

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Wanda Keener and Katherine Asbury v. Clay County Development Corporation

Keener · No. No. 21-0267 · Decided November 3, 2022

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed summary judgment for the Clay County Development Corporation in claims alleging employment discrimination and breach of an implied employment contract. The court held that familial status is not a protected category for employment discrimination under the West Virginia Human Rights Act and that sibling relationships do not constitute ancestry under the Act. The court also addressed whether the employer's employment guide created an implied contract and concluded that the petitioners remained at-will employees.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Wooton; Judge Hoke, sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	November 3, 2022
DOCKET	No. 21-0267
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioners appealed the Clay County Circuit Court's order granting the respondent summary judgment on claims under the West Virginia Human Rights Act and for breach of an implied employment contract.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The moving party must initially show the absence of a genuine issue of material fact, after which the nonmoving party must identify specific record facts demonstrating a trialworthy issue.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Wanda Keener, Katherine Asbury v. Clay County Development Corporation

TOPICS

employment discrimination

employment contracts

employment at-will

statutory interpretation

standard of review

PRACTICE AREAS

employment law

civil rights

contracts

appellate procedure

QUESTIONS PRESENTED

1. Whether familial status is a protected group, or falls within the term ancestry, for purposes of an employment-discrimination claim under the West Virginia Human Rights Act.
2. Whether the CCDC Employment Guide created an implied employment contract requiring progressive discipline before petitioners could be terminated.
3. Whether petitioners established by clear and convincing evidence that their employment was other than at will.
4. Whether the circuit court properly granted summary judgment to CCDC.

HOLDINGS

1. Familial status is not a protected group for purposes of an employment-discrimination claim under the West Virginia Human Rights Act because the Legislature included familial status for housing and real-property discrimination but omitted it from the employment list.
2. As used in West Virginia Code section 5-11-2, ancestry means discrimination based on a characteristic such as race, ethnicity, or national origin that is passed down by lineal descendants; familial status involving a sibling relationship does not fall within ancestry.
3. Summary judgment was proper because petitioners' asserted discrimination based on their relationship to their sister was not based on a protected employment characteristic under the Act.
4. The Employment Guide did not create an implied employment contract because it contained no definite promise of job security or fixed term, expressly stated that receipt of the manual did not constitute an employment contract, and permitted positive termination for insufficient funding or reorganization.
5. Petitioners remained at-will employees because they failed to prove by clear and convincing evidence that the Employment Guide or other facts created enforceable employment rights.

KEY QUOTATIONS

“Familial status is not a protected group for purposes of an employment discrimination claim under the West Virginia Human Rights Act, W. Va. Code §§ 5-11-1 to -9 (2022).” (syllabus point 2)

“As used in the West Virginia Human Rights Act, West Virginia Code § 5-11-2 (2022), ancestry means discrimination based on some characteristic like race, ethnicity, or national origin that is passed down by lineal descendants.” (syllabus point 5)

“Where an employee seeks to establish a permanent employment contract or other substantial employment right, either through an express promise by the employer or by implication from the employer’s personnel

manual, policies, or custom and practice, such claim must be established by clear and convincing evidence.”
(syllabus point 6)

“The circuit court did not err in its finding that “the Plaintiffs were at-will employees, and as such could be terminated for any non-discriminatory reason.”” (opinion at 26)

FACTUAL BACKGROUND

Keener and Asbury were sisters who worked for CCDC for approximately thirty and forty years, respectively. Their sister, CCDC's former executive director, was terminated after making a racially derogatory Facebook post, which led to state and regional investigations of CCDC's policies and finances. CCDC had approximately \$250,000 in debt, significant payroll obligations, and insufficient funds, and its board terminated Keener and Asbury, the two highest-paid nonprofessional employees, while dissolving their positions and distributing their duties to other employees.

PROCEDURAL HISTORY

Keener and Asbury sued the Clay County Development Corporation, alleging that they were terminated because of their familial relationship to the corporation's former executive director and that their employment guide created an implied contract requiring progressive discipline before termination. After discovery, the circuit court granted CCDC summary judgment on March 5, 2021, concluding that familial status was not protected under the employment provisions of the West Virginia Human Rights Act and that the employment guide did not create an implied contract. The Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- Powderidge Unit Owners Ass'n v. Highland Props., Ltd., 196 W. Va. 692, 474 S.E.2d 872 (1996)
- Conaway v. E. Associated Coal Corp., 178 W. Va. 164, 358 S.E.2d 423 (1986)
- State v. Epperly, 135 W. Va. 877, 65 S.E.2d 488 (1951)
- Crockett v. Andrews, 153 W. Va. 714, 172 S.E.2d 384 (1970)
- Miners in Gen. Grp. v. Hix, 123 W. Va. 637, 17 S.E.2d 810 (1941)
- Lee-Norse Co. v. Rutledge, 170 W. Va. 162, 291 S.E.2d 477 (1982)
- W. Va. Health Care Cost Rev. Auth. v. Boone Mem. Hosp., 196 W. Va. 326, 472 S.E.2d 411 (1996)
- Banker v. Banker, 196 W. Va. 535, 474 S.E.2d 465 (1996)
- Bullman v. D & R Lumber Co., 195 W. Va. 129, 464 S.E.2d 771 (1995)
- Donley v. Bracken, 192 W. Va. 383, 452 S.E.2d 699 (1994)
- State ex rel. Frazier v. Meadows, 193 W. Va. 20, 454 S.E.2d 65 (1994)
- W. Va. Inst. of Tech. v. W. Va. Human Rights Comm'n, 181 W. Va. 525, 383 S.E.2d 490 (1989)

- Billiter v. Jones, No. CV 3:19-0288, 2020 WL 5646901 (S.D.W. Va. Sept. 22, 2020)
- Barefoot v. Sundale Nursing Home, 193 W. Va. 475, 457 S.E.2d 152 (1995)
- Fairmont Specialty Servs. v. W. Va. Human Rights Comm'n, 206 W. Va. 86, 522 S.E.2d 180 (1999)
- Darlington v. Mangum, 192 W. Va. 112, 450 S.E.2d 809 (1994)
- Wolfe v. Forbes, 159 W. Va. 34, 217 S.E.2d 899 (1975)
- Suter v. Harsco Corp., 184 W. Va. 734, 403 S.E.2d 751 (1991)
- Williams v. Precision Coil, Inc., 194 W. Va. 52, 459 S.E.2d 329 (1995)
- Younker v. E. Associated Coal Corp., 214 W. Va. 696, 591 S.E.2d 254 (2003)
- Adkins v. Inco Alloys Int'l, Inc., 187 W. Va. 219, 417 S.E.2d 910 (1992)
- Cook v. Heck's Inc., 176 W. Va. 368, 342 S.E.2d 453 (1986)
- Mace v. Charleston Area Med. Ctr. Found., Inc., 188 W. Va. 57, 422 S.E.2d 624 (1992)
- iPacesetters, LLC v. Douglas, 239 W. Va. 820, 806 S.E.2d 476 (2017)
- Stephens v. Bartlett, 118 W. Va. 421, 191 S.E. 550 (1937)

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