The Legal Intelligencer

Key At-Will Employment Case Headed to Superior Court

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By Amaris Elliott-Engel

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In an apparent case of first impression, a Philadelphia judge has ruled that a hospital executive fired for suing his employer in a medical malpractice claim over his infant's care might be able to sue for wrongful discharge despite Pennsylvania's at-will doctrine.

The Philadelphia judge also has ruled that the plaintiff might be able to recover for tortious interference with an employment contract that is terminable at will.

The state Superior Court has granted an interlocutory appeal regarding both of these issues.

In an opinion setting out his reasoning for his decision to deny an employer's preliminary objections in the nature of demurrer to the state Superior Court, Philadelphia Common Pleas Judge Arnold L. New said that no Pennsylvania court has yet determined if there is a public policy exception to the at-will doctrine that would bar the termination of an employee when an employee is suing an employer to protect the rights of his or her child. New's opinion required under the Pennsylvania Rule of Civil Procedure 1925(b) is dated Nov. 5.

"A good faith argument has alleged that [plaintiff Richard D.] Haun's dismissal violated public policy," New wrote. "His termination, for assisting his son in seeking compensation to which he has a legal right, violated a mandate of public policy since there are recognized public policies which support each aspect of Haun's claim.

"Public policy favors allowing the victims of medical malpractice to seek adequate compensation. Public policy also favors parents asserting legal claims on behalf of their children."

New said he was justified in rejecting the defendants' preliminary objection to the plaintiff's wrongful termination claims because the defendants in *Haun v. Phoenixville Hospital* have not

shown their demurrers could be sustained without doubt. The judge said there might be a public policy exception for suing an employer to protect the rights of an employee's child.

Plaintiff Richard D. Haun was Phoenixville Hospital's chief financial officer from June 2007 until being fired Nov. 12, 2008, for bringing a medical malpractice claim on behalf of his son, according to New's opinion.

Haun's wife, Theresa, gave birth to twins, a boy and a girl, at Phoenixville Hospital Aug. 23, 2007, New said. The twins were born prematurely and taken to the neonatal intensive care unit. While in the unit, Drake Haun, the boy, was disconnected from an IV line, leading to extensive blood loss that caused "severe and irreversible injury" to his nervous system, New wrote.

The Hauns filed a medical malpractice suit against Phoenixville Hospital as well as doctors and nurses who had taken care of Drake at the hospital, New said. During a meeting with Steven Tullman, chief executive officer of Phoenixville Hospital, and Grant Hoffman, the hospital's human resources director, Nov. 12, 2008, Haun was told he was being fired because he was "'an adversary of the company and it's too much risk,'" according to the judge's opinion.

Haun was immediately escorted from the building and was not allowed to collect his personal possessions.

While Pennsylvania is an at-will employment state, New wrote, employees can pursue a wrongful termination claim if their discharge violates a clear mandate of public policy. Since the case was decided just on papers and Phoenixville Hospital has not yet had the opportunity to give a reason to support its decision to fire Haun, the judge wrote he had to focus solely on the public policy threatened by Haun's discharge.

New noted that in the 1998 decision in *Shick v. Shirey* the state Supreme Court recognized a public policy exception to the at-will doctrine when employees exercised their rights to sue over their workers' compensation. And in the 1995 decision in *Highhouse v. Avery Transportation,* the state Superior Court found another public policy exception to the at-will doctrine for employees seeking unemployment compensation, New said.

New also said he was justified in rejecting the defendants' preliminary objection to the plaintiff's tortious interference with contract claim because the defendants had not shown their demurrer should be sustained without doubt and that the law is unclear as to whether a plaintiff can recover for a claim of tortious interference with an employment contract that is terminable at will.

The state Supreme Court has not ruled on this issue, and two Superior Court panels have ruled in opposite ways on the issue, New said.

In an older case from 1980, a Superior Court panel in *Yaindl v. Ingersoll-Rand Co.* cited *Restatement (Second) of Torts* Section 766 and said in dicta that an action for intentional interference with the performance of contract could proceed even if the contract is terminable at will.

The defendants argued that, under the 1998 decision in *Hennessy v. Santiago* , Haun can't pursue his tortious interference with a contract claim, New said. In that case, the Superior Court said that there is no precedent extending the Superior Court's statement in *Yaindl* to employment contracts at will and that the statement is dicta, New said.

With two Superior Court panels in conflict, "it is unclear whether, under Pennsylvania law, a party can recover for tortious interference with contractual relations in the context of an employment contract terminable at will," New wrote.

Haun claims wrongful termination in violation of public policy, wrongful termination in violation of the specific intent exception to Pennsylvania's default employee at-will doctrine or tortious interference with contract, New said.

The defendants' preliminary objections included: a demurrer to Haun's claim of wrongful termination in violation of public policy on the argument that Haun failed to plead a recognized public policy exception to the at-will doctrine; a demurrer to Haun's claim of wrongful termination in violation of the specific intent exception to the at-will doctrine on the grounds that Pennsylvania no longer recognizes a specific intent exception to the at-will doctrine; and a demurrer to Haun's claim that Pennsylvania law does not recognize a claim for tortious interference with a contract in the context of contracts for employment at-will.

Defendants include Phoenixville Hospital; Community Health Systems Inc., which owns and operates 118 hospitals including Phoenixville Hospital; and other related business entities.

New dismissed Haun's claim of wrongful termination in violation of the specific intent exception to the at-will doctrine, but New overruled the defendants' other preliminary objections May 15, 2009. That order is now what is under appeal to the state Superior Court.

Sidney R. Steinberg, a partner with Post & Schell's labor and employment and employee relations practice groups, declined to comment because of his client's policy against commenting on pending litigation.

"The defendants really rest here on a legal defense," said **Chip Becker**, one of the plaintiff's attorneys from Kline & Specter. "If the Superior Court disagrees with their view, what they are left here with then is the facts and the facts are appalling."

Kline & Specter also represents Haun in the medical malpractice claim on behalf of his son. Haun was fired after a summons against the hospital was filed and before a claim had been articulated, the firm's **Tom Kline** said.

Haun's claim for wrongful discharge also includes a punitive damages claim on the basis that it was wrongful to discharge Haun when he was exercising a right to file a lawsuit on behalf of his son for his son's brain injuries, Kline said.

"Good facts make good law," Kline said. "There couldn't be a stronger fact pattern."

The tortious interference claim arises if the other corporate entities argue Haun was working directly for Phoenixville Hospital, not the corporate entities, Becker said.