants give "reasonable notice" of their jury summons to employers. 705 ILCS 305/4.1(b) (West 2008). Plaintiff argues that established case law indicates "*that the case turns entirely on notice*." (Emphasis in original.) We do not find this argument persuasive.

¶ 60 Plaintiff argues that, with "one notable exception," he could find no reported decisions concerning "Illinois Jury Act retaliation." The "one notable exception" is *Jackson v. Restaurant Depot*, 2005 U.S. Dist. LEXIS 24151 (N.D. Ill. Oct. 18, 2005), in which the United States District Court for the Northern District of Illinois granted an employer's motion for summary judgment on all of an employee's claims except a claim under the Jury Act. In *Jackson*, the employer, "relying solely on [the plaintiff's] deposition testimony, argues that [the plaintiff] failed to deliver a copy of the jury summons prior to his jury service." *Jackson*, 2005 U.S. Dist. LEXIS 24151, at *15. Citing the deposition testimony, in which the plaintiff unequivocally testified that he did provide a copy of the summons to his employer, the district court held that "[the plaintiff had] established a factual dispute as to whether he provided his employer with notice of his summons to jury duty." *Jackson*, 2005 U.S. Dist. LEXIS 24151, at *15-17. The district court found that the notice issue was "precisely the sort of dispute that should not be decided on summary judgment." *Jackson*, 2005 U.S. Dist. LEXIS 24151, at *17.

¶ 61 Plaintiff argues that the *Jackson* court "observed something that the trial court overlooked in this case; *that the case turns entirely on notice*." (Emphasis in original.) Plaintiff argues that the trial court never resolved whether he provided defendants with notice of his jury duty.

However, defendants did not argue that plaintiff never informed them of his scheduled jury duty, only that plaintiff did not provide them with a copy of the summons. 705 ILCS 305/4.1(c) (West 2008). Nor did defendants testify that plaintiff was terminated for failing to give them notice. Therefore, there was no issue of notice in this case.

¶ 62 *Jackson* is also distinguishable because in that case, the district court was considering a summary judgment motion. "Summary judgment is appropriate when 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is *no genuine issue of material fact* and that the moving party is entitled to a judgment as a matter of law.' " (Emphasis added.) *Palm v. 2800 Lake Shore Condominium Ass'n*, 2013 IL 110505, ¶ 28 (quoting 735 ILCS 5/2-1005(c) (West 2008)). In *Jackson*, the district court determined that an issue of material fact existed concerning whether the plaintiff had provided notice of his jury duty to his employers. *Jackson*, 2005 U.S. Dist. LEXIS 24151, at *17. The case at bar was tried to a verdict, and the trial court found that there was no dispute concerning whether or not plaintiff informed defendants of his jury service,[1] that Holmes had "requested that [plaintiff] have his work done before he went to jury service" and that plaintiff failed to complete the task of arranging transportation for a patient. In addition, Holmes testified that plaintiff told her that he "forgot" to arrange transportation for the patient.

¶ 63 Plaintiff further argues that the issue of notice is important because, while an employee with a "good" employment history may be fired for attending jury duty if he failed to give notice,

[1] The trial court found that the contradiction lay in whether or not plaintiff "left a copy of the *jury summons* with Buenaflor or Holmes." (Emphasis added.)

an employee with a "bad" employment history may not be fired for performing jury duty if he did give notice. Plaintiff argues that although defendants attempted to establish him as a "bad" employee who was fired for failing to do his job, his jury service is inextricably linked to the performance of his job. Plaintiff argues that if he was fired for failing to arrange transportation for the patient, his termination "cannot be justified unless one holds him accountable for the events that took place on the day he was at jury duty." This argument becomes unpersuasive because plaintiff himself testified that Holmes told him to "make sure everything was in order" before his scheduled jury duty. Plaintiff had been aware of the need to arrange for transportation for the patient two days prior to the scheduled date of his jury duty. Although plaintiff testified that the IDPH computer systems were down for the two days preceding his jury duty, the evidence shows that other methods for arranging transportation existed and plaintiff failed to utilize those methods or reasonably inform his supervisors. Both Buenaflor and Holmes testified that the transportation issue was resolved by hiring a taxi to transport the patient to her doctor's appointment, which was a method of transportation that LHHC had used in the past.

¶ 64 Furthermore, even if plaintiff had not attended jury duty on February 11, his testimony indicates that he was expected to arrange transportation prior to that date. Plaintiff testified that the transportation providers required 24 hours' notice of a transportation request. Therefore, it was standard for plaintiff to arrange transportation at least a day in advance of a scheduled transportation. Plaintiff's own testimony indicates that he was not expected to arrange for transportation the day of his jury duty, he was expected to have arranged transportation prior to that date. Plaintiff testified that he left a "Post-It" note for Holmes before he left LHHC the day

before his jury duty and that he told a QA supervisor that he was unable to arrange transportation for the patient. However, plaintiff did not call the QA supervisor as a witness. Buenaflor and Holmes testified that plaintiff did not inform anyone of his failure to arrange transportation for the patient. Neither party argued that plaintiff was able to arrange transportation for the patient, so there was no dispute as to whether or not plaintiff fulfilled the task he had been given. The trial court, after weighing the evidence, concluded that plaintiff was an at-will employee that failed to complete the work he had been asked to finish. As a result, we cannot say it was against the manifest weight of the evidence for the trial court to make a finding on grounds other than notice.

¶ 65 IV. Scheduled Appearance

¶ 66 Plaintiff next argues that he was denied the protection of the Jury Act because its protection extends to before and after the employee's actual attendance of jury duty, and he was terminated because of his scheduled appearance for jury duty. Plaintiff cites to the Jury Act, its federal counterpart, and to federal case law to argue that the Jury Act protects employees "from any deprivation by his employer *during or because of* his jury service." (Emphasis added.) *United States ex rel. Madonia v. Coral Springs Partnership*, 731 F. Supp. 1054, 1056 (S.D. Fla. 1990). See also 28 U.S.C. 1875(a) (West 2008) (stating that "[n]o employer shall discharge, threaten to discharge, intimidate, or coerce any permanent employee by reason of such employee's jury service, *or the attendance or scheduled attendance in connection with such service*" (emphasis added)).

¶ 67 However, plaintiff failed to argue how the facts of the case at bar relate to the cases and

statutes he cites. Under Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 1967), a party must argue how the facts of his case satisfy the legal criteria to which he cites. *Janousek v. Slotky*, 2012 IL App (1st) 113432, ¶ 16 (stating that the appellants failed to explain how the facts of their case satisfied the elements courts consider in deciding issues of procedural due process). "The court 'is not merely a repository into which an appellant may dump the burden of argument or research.' " *Janousek*, 2012 IL App (1st) 113432, ¶ 16 (quoting *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459 (2009)). The consequences of not complying with Rule 341 "is waiver of those issues on appeal." *U.S. Bank*, 397 Ill. App. 3d at 459. Since plaintiff failed to explain how his termination was the result of his "scheduled attendance" at the Daley Center for jury duty, this issue is waived.

¶ 68 V. Evidentiary Errors

¶ 69 Plaintiff next argues that the trial court made various evidentiary errors and failed to properly analyze the evidence.

¶ 70 1. Circumstantial Evidence and Pretext

¶ 71 Plaintiff argues that the trial court failed to allow him to prove his retaliatory discharge claim through circumstantial evidence and that the trial court's factual findings were "at variance with the transcript." Plaintiff is correct that he may use circumstantial evidence to prove causation in his retaliatory discharge claim. *Zuccolo v. Hannah Marine Corp.*, 387 Ill. App. 3d 561, 569 (2008). Plaintiff cites to the United States Court of Appeals for the Seventh Circuit to state that evidence of unlawful motivations is often under the control of the defendant, and allowing plaintiffs to use indirect proof " 'compensates for these evidentiary difficulties by

permitting the plaintiff to prove his case by eliminating all lawful motivations, instead of proving directly an unlawful motivation.' " *Oxman v. WLS-TV*, 846 F.2d 448, 453 (7th Cir. 1988) (quoting *La Montagne v. American Convenience Products, Inc.*, 750 F.2d 1405, 1409 (7th Cir. 1984)). Plaintiff argues that defendants' purported lawful motivation for terminating him, that the quality of patient care was compromised by plaintiff's inability to arrange transportation for the patient, was merely pretextual. Plaintiff further argues that this motivation was undermined by testimony that LHHC was able to arrange for a taxi to transport the patient and that LHHC had used taxis in the past for patient transportation. Whether an employer's articulated reason for a challenged action is a pretext is a question of fact to be decided by the trier of fact. *Toledo v. Human Rights Comm'n*, 312 Ill. App. 3d 131, 141 (2000).

¶ 72 Plaintiff's argument is not persuasive. Plaintiff conflates LHHC successfully arranging transportation for the patient with his satisfactory performance of his job. Although LHHC was able to arrange transportation for the patient, they were forced to do so at the last minute. Even if the trial court found plaintiff's testimony credible that he left a "Post-It" note on Holmes' desk, that note would not have been timely because he left the note as he was leaving LHHC the evening prior to the date of his jury service. Holmes would not have observed the "Post-It" note until the morning that the patient required the transportation, which would necessitate LHHC to arrange for transportation at the last minute. Plaintiff testified in rebuttal that, in addition to leaving the "Post-It" note, he informed a QA supervisor that he was unable to arrange transportation for the patient, but plaintiff did not call this person as a witness to testify. As a result, we cannot say that it was against the manifest weight of the evidence for the trial court to

conclude that LHHC had valid motivation for terminating plaintiff that did not violate public policy, namely, that plaintiff failed to complete the work he was assigned to complete before attending jury duty.

¶ 73 2. Lack of Evidentiary Support

¶ 74 Plaintiff next argues that the trial court improperly concluded that "*[d]efendant* offered the uncontradicted fact that Holmes had requested that [plaintiff] have his work done before he went to jury service, and that [plaintiff] did not obtain transportation for [the patient] for the day of his jury service – the work he was to have done." (Emphasis added.) After a review of the trial transcript, plaintiff is correct that *Holmes* did not testify that she told plaintiff to complete his work before attending jury duty. However, *plaintiff* testified that Holmes told him to "make sure everything was in order" prior to his attending jury service. As a result, the trial court found that plaintiff's failure to arrange for transportation for the patient is not a pretext for an unlawful termination. Whether or not plaintiff's failure to arrange transportation was a pretext for terminating plaintiff for fulfilling his jury duty is a question of fact to be decided by the trial court. *Toledo*, 312 Ill. App. 3d at 141. Based on the evidence presented at trial, we cannot say that it was against the manifest weight of the evidence for the trial court to find that defendants had a non-pretextual motivation for terminating plaintiff.

¶ 75 3. Failure To Resolve Contradictory Testimony

¶ 76 Plaintiff further argues that the trial court failed to resolve contradictory testimony because defense witnesses' testimony contradicted plaintiff's testimony, and that the testimony of the defense witnesses was self-contradictory. Plaintiff argues that Buenaflor's testimony that she

did not monitor leaves of absence was contradicted by her own employees, including her sister Holmes, who testified that Buenaflor did monitor leaves of absence; that Buenaflor's reasons for terminating plaintiff that were listed in the letter she sent him were different from the reasons she provided in her testimony; and that defendants were unable to produce a single performance evaluation of plaintiff, despite Buenaflor's testimony that all employees receive performance evaluations. However, as previously established, the trial court's finding of fact that plaintiff was required to finish his work prior to attending jury duty was derived from plaintiff's testimony. Based on plaintiff's testimony, plaintiff was unable to " 'eliminat[e] all lawful motivations' " for his termination because he testified that he was told to complete his work and he did not do so. *Oxman*, 846 F.2d at 453 (quoting *La Montagne*, 750 F.2d at 1409). Therefore, plaintiff was unable to prove that his termination was in violation of public policy. Coupled with Siscar's testimony that she satisfied jury duty without incident, we cannot say that it was against the manifest weight of the evidence for the trial court to conclude that plaintiff's termination did not violate public policy.

¶ 77 4. Reliance on Improper Evidence

¶ 78 Finally, plaintiff argues that the trial court improperly refused to admit evidence that the majority of LHHC employees are non-citizens not subject to jury duty. Plaintiff argues that if the majority of the employees are not subject to jury duty, LHHC would be likely to make errors when citizen employees request time off for jury duty. Plaintiff further argues that he was at a disadvantage in communicating with LHHC staff because employees including Buenaflor and Holmes spoke languages other than English in the workplace, and plaintiff did not speak those

languages. This argument is not persuasive. The trial court found that another LHHC employee had attended jury duty without incident. Further evidence revealed that plaintiff did advise defendants of his jury duty. Buenaflor and Holmes testified in English without translators, and Buenaflor testified that although non-English languages are spoken at LHHC, patients and doctors must be able to understand LHHC employees, which indicates that LHHC employees are expected to be able to effectively communicate in the English language. Furthermore, the fact remains that the trial court determined that a lawful motivation for terminating plaintiff existed.

¶ 79 VI. Sudden Dissatisfaction

¶ 80 Finally, plaintiff argues that the trial court failed to consider "sudden dissatisfaction" evidence. Claims of retaliatory discharge may be supported by "sudden dissatisfaction" evidence, particularly when an employee has a generally good record. *Leitgen v. Franciscan Skemp Healthcare, Inc.*, 630 F.3d 668, 676 (7th Cir. 2011). "[A]n employer's sudden dissatisfaction with an employee's performance after that employee engaged in a protected activity may constitute circumstantial evidence of causation." *Culver v. Gorman & Co.*, 416 F.3d 540, 546 (7th Cir. 2005). Plaintiff cites to multiple Seventh Circuit cases to argue that employers' claims of "sudden dissatisfaction" with a terminated employee can indicate retaliatory intent when an employee's employment history is positive. See *Culver*, 416 F.3d at 546-47 (holding that a reasonable fact finder could conclude that the plaintiff was terminated because she made allegations of gender discrimination when, days prior to making such allegations, the plaintiff had received a satisfactory performance review and her supervisor insisted at the time of the review that he had no desire to terminate her); *Lang v. Illinois Department of Children &*

Family Services, 361 F.3d 416, 419 (7th Cir. 2004) (holding that "[c]lose temporal proximity" between filing a complaint with the Equal Employment Opportunity Commission (EEOC) and the receipt of negative performance reviews "provides evidence of causation"). Plaintiff argues that the trial court improperly considered merit reviews of a different LHHC employee when defendants testified to plaintiff's shortcomings as an employee but did not produce any documentation concerning plaintiff's employment record.

¶ 81 Although plaintiff and defendants presented conflicting testimony regarding plaintiff's employment history, the trial court's written decision makes no mention of plaintiff's employment history. Instead, the trial court found that plaintiff was an employee at will, who could be "terminated for any or no reason, so long as that reason was not against public policy," and concluded that the evidence indicated that plaintiff failed to perform his duties, as requested by Holmes, and as a result his employer had a valid reason to terminate plaintiff that did not violate public policy. Therefore, unlike the federal cases cited by plaintiff, evidence in the case at bar suggests that defendants did not express "sudden dissatisfaction" with plaintiff, but rather terminated him because he failed to perform his duties. We cannot say that it was against the manifest weight of the evidence for the trial court to conclude that plaintiff's failure to arrange transportation was the reason for his termination.

¶ 82 CONCLUSION

¶ 83 For the preceding reasons, the trial court's decision is affirmed. The trial court determined that plaintiff was an employee at will and that defendants countered plaintiff's claim that his termination was against public policy. We therefore cannot say that the trial court's

decision was against the manifest weight of the evidence.

¶ 84 Affirmed.