

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Julie Conrad v. The Council of Senior Citizens of Gilmer County, Inc.

Julie Conrad v. The Council of Senior Citizens of Gilmer County, Inc. · No. No. 14-1262 · Decided November 16, 2016

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed dismissal of Julie Conrad’s amended complaint alleging constructive retaliatory discharge in violation of public policy and the tort of outrage. The court held that Conrad failed to plead sufficient facts showing that her employer violated West Virginia Code § 21-3-1 or that the alleged third-party conduct occurred in an unsafe workplace controlled by the employer, and declined to review the outrage claim because it was not assigned as error.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Menis E. Ketchum; Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	November 16, 2016
DOCKET	No. 14-1262
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the Circuit Court of Gilmer County's order dismissing her amended complaint under West Virginia Rule of Civil Procedure 12(b)(6) for failure to state a claim.
STANDARD OF REVIEW	De novo review of dismissal under West Virginia Rule of Civil Procedure 12(b)(6); the complaint is construed in the light most favorable to the plaintiff and its allegations are taken as true.
PRECEDENTIAL VALUE	Published memorandum decision; precedential value not otherwise specified in the source.
PARTIES	Julie Conrad v. The Council of Senior Citizens of Gilmer County, Inc.

TOPICS

wrongful termination

constructive discharge

motions to dismiss

employment at-will

statutory interpretation

PRACTICE AREAS

employment law

civil procedure

appellate procedure

torts

QUESTIONS PRESENTED

1. Whether Conrad pleaded sufficient facts to state a constructive retaliatory discharge claim based on the public policy expressed in West Virginia Code § 21-3-1.
2. Whether the dismissal of Conrad's tort of outrage claim should be addressed on appeal when that claim was not assigned as error in the petition for appeal.

HOLDINGS

1. The amended complaint failed to state a plausible constructive retaliatory discharge claim because it did not allege facts showing that the client's home, which was Conrad's workplace, was unsafe or that the employer failed in a statutory duty involving employment activity under the employer's control.
2. The court declined to consider the tort of outrage claim because Conrad did not designate the dismissal of that claim as an assignment of error in her petition for appeal.

KEY QUOTATIONS

“What proves fatal to Petitioner’s claim is the absence of alleged facts that demonstrate Respondent acted contrary to West Virginia Code § 21-3-1 and those actions led to her discharge.” (Opinion at 5)

“The public policy exception to the general rule allowing unfettered termination of an at-will employment relationship is a narrow one that does not extend this far.” (Opinion at 7)

FACTUAL BACKGROUND

The Council hired Julie Conrad as an at-will homemaker in February 2002 to provide in-home services. Conrad alleged that a client's family member repeatedly flattened her tires, vandalized her vehicle, and blocked the driveway, and that she told her supervisor she could no longer safely or emotionally continue the placement. After her supervisor allegedly told her to "stick it out," Conrad resigned in January 2013 and later sued, asserting constructive retaliatory discharge and the tort of outrage.

PROCEDURAL HISTORY

Conrad, an at-will homemaker, resigned after alleging that a client's family member vandalized her vehicle, flattened her tires, and blocked access to the client's home. She filed an action asserting constructive retaliatory discharge in violation of public policy and the tort of outrage. The circuit court granted the employer's Rule 12(b)(6) motion, and the Supreme Court of Appeals affirmed in a memorandum decision.

DISPOSITION

affirmed

CASES CITED

- Cantley v. Lincoln Cty. Comm’n, 221 W.Va. 468, 655 S.E.2d 490 (2007)
- John W. Lodge Distrib. Co. v. Texaco, Inc., 161 W.Va. 603, 245 S.E.2d 157 (1978)
- Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)
- Conrad v. ARA Szabo, 198 W.Va. 362, 480 S.E.2d 801 (1996)
- Harless v. First National Bank, 162 W.Va. 116, 246 S.E.2d 270 (1978)
- Slack v. Kanawha County Housing and Redevelopment Authority, 188 W.Va. 144, 423 S.E.2d 547 (1992)
- Birthisel v. Tri-Cities Health Servs. Corp., 188 W.Va. 371, 424 S.E.2d 606 (1992)
- Henderson v. Meredith Lumber Co., 190 W.Va. 292, 438 S.E.2d 324 (1993)
- Pack v. Van Meter, 177 W.Va. 485, 354 S.E.2d 581 (1986)
- Frohnapfel v. ArcelorMittal USA LLC, 235 W.Va. 165, 772 S.E.2d 350 (2015)
- Tudor v. Charleston Area Med. Ctr., Inc., 203 W.Va. 111, 506 S.E.2d 554 (1997)
- Lilly v. Overnight Transp. Co., 188 W.Va. 538, 425 S.E.2d 214 (1992)
- Canterbury v. Laird, 221 W.Va. 453, 655 S.E.2d 199 (2007)
- Muller v. Automobile Club of Southern California, 71 Cal. Rptr. 2d 573 (Cal. Ct. App. 1998)
- Colmenares v. Braemar Country Club, Inc., 63 P.3d 220 (Cal. Ct. App. 2003)