

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

THOMAS POSTELL and MARJORIE)
POSTELL,)
) C.A. No. 06C-11-021 (JTV)
Plaintiffs,)
)
v.)
)
PAULA EGGERS, individually, and in)
her official capacity as Delaware State)
Epidemiologist in the Delaware)
Division of Public Health; VINCENT)
MECONI, in his official capacity as)
Secretary of the Delaware Department of)
Health & Social Services; PAUL)
SILVERMAN in his official capacity)
as Junior Associate Deputy Director of)
Public Health; and CHRISTIANA CARE)
HEALTH SYSTEM, INC.,)
)
Defendants.)

Submitted: August 17, 2007

Decided: January 15, 2008

Herbert W. Mondros, Esq., Margolis Edelstein, Wilmington, Delaware. Attorney for Plaintiffs.

Jeffrey A. Young, Esq., Young & McNelis, Dover, Delaware. Attorney for Defendant Eggers.

John D. Balaguer, Esq., White & Williams, Wilmington, Delaware. Attorney for Defendant Christiana Health Care System.

Patricia D. Murphy, Esq., Department of Justice, Wilmington, Delaware. Attorney for Defendant Silverman & Meconi.

*Upon Consideration of Defendants'
Motions For Summary Judgment*

GRANTED In Part

DENIED In Part

DEFERRED In Part

VAUGHN, President Judge

Postell et al, v. Eggers, et al.
C.A. No. 06C-11-021 (JTV)
January 15, 2007

OPINION

The following defendants have moved for summary judgment: Paula Eggers, Secretary Vincent Meconi and Dr. Paul Silverman. The facts will be set forth in the light most favorable to the plaintiffs to the extent necessary to address the motion. I express no opinion about what a jury may ultimately determine the facts to be.

FACTS

Plaintiff Thomas Postell works at the Division of Public Health, which is a division within the Department of Health and Social Services. Defendant Paula Eggers also works in the Division of Public Health. She is the Acting State Epidemiologist and Mr. Postell's immediate supervisor. Dr. Paul Silverman is a Deputy Director of the Division of Public Health and Ms. Eggers' immediate supervisor. Mr. Meconi is Secretary of the Department of Health and Social Services. Plaintiff Marjorie Postell was an employee within the Division of Public Health, but resigned on July 31, 2006.

The events which precipitated this litigation started on August 17, 2006. On that day the plaintiffs' minor daughter reported to her mother that she had been the victim of a sexual assault. The next day, Mrs. Postell took the child to Christiana Care Hospital to be examined. The plaintiffs wanted the hospital visit to be private. While Mrs. Postell was taking her daughter to the hospital, Mr. Postell had to leave work early to look after another child, a son. Ms. Eggers was not at work at the time, so Mr. Postell informed another supervisor that he needed to be home with his son because a family emergency required his wife to take their daughter to the hospital. The leave was approved.

Postell et al, v. Eggers, et al.

C.A. No. 06C-11-021 (JTV)

January 15, 2007

On or about August 21, 2006 Ms. Eggers decided to look into Mr. Postell's leave on the 18th, purportedly to see whether it was legitimate. She called Christiana Hospital and induced a nurse there to give her the facts of the plaintiffs' daughter's hospital visit on the 18th. Ms. Eggers did so by falsely representing to the Christiana nurse that the daughter was a possible meningitis case and she needed to know about it. During the conversation, the nurse related that the daughter was not a meningitis case, but a sexual assault case.

Ms. Eggers then disclosed this information to other Division of Public Health employees, one of whom informed Mr. Postell of what Ms. Eggers had done. Dr. Silverman was also made aware of what had happened, but at that point did nothing.

On September 19, 2006, the plaintiffs wrote to Secretary Meconi, complaining that Ms. Eggers had abused her state position to obtain confidential health information about their daughter and maliciously disseminated the information to other Division of Public Health employees. Secretary Meconi forwarded the letter to Dr. Silverman, who then began to investigate the matter.

The investigation concluded that Ms. Eggers had improperly obtained confidential medical information about the plaintiffs' daughter as alleged and shared it with Division of Public Health employees.

The plaintiffs' have suffered mental injury as a result of the defendants' conduct.

THE PLAINTIFF'S CLAIMS

The plaintiffs' assert seven claims against the moving defendants. Count I alleges a claim of intentional infliction of mental distress against Ms. Eggers only.

Postell et al, v. Eggers, et al.

C.A. No. 06C-11-021 (JTV)

January 15, 2007

Count II alleges a claim for invasion of privacy against Ms. Eggers only. Count III alleges that all defendants negligently obtained the plaintiffs' daughter's confidential medical information and disseminated it to employees at the Division of Public Health. It also alleges that Secretary Meconi and Dr. Silverman negligently failed to adopt, implement, and execute training and oversight procedures designed to prevent, detect, and punish conduct such as that committed by Ms. Eggers. Count III also alleges that all of the moving defendants violated Department of Health and Social Services and Division of Public Health policies and procedures and various state and federal laws and federal regulations. Count V alleges that the moving defendants aided and abetted Christiana Hospital in breaching its duty of confidentiality.¹ Count VI alleges that all defendants violated 16 *Del C.* § 1232 relating to confidentiality of personal health information. Count VII alleges that the moving defendants violated 42 U.S.C. § 1983.² Count VIII alleges that the moving defendants violated the "Whistleblowers' Protection Act" at 19 *Del C.* § 1701-1708.

STANDARD OF REVIEW

On a motion for summary judgment, the court must inquire into the record to determine whether there are any material facts in dispute.³ Where there is an

¹ Count IV is a claim against Christiana Hospital alone.

² In the complaint, Counts VII and VIII are numbered in reverse. I refer to them in the order in which they appear.

³ *Golt v. Sports Complex, Inc.*, 644 A.2d 989, 990 (Del. Super. 1994).

Postell et al, v. Eggers, et al.
C.A. No. 06C-11-021 (JTV)
January 15, 2007

unresolved issue of material fact, it is improper to enter a summary judgment.⁴ If however, when the facts are viewed most favorable to the nonmoving party, the court finds that there is no genuine issue to a material fact, then summary judgment is appropriate.

DISCUSSION

_____ I will address only the arguments which the defendants' make in their motion and the plaintiffs' responses to those arguments.

Workers' Compensation Exclusivity.

The moving defendants contend that the plaintiffs' claims in Counts I, II, III, V and VI are personal injury claims arising out of and in the course of their employment. They contend that those claims are governed by the Workers' Compensation Act⁵ and their sole remedy is a workers' compensation claim.

Mrs. Postel resigned on July 31, 2006. Her claims arise out of acts which occurred on and after August 18, 2006. Since the acts giving rise to her claims occurred after she ceased to be an employee, they cannot be barred by the Workers' Compensation Act. Therefore, the defendants' motion for summary judgment on Counts I, II, III, V, and VI must be denied as to Mrs. Postell's claims. If Mrs. Postell seeks to expand her complaints under these counts to include workplace issues occurring while she was still an employee, or if she wishes to introduce evidence from her time as an employee, the defendants may renew this motion as to her at trial.

⁴ *Davis v. Univ. of Del.*, 240 A.2d 583 (Del. 1968).

⁵ 19 *Del. C.* ch. 23.

Postell et al, v. Eggers, et al.
C.A. No. 06C-11-021 (JTV)
January 15, 2007

Mr. Postell contends that his claims fall within the "personal dispute exception" in the Workers' Compensation Act, which reads as follows:

Personal injury sustained by accident arising out of and in the course of the employment:

....

Shall not include any injury caused by the wilful act of another employee directed against the employee by reasons personal to such employee and not directed against the employee as an employee or because of the employee's employment.⁶

Under this provision, an injury is not covered by the Workers' Compensation Act if (1) the injury was caused by the willful act of another employee directed against the employee (2) for reasons personal to such employee, and (3) not directed against him as an employee or because of his employment. Since Mr. Postell's claims fall within the "personal dispute exception," he contends, they are not barred by the Workers' Compensation Act's exclusivity provision.

The Delaware Supreme Court discussed the "personal dispute exception" in *Konstantopoulos v. Westvaco Corp.*⁷ That case involved on-job sexual harassment by co-employees. The Supreme Court stated that the "personal dispute exception" is consistent with other cases in which courts have held that the willful act of a third party which causes injury to an employee is covered under the Workers'

⁶ 19 Del. C. § 2301(18)(b).

⁷ *Konstantopoulos v. Westvaco Corp.*, 690 A.2d 936, 939 (Del. 1996).

Postell et al, v. Eggers, et al.
C.A. No. 06C-11-021 (JTV)
January 15, 2007

Compensation Act so long as the wrongful acts "are not completely unrelated to the conditions existing in, or created by, the workplace."⁸ The Supreme Court has used this choice of words again more recently in the case of *Limehouse v. Steak & Ale Rest. Corp.*⁹ Thus, under applicable Supreme Court decisions, the "personal dispute exception" does not apply unless it can be said that a co-employee's wrongful acts are "completely unrelated to the conditions existing in, or created by, the workplace."

In this case Mr. Postell contends with vigor that Ms. Eggers was engaged in a personal vendetta against him and that her acts were completely outside the scope of her employment. The record contains evidence, which I have not set forth in this opinion, but which I have examined, that supports these contentions. However, wrongful acts committed by one employee against another for personal reasons which are outside the scope of the actor's employment are not necessarily within the "personal dispute exception." In order to be within that exception, the wrongful acts must be "completely unrelated to the conditions existing in, or created by the workplace." Viewing the evidence in the light most favorable to the plaintiff, I conclude that it cannot be said that Ms. Eggers' conduct, let alone the conduct of the other two moving defendants, was "completely unrelated to the conditions existing in, or created by, the workplace."

However, that does not end the matter. Under 19 *Del. C.* § 2363(a), an employee may maintain a third-party claim against a co-employee if the acts causing

⁸ *Id.* at 939.

⁹ 2004 Del. LEXIS 240, at *6.

Postell et al, v. Eggers, et al.
C.A. No. 06C-11-021 (JTV)
January 15, 2007

injury are outside the course of the co-employee's employment.¹⁰ On the question as to whether acts of a co-employee are within or outside the co-employee's course of employment, the following language from the Supreme Court is instructive:

[T]o have been acting in the course of his employment, . . . the defendant need not have been engaged in a regular duty or function of his own employment at the time of injury to the plaintiff. [The co-employee is immune from liability] if the act complained of was one which the defendant might reasonably do, or be expected to do, within a time during which he was employed and at a place where he could reasonably be during that time – even though outside his regular duties¹¹

I find that there is a question of fact as to whether Ms. Eggers was acting within or outside the course of her employment. Therefore, Ms. Eggers' motion for summary judgment on workers' compensation exclusivity must be denied as to all counts.

I also conclude, however, that summary judgment should be granted in favor of Secretary Meconi and Dr. Silverman against Mr. Postell on Count's III, V and VI.¹² All of Secretary Meconi's perceived acts or omissions mentioned in the record occurred in the course of his employment. The acts and omissions of which Mr.

¹⁰ *Groves v. Marvel*, 213 A.2d 853, 855-56 (Del. 1965) (The course of employment envelopes some actions that may be deemed outside the scope of employment.). The fact that plaintiff Thomas Postells has not applied for workers' compensation benefits is irrelevant.

¹¹ *Grabowski v. Mangler*, 2007 Del. LEXIS 301 (citing *Groves*, 213 A.2d 853).

¹² The fact that Mr. Postell has not filed a petition for workers' compensation is irrelevant. *Walker v. Patterson*, 325 F. Supp. 1024 (D. Del. 1971).

Postell et al, v. Eggers, et al.
C.A. No. 06C-11-021 (JTV)
January 15, 2007

Postell complains against Dr. Silverman are broad and include Dr. Silverman's personal animosity toward Mr. Postell, his delay in investigating Ms. Eggers conduct, his failure to train and supervise Ms. Eggers, his failure to adopt standards for training and supervising managerial employees, his becoming Mr. Postell's supervisor in place of Ms. Eggers, and Mr. Postell's belief that Dr. Silverman interfered with his efforts to obtain employment for which he is qualified in other offices of the Department. I have considered the evidence in support of Mr. Postell's claims against Dr. Silverman under Counts III, V and VI, and I am satisfied that all of the relevant conduct of Dr. Silverman which may have allegedly contributed to the injury for which Mr. Postell seeks recovery was within the course of his employment.¹³

42 U.S.C. § 1983

The plaintiffs contend that the moving defendants violated 19 U.S.C. § 1983 by depriving them of certain rights guaranteed by the laws of the United States at 42 U.S.C. §§ 1320d - 1320-d-8, 45 C.F.R. pts. 160 and 164, 16 *Del. C.* §1232, and their constitutional right of privacy.

A plaintiff may bring a civil action pursuant to § 1983 action where a defendant, acting under the color of state law, deprives him of a constitutionally

¹³ This Court has been previously observed that there is room for confusion as to how co-employee conduct which is within § 2301(18)(b) and co-employee conduct which is subject to civil suit under § 2363(a) compare. *Dockham v. Miller*, 1997 Del. Super. LEXIS 222, at *2 n.1. Since co-employee conduct falling within § 2301(18)(b) is not compensable under the Workers' Compensation Act, while co-employee conduct which is subject to third-party suit under § 2363(a) is compensable, it would seem logical that they are not the same.

Postell et al, v. Eggers, et al.
C.A. No. 06C-11-021 (JTV)
January 15, 2007

protected right.¹⁴ There is a qualified immunity for public officials from liability under § 1983 “insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”¹⁵ Qualified immunity is an affirmative defense.¹⁶

I am satisfied that there are questions of fact regarding Ms. Eggers’ potential liability under § 1983. Therefore, summary judgment on this count will be denied as to her.

_____The plaintiffs argue that Secretary Meconi and Dr. Silverman have not set forth facts to support their qualified immunity affirmative defense. While I do not necessarily agree with this argument, I will defer ruling on this part of the defendants’ motion until discovery is complete.

The Whistleblowers’ Protection Act.

The Delaware Whistleblowers’ Protection Act appears at Chapter 17 of Title 19 of the Delaware Code. This Court has previously ruled that individual state officials and employees cannot be sued under the Whistleblowers’ Protection Act.¹⁷ I will follow that precedent and grant summary judgment in favor of all three moving defendants on Count VIII.

¹⁴ *Hall v. McGuigan*, 743 A.2d 1197 (Del. Super. 1999).

¹⁵ *Hall*, 743 A.2d at 1206 (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

¹⁶ *Id.*

¹⁷ *Tomei v. Sharp*, 902 A.2d 757, 767 (Del. Super. 2006).

Postell et al, v. Eggers, et al.
C.A. No. 06C-11-021 (JTV)
January 15, 2007

CONCLUSION

Therefore, defendant Eggers' motion for summary judgment on Counts I, II, III, V, VI and VII (42 U.S.C. § 1983) is *denied*. The motion of Secretary Meconi and Dr. Silverman for summary judgment on Counts III, V and VI is *denied* as to Mrs. Postell and *granted* as to Mr. Postell. The defendants' motion for summary judgment on Count VII is *deferred* as to Secretary Meconi and Dr. Silverman. The defendants' motion for summary judgment on Count VIII (Whistleblowers' Act) is *granted* as to all three moving defendants.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

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