

1986

Welch v. Grand County School : Unknown

Utah Supreme Court

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IN THE SUPREME COURT
IN AND FOR THE STATE OF UTAH

JOLENE L. WELCH,)	
)	
Plaintiff/Appellant,)	CIVIL NO. _____
)	
vs.)	
)	
GRAND COUNTY SCHOOL)	APPELLANT'S BRIEF
)	
Defendant/Respondent.)	

STATEMENT OF ISSUE PRESENTED

This is an action for damages arising from the termination of Appellant's employment by the Respondent during the time the Appellant was receiving Workman's Compensation benefits for an injury sustained while in Respondent's employ.

DISPOSITION IN LOWER COURT

The Appellant appeals from an Order of Summary Judgment wherein the Judge of the Seventh Judicial District Court ruled as a matter of law that no cause of action existed for the

redress of grievances arising from the discharge of one's employment.

RELIEF SOUGHT ON APPEAL

The Appellant seeks reversal of the Summary Judgment entered against her and for the remand of this cause to the lower court for trial on the merits.

STATEMENT OF FACTS

This action was commenced by the Appellant in August, 1984 by the filing of a Verified Complaint alleging inter alia; that she was employed in August of 1981 as a bus driver for the Grand County School District; that in the employment interview she was advised the bus drivers enjoyed the same negotiated benefits (with the exception of the number of days for sick leave) as the educators and support personnel of the Grand County School District who were represented by the G.E.A. Union; that she received oral assurances that as long as her job performance was satisfactory, she could rely upon employment for an indefinite term, and she would be tendered a yearly contract each June when salary adjustments were made. In August, 1981 the Appellant commenced work and was continually assured her job performance was satisfactory and she never received a negative evaluation.

On September 23, 1983 Appellant's supervisor directed her to transport children with special educational needs. Inasmuch as the vehicle did not comply with the minimum standards

prescribed by the Utah Transportation Commission, which standards were promulgated by the authority of Section 41-6-115 of the Utah Code requiring some form of mechanical apparatus to lift children into the bus, the Appellant had to lift manually a child into the bus who was wearing braces and was in a wheelchair. While performing this task, Appellant sustained a back injury.

The State Insurance Fund, as the workman's compensation carrier for the Grand County School District, commenced compensation for this injury.

The Appellant alleges that on January 6, 1984 the Superintendent of Schools told her if she did not return to work by the end of January she would be replaced. On January 30, 1984 the Superintendent told her he was going to let her go, but was going to hold her on the payroll until the end of May for insurance reasons. During this time Appellant was being treated by doctors and was receiving compensation from the workman's compensation carrier.

On May 17, 1984 Appellant advised the Superintendent of Schools the doctor would release her to return to work on or before August 21, 1984, but she was advised she did not have a job and she would not be given a blue slip or any evidence of termination.

The Handbook of Selected Policies and Rules approved and adopted by the Grand County Board of Educators further provided for the orderly termination procedures without discrimination. The procedures provide inter alia (1) the receiving of a written notice prior to the end of the contract of the intent not to employ, (2) the right of a fair hearing concerning employment status or a right to an informal conference.

Appellant alleges she was terminated by the Respondent (a) contrary to the policies and procedures of the Respondent, (b) in violation of the implied contract the Respondent had with the Appellant, and (c) contrary to public policy in that her absenteeism resulted from a work-related injury for which workman's compensation benefits were paid throughout the absenteeism. Appellant also alleged that such actions were attended by such conduct as to entitle her to exemplary damages.

The Answer filed by the School Board admits the employment of Appellant, the work-related injury sustained, her receipt of workman's compensation benefits; and, further the Respondent admits "that the policies of the Defendant provide for orderly termination procedures as to certain classifications of employees". Respondent alleges in its Fourth Defense that "all acts of omission of the Defendant were undertaken in good faith..." and in the Fifth Defense that "Plaintiff has, and had, no recognized

statutory, constitutional, or common-law right in, or expectancy relative to, continued employment by the Defendant", and in the Sixth Defense alleges that "Plaintiff's employment with the School District was legally and properly terminated because of, inter alia, Plaintiff's inability and/or unwillingness to perform the tasks reasonably attendant to said employment, all of same adverse to Defendant's rightful interests, and all acts of the Defendant were consistent with the policies and procedures of the Defendant and consisted with state and federal law". Respondent denied all other allegations.

With respect to the factual allegations, Appellant, to clarify the general denials of Respondent, served interrogatories.

In response to the interrogatories, the Superintendent of schools who is the Respondent's agent, did not recall and, therefore, did not deny the conversations regarding the discharge of the Appellant with the Superintendent of Schools. The Respondent also asserted bus drivers were "classified personnel and as such negotiated individually with the School District." No evidence was heard on the terms of the hiring.

In the Second Defense in Respondent's Answer, it was alleged that Defendant's policies provide for orderly termination procedures as to certain classifications of employees. Exhibit A affixed to Respondent's Answer is a copy of the Grand County School District's "Orderly Termination Procedure".

The "Orderly Termination Procedure" sets forth a policy of termination of educators without discrimination and classifies in Exhibit B all employees not requiring certification as classified personnel. It defines classified personnel and states that duties and responsibilities of classified employees should be defined in accordance with job descriptions adopted and published separately. The grievance procedure in 4223.5 (Rules) specifically limits the applicability to educators or students (Procedure Step 1, Informal). The procedures manual is vague as to classified personnel and no evidence was heard to characterize the Appellant and whether or not she is an included employee.

The Respondent's general answer and response to interrogatories is replete with representations of persons not remembering conversations, except the one conversation with regard to filling out W-4's and State forms. The Appellant alleges affirmatively she relied upon the representations that she would have the same rights as a beneficiary under the G.E.A. contract. Other than a general denial, the response to the interrogatories elicited the fact that the substance of conversations Appellant relies upon are not remembered as to what was said but are in some instances remembered as having occurred. Facts relevant to the hiring and to the termination have been put in issue by the pleading.

Additionally, if Appellant had no common-law rights, no rights derivative of contract, no rights derivative of the "Orderly Termination Procedure", she allegedly did have rights as Respondent defined the in interrogatory response 9. There has been no allegation on the part of the Respondent that these procedures were followed and Appellant has affirmatively alleged they were not followed because she was told she was terminated.

Notwithstanding these issues of material fact, summary judgment was entered against the Appellant, stating that as a conclusion of law the Respondent was justified in terminating the employment of Appellant for her inability to perform and that Respondent was entitled to a summary judgment of "no cause of action."

SUMMARY OF ARGUMENT

The issues of material fact in conflict which were left unresolved by the entry of a Summary Judgment Order in the District Court are, of course, academic if the State of Utah affords no protection to an employee who is protected either by tort principles or by a contract in fact or one implied in law from unlawful discharge, while the employee is drawing workman's compensation benefits for a work-related injury sustained while using the substandard and unsafe equipment of the employer.

ARGUMENT

A. THE LAW AS IT EXISTS IN UTAH.

This Court has addressed the issue of the propriety of summary judgment in an action brought to recover damages for alleged breach of an oral employment contract in Bihlmaier v. Carson, 603 P2d 790 (1979). This Court held that the entry of summary judgment was appropriate because the oral employment contract contained no express terms concerning the duration of Plaintiff's employment and the evidence (italics supplied) indicated that both Plaintiff and Defendant intended the employment to be at the will of either party, therefore barring Plaintiff from a right of action from an alleged constructive discharge.

This case appears to be definitive on this issue and should be dispositive of the cause on appeal. The reason it is dispositive is that in the case at bar summary judgment was entered on the basis of the pleadings and no evidence was ever taken. The Appellant alleged and intended to prove oral assurances of continued employment as long as her job performance was satisfactory and the Respondent, other than a general denial in the answer and further in interrogatories, responded that the conversations to which Plaintiff made reference were not remembered. Inasmuch as there was no evidentiary hearing and, therefore, no finding made as to the presence or absence of oral promises of continued employment or whether or not written provisions in a union contract or written provisions in a procedure

manual applied, there are genuine issues of material fact to be heard and summary judgment cannot be entered as a matter of law, Rules of Civil Procedure, rule 56(c), Utah Rules of Court.

Additionally, the case of Bihlmaier v. Carson, infra, appears to set forth the Utah position with respect to the employee's rights against employers for breach of the employment contract. This Court held:

"When an individual is hired for an indefinite time, he has no right of action against his employer for breach of the employment contract upon being discharged."

This Court cited Jackson v. Minidoka Irrigation District, 98 Idaho 330, 563 P2d 54 (1977) to support this rule wherein that Court explained:

"An employee who is hired for an indefinite period of time is known as an employee at will and it is well established that if he is not hired for some definite period of time he has no right of action upon being discharged," page 57.

A reading of the Idaho case further reveals that

"The employment at will rule is not, however, an absolute bar to a claim of wrongful discharge. As a general exception to rule allowing either the employer or the employee to terminate the employment relationship without cause, an employee may claim damages for wrongful discharge when the motivation for the firing contravenes public policy."

The Idaho court used the often cited Petermann v. International Brotherhood of Teamsters, 174 Cal App 2 184,344, P2d 25 (1955) to support its position that the right to discharge an employee at will may be limited by considerations of public policy. The Court continued, quoting from 72 CJS Policy at page 312:

"Public policy is the principle under which freedom of contract or private dealing is restricted by law for the good of the community."

As examples of actions patently contrary to the public welfare are: employer coercing perjury, Petermann v. International Brotherhood of Teamsters, infra; retaliatory terminations based on malice, Monge v. Beebe Rubber Co., 114 N. H. 130, 316 A2d 549 (1974); employee terminated for serving on a jury, Nees v. Hocks, 276 Or. 210, 536 P2d 512 (1975); and employee fired for reporting an injury to her arm in order to file for workman's compensation (italics supplied), Frampton v. Central Indiana Gas Co., 260 Ind 249, 297 N.E. 2d 425 (1973).

The Appellant alleged the injury she sustained was sustained while working with equipment that did not meet the Utah State minimum requirements, and having sustained such injury and while being compensated by the Industrial Commission for such injury, she was terminated. Such conduct by the employer, it is urged by the Appellant, clearly contravenes public policy.

Although this issue presented directly is of novel impression in this State, Appellant urges that this Court continue to follow the doctrine as evidenced in the Idaho case.

B. THE LAW AS IT EXISTS IN THE UNITED STATES.

Throughout the United States more than two-thirds (2/3) of the states recognize some means of recovery. Recovery in tort or contract for wrongful dismissal have also been recognized in Alabama, Alaska, Arizona, California, Connecticut, Florida, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, North Dakota, Tennessee, Virginia, Washington, West Virginia, Wisconsin and Wyoming. Employee Dismissal Law & Practice, Section 1.11, p 19.

These states embrace one or more of the three (3) basic common law doctrines which have emerged since 1970 which permit common law actions for wrongful dismissal despite the Employment at Will Rule.

FIRST DOCTRINE

The first doctrine permits a Plaintiff to recover for a breach of contract when the employer dismisses the employee in violation of oral assurances or promises of employment tenure implied from a course of conduct or from employee policies or handbooks. The cases cited most frequently to support this

position are Tesario v. Millinocket Community Hospital, 379 A 2 135 (Me 1977), where Plaintiff showed a direct oral promise; or Toussaint v. Blue Cross & Blue Shield of Michigan, 408 Mich 579, 292 N.W. 2d 880 (1980) oral promises made directly to the employee in addition to general promises contained in the handbooks; and Weiner v. McGraw Hill, 57 NY 2d 458, 443 N.E. 2d 441 (1892) where Plaintiff sought to establish existence of a contract by showing general statement of employer policies that promised continued employment. In Toussaint and its companion case, the Supreme Court of Michigan found sufficient factual evidence to permit a jury to imply a contract based on assurances that termination would occur for just cause only. Regarding the oral promise, the Court held:

"Where a prospective employee inquires about job security and the employer agreed that the employee shall be employed as long as he does the job, a fair construction is that the employer has agreed to give up his right to discharge at will without assigning a cause and may discharge only for cause."

The Appellant in the instant case alleged in her complaint and before the Court evidence that she had oral assurances that as long as her work was satisfactorily performed she would continue to be employed. The order granting summary judgment denies her the right to place this evidence before the Court.

SECOND DOCTRINE

The second doctrine enables an employee to recover for breach of contract when the employer has violated a "covenant of good faith and fair dealing" implied in all contracts as a matter of law.

Section 205 of the Restatement of Contracts says:

"Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement."

This concept has been used by several courts to imply an employer obligation not discharge employees wrongfully. This promise of employment tenure implied in law was applied in the Monge v. Beebe Rubber Co., infra, retaliatory dismissal because Plaintiff refused to "go out with employer"; Petermann v. Teamsters, infra, employer coercing perjury; Fortune v. National Cash Register Co., 373 Mass 96, 364 N.E. 2d 1251 (1977), citing and basing decision on Restatement of Contracts 205; Gates v. Life of Montana Insurance Co., 638 P2d 1063 (1982), employer obligated to follow policies in personnel handbook.

The Appellant alleged a contract of tenure implied in law based on oral assurances and policies in the personnel manual. That she was required to work under conditions which did not meet the minimum safety standards as dictated by this state and was discharged while she was being compensated for same, does not

demonstrate to this author the good faith and fair dealing in performance and enforcement required by basic contract law. To be barred from presenting evidence addressed to these issues is surely a grievance this Court can redress.

THIRD DOCTRINE

Finally, the third doctrine which permits recovery is a recovery in tort when the dismissal offends some identifiable public policy.

Intentional tort principles require a Plaintiff, in order to recover, to show that a legally protected right of the Plaintiff was harmed by an act of the Defendant and the Defendant lacked justification for it. The new wrongful dismissal cause of action has expanded the range of tort theories potentially available to dismissed employees. Until these new wrongful dismissal theories were accepted by the Court, the dismissed employees could recover in tort only if they could show their dismissal was accompanied by conduct or a state of mind sufficient to satisfy traditional tort categories, such as intentional interference with contractual relations, Restatement (Second) of Torts, Section 766, comment C (1979); intentional infliction of emotional distress, Restatement (Second) of Torts, Sections 46 and 47; fraudulent misrepresentations, Restatement (Second) of Torts, Section 525; defamation, Restatement (Second) of Torts, 558; or invasion of

privacy, Restatement (Second) of Torts, 652B, 652C, 652D, and 652E.

The most commonly accepted new theory is the public policy tort. In these cases employer conduct contravened public policy if it violated a statutory grant of rights directly pertinent to the employment relationship, or activities affirmatively protected by public policy, or for opposing employer conduct that contravenes public policy. For example, the employee was dismissed in violation of a statutory grant of rights directly pertinent to the employment relationship, such as Montalvo v. Zamora, 7 Cal App 3d 69, 86 Cal Rptr 401, (1970), which implied a civil action for retaliation against an employee for exercising his rights under a minimum wage statute, or Nees v. Hocks, 272 Or 210, 536 P2 512 (1975), dismissed in retaliation for serving on a jury; or workman's retaliation for filing workman's compensation claims.

The first workman's compensation case was Frampton v. Central Indiana Gas Co., 260 Ind 249, 297 NE 2d 425 (1973). The Court held that employee rights and employer duties contained in the state worker's compensation acts would be frustrated if employers could retaliate against employees for filing claims. Thus, it held a cause of action existed although the state statute provided no penalties either civil or criminal for retaliation.

In Sventko v. Kroger Co., 69 Mich App 644, 245 N.W. 2d 151 (1976), the Court held that public policy embodied in the statute would be undermined if the employer were permitted to discourage them from realizing rights created by statute; the Court thus reversed the trial courts grant of summary judgment against the Plaintiff.

To bar the Appellant from presenting evidence that she was engaging in activities affirmatively protected by public policy, that is to say claiming benefits from the Industrial Commission for a work-related injury, which activity provoked her discharge is to compound by judicial decree the contravention of public policy.

Although the Defendant's primary argument is that the Plaintiff's contract of employment was terminable at will, the issue of whether or not the Plaintiff's inability to perform due to illness granted a right to terminate should also be addressed.

The Plaintiff was employed under a contract for a specific period of time and that contract was indefinitely renewable so long as the Plaintiff adequately performed. Termination is represented to have occurred in January by the Defendant, in the middle of the contract period although no blue slip was given at that time and the Plaintiff's employment benefits continued until May, at which time the Plaintiff was given her termination papers.

The Plaintiff's injury was cured by the time she was terminated and, thus, the argument that her extended inability would have precluded her performance, at the time of actual termination, is an error in the law and in fact.

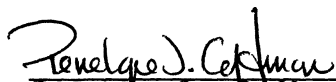
There are genuine disputes of fact before the Court. The Plaintiff denies she was terminated in January. The documentary evidence shows that she was, in fact, not terminated in January, but in May. The failure to offer her a renewal of her contract, when she was physically able and willing to do so, merely because the School Board Superintendent thought he had fired her in January, is an administrative bumbling on the Defendant's side and cannot represent a prejudice to the Plaintiff.

CONCLUSION

The material issues of fact in this case are: what were the terms of Appellant's hiring; when did the School Board actually terminate Ms. Welch; and what were the school policies with respect to the renewal of contracts and termination of school bus drivers since they were not explicitly covered in all instances by the Policy and Procedures Manual. There is a sufficient conflict in the pleadings filed and in the representations of the evidence that the trial court should be reversed in its grant of Summary

Judgment and the Appellant should be allowed to proceed on the merits.

Respectfully submitted,


Penelope D. Coffman
Coffman & Coffman, P.C.
Attorneys for Appellant

CERTIFICATE OF MAILING

I certify that I mailed four (4) true and correct copies of the above and foregoing APPELLANT'S BRIEF, postage prepaid, this 6th day of December, A.D. 1985, addressed as follows:

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Attorneys for Plaintiff

IN THE SEVENTH JUDICIAL DISTRICT COURT
IN AND FOR GRAND COUNTY, STATE OF UTAH

JOLENE L. WELCH,)	
)	
Plaintiff,)	CIVIL NO. _____
)	
vs.)	
)	VERIFIED
GRAND COUNTY)	COMPLAINT
SCHOOL DISTRICT,)	
)	
Defendant,)	

NOW COMES your Plaintiff and respectfully
represents unto this Honorable Court as follows:

FIRST CAUSE OF ACTION

- A
1. That at all times material, the Defendant Grand County School District employed educators and support personnel for the purpose of operating a school system in Grand County, Utah.

A 2. That at all times material, each employee in the District was responsible to the Board of Education through its superintendent, Bill B. Meador.

A 3. That at all times material, the educators in and District were represented by the G.E.A. Union and its representatives negotiated on an annual basis, the terms of each year's contract.

4. That in August, 1981, Jolene L. Welch made application to the Grand County School District for a position as bus driver. She was advised by Elmer E. Dravage, Business Manager of the Board of Education for the Grand County School District, that bus drivers enjoyed the same negotiated benefits of employment that the educators had gained by negotiations with the exception of the number of days for sick leave. These benefits included, but were not limited to, life insurance, disability insurance and vacation time.

5. That at the time of her employment, Plaintiff was advised that yearly contracts would be sent out each June which would state the wage and reflect any changes. Plaintiff understood that contracts would be tendered to her annually provided her work performance was satisfactory.

6. Your Plaintiff thereafter commenced to work for the Grand County School District, relying upon the representations

of Elmer Dravage that the union contract in effect with the educators was the implied contract with the exception of sick leaves that covered the bus drivers and that as long as her job performance was satisfactory she could rely upon the job security.

7. That in accordance with the standards of the Board of Education, your Plaintiff's job performance was evaluated regularly and she never received a negative evaluation.

8. That at all times Plaintiff's supervisors advised her that her employment was for an indefinite term, the amount of the wage to be negotiated every June, and that her job performance was satisfactory.

9. That, pursuant to the direction of her immediate supervisor, your Plaintiff occasionally transported children with special educational needs. That the vehicle your Plaintiff was instructed to use on September 2, 1983 did not comply with the minimum standards prescribed by the Utah Transportation Commission, which standards are promulgated by authority of Section 41-6-115 of the Utah Code Annotated, such standards being set forth in the "Minimum Standards for Utah School Buses" and "Utah School Bus Driver Handbook" as Chapters 30-43.

That notwithstanding the lack of mechanical apparatus to lift a child into a vehicle, in order to perform her job, the Plaintiff lifted a child into the vehicle on September 23, 1983.

That at the time of lifting a handicapped child wearing braces and in a wheelchair, she bore weight on her right leg and turned to adjust the position of the child. At that time, your Plaintiff sustained a back injury.

10. That the State Insurance Fund, workman's compensation carrier for the Grand County School District, compensated her for this injury.

11. That on January 6, 1984, your Plaintiff called Superintendent Bill B. Meador's office and was told that if she did not return to work by the end of January she would be replaced. That at the time of this conversation, your Plaintiff was under a doctors care, had not been released for work, and was still being compensated by the State Insurance Fund for a work-related injury.

12. That on January 30, 1984, your Plaintiff again talked with Superintendent Bill B. Meador and was told that he was going to let her go. When Plaintiff asked for a blue slip or some other indication of termination, he told her that he was going to hold her on the payroll until the end of May for insurance reasons.

13. That on May 17, 1984, your Plaintiff called Bill Meador and told him the doctor would release her to return to work on or before August 21, 1984. Mr. Meador told your Plaintiff she did not have a job, but refused to give her a blue slip or any evidence of termination. Subsequently, on the 29th day of June,

1984, your Plaintiff received a letter stating her insurance was cancelled.

14. That the Handbook of Selected Policies and Rules approved and adopted by the Grand County Board of Education, provides inter alia, in 4119.1, for the orderly termination procedures without discrimination. Your Plaintiff had a written contract of employment with the school district, and based upon the representations to her of Elmer Dravage that non-educators were protected by these provisions, she believes that she is entitled to the protection of these provisions, to-wit: (1) receiving a notice prior to the end of the contract, in writing of intent not to employ; (2) right of a fair hearing concerning employment status or a right to an informal conference.

15. That your Plaintiff believes that the date upon which her insurance was cancelled by the school district is the effective date of termination although she has made demand for a blue slip and has not received a blue slip or any other indication of termination.

16. That the Defendant has terminated the Plaintiff contrary to the policies and procedures of the Defendant and in violation of the implied contract the Defendant had with the support employees.

17. That the Defendant has wrongfully discharged your Plaintiff, and such a discharge is against public policy in that her absenteeism resulted from a job-related injury for which workman's compensation benefits were paid throughout her period of absenteeism.

18. That Plaintiff, as a direct result of this wrongful termination, has sustained a loss of income, both present and future, incurred expenses associated with a search for employment, suffered a loss of pension benefits and other employment benefits, and has been damaged in other regards.

SECOND CAUSE OF ACTION

19. That the Plaintiff incorporates by reference, the allegations contained in paragraphs 1 through 18 of her First Cause of Action as if fully set forth herein.

20. That actions of the Defendant in terminating the Plaintiff's employment as described above were outrageous and extreme, going beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community.

20. That the Defendant's actions were done intentionally and recklessly without regard for the rights of the Plaintiff.

21. That as a direct result of the Defendant's outrageous conduct in terminating the Plaintiff's employment, the Plaintiff sustained severe emotional distress.

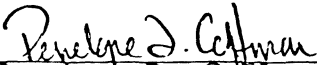
THIRD CAUSE OF ACTION

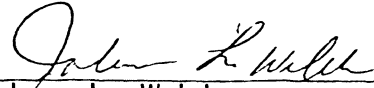
22. That the Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 18 of the First Cause of Action and paragraphs 19-21 of the Second Cause of Action, as if fully set forth herein.

23. That the actions of the Defendant in terminating the Plaintiff's employment were attended by circumstances of fraud, malice and a wanton or reckless disregard for the rights and feelings of the Plaintiff, thereby entitling the Plaintiff to reasonable exemplary damages.

WHEREFORE, Plaintiff prays for Judgment against the Defendant for compensatory and exemplary damages as determined by the trier of fact, for costs, interest from the date of termination, expert witness fees, deposition expenses, and such other and further relief as the Court may deem proper.

DATED this 9 day of ^{December}~~August~~, A.D. 1984.



Penelope D. Coffman
Coffman & Coffman, P.C.
Attorneys for Plaintiff


Jolene L. Welch

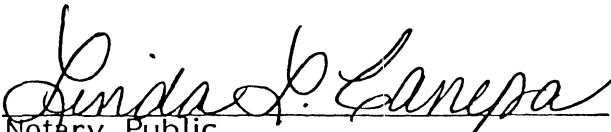
STATE OF UTAH)
) ss.
County of Grand)

JOLENE L. WELCH the signer of the foregoing instrument, being first duly sworn on oath, deposes and says:

That she has read the above and foregoing instrument and knows the contents thereof; that the same is true to the best of her knowledge except as to matters therein stated on information and as to such matters, she believes it to be true.


Jolene L. Welch

~~December~~ Subscribed and sworn to before me this 9th.day of
~~August~~ A.D. 1984.


Notary Public
Residing at Moab, Utah 84532

My commission expires:
11-18-86

ALLAN L. LARSON
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Attorneys for Defendant Grand
County School District

IN THE SEVENTH JUDICIAL DISTRICT COURT OF GRAND COUNTY
STATE OF UTAH

JOLENE L. WELCH,

Plaintiff,

ANSWER

vs.

GRAND COUNTY SCHOOL
DISTRICT,

Civil No. 5233

Defendant.

The above-named defendant, Grand County School District,
answers plaintiff's Complaint as follows:

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim against this
defendant upon which relief can be granted.

SECOND DEFENSE

Defendant admits the allegations of paragraphs 1, 2, 3, and
10 of plaintiff's Complaint, and admits that plaintiff was hired
as a school bus driver for the school years 1980-1981, 1981-1982,
1982-1983, and 1983-1984, and that plaintiff was not rehired as a

school bus driver for the school year 1984-1985, admits that plaintiff claims to have suffered an injury on the job in September 1983, and that the policies of the defendant provide for orderly termination procedures as to certain classifications of employees. Defendant denies each and every other allegation of plaintiff's Complaint except as herein specifically admitted.

THIRD DEFENSE

Plaintiff has failed to mitigate damages as required by law, and to that extent is not herein permitted to recover.

FOURTH DEFENSE

All acts or omissions of the defendant were undertaken in good faith, without malice, with probable cause, were fully justified and reasonable under the circumstances, and not in contravention of any recognized statutory, common-law or constitutional right of the plaintiff.

FIFTH DEFENSE

Plaintiff has, and had, no recognized statutory, constitutional, or common-law right in, or expectancy relative to, continued employment by the defendant, and defendant specifically denies violating any recognized right, privilege or immunity, or any other statutory, constitutional, or common-law right of the plaintiff.

SIXTH DEFENSE

Defendant affirmatively alleges that plaintiff's employment with the School District was legally and properly terminated because of, inter alia, plaintiff's inability and/or unwillingness to perform

the tasks reasonably attendant to said employment, all of same adverse to the defendant's rightful interests, and all acts of the defendant were consistent with the policies and procedures of the defendant and consistent with state and federal law.

SEVENTH DEFENSE

To the extent that plaintiff herein claims damages for personal injuries sustained in connection with her employment with the defendant School District, same is barred by virtue of, inter alia, the exclusive remedy provisions of the Utah Workmen's Compensation statute, Sections 35-1-60, et seq., Utah Code Annotated, 1953.

EIGHTH DEFENSE

To the extent that plaintiff's claims herein are based upon an alleged verbal or oral agreement or promise, same is void and unenforceable by virtue of the statute of frauds, Section 25-5-4, Utah Code Annotated, 1953.

NINTH DEFENSE

Plaintiff's Complaint is defective as, contrary to Rule 9(b), Utah Rules of Civil Procedure, the circumstances constituting "fraud" as alleged in paragraph 23 thereof are not stated with particularity, and said claims should be dismissed.

TENTH DEFENSE

Plaintiff has failed to comply with or to allege compliance with the provisions of, inter alia, Sections 63-30-11, 12, 13, 14, 15 and 19, Utah Code Annotated, 1953, and this action is accordingly barred.

ELEVENTH DEFENSE

Defendant is immune by virtue of, inter alia, the provisions of Sections 63-30-3, 4 and 10, Utah Code Annotated, 1953.

TWELFTH DEFENSE

Defendant's maximum potential liability to plaintiff is the sum of \$100,000.00, as provided by Section 63-30-34, Utah Code Annotated, 1953, nor may punitive or exemplary damages be recovered as against said defendant by virtue of Section 63-30-22, Utah Code Annotated, 1953.

THIRTEENTH DEFENSE

Any injury or damage sustained by plaintiff was solely caused or proximately contributed to by the negligence or other actionable conduct of the plaintiff, or by a risk of which the plaintiff knew or should have known and assumed, and said culpable conduct on the part of the plaintiff was equal to or greater than the culpable conduct, if any, of defendant.

FOURTEENTH DEFENSE


Plaintiff's claims are barred, variously, by the doctrines of assumption of risk, contributory negligence, estoppel, failure of consideration, laches, statute of frauds, and waiver.

WHEREFORE, having fully answered plaintiff's Complaint, defendant Grand County School District demands that same be dismissed and that it be awarded its costs herein incurred.

Dated this 17th day of January, 1985.

SNOW, CHRISTENSEN & MARTINEAU

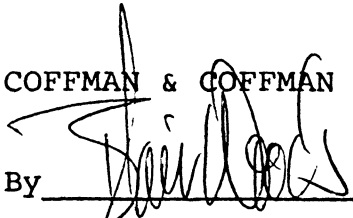
By 
Allan L. Larson


Robert H. Ruggieri

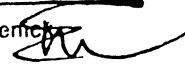
Attorneys for Defendant
Grand County School District

Received a copy of the above and foregoing Answer this 22nd day
of January, A. D., 1985.

COFFMAN & COFFMAN

By 

Attorneys for Plaintiff
59 East Center Street
Moab, Utah 84532

FILED 1985 6-10-85
Filed _____
Fee _____
Barbara Domenico 
Clerk of Grand County

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Grand County School District

IN THE SEVENTH JUDICIAL DISTRICT COURT OF GRAND COUNTY
STATE OF UTAH

JOLENE L. WELCH,

Plaintiff,

vs.

GRAND COUNTY SCHOOL DISTRICT,

Defendant.

ORDER GRANTING
SUMMARY JUDGMENT

Civil No. 5233

Defendant Grand County School District's Motion to Dismiss or in the Alternative, Motion for Summary Judgment, a Memorandum of Points and Authorities in support thereof, together with an Affidavit, were filed by defendant's counsel of record in the above-referenced Court on the 13th day of May, 1985. Plaintiff filed no Objection to the Motion or Counter-Affidavits or Memorandum.

The Court having reviewed, examined and considered the Pleadings, Affidavit and Memorandum on file, having previously

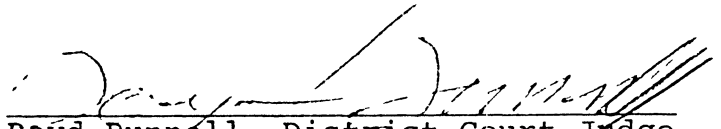
issued a Ruling on Motion to Dismiss, or for Summary Judgment, and being fully advised in the premises:

The Court finds that plaintiff entered into an annual contract of employment with defendant Grand County School District covering the nine month period of the 1983-1984 school year as a bus driver; that plaintiff suffered an injury in September of 1983 and was unable to perform her employment under the contract; and, that it became necessary for defendant to replace plaintiff with another employee in January of 1984 to perform those duties. The Court concludes as a matter of Law that the defendant Grand County School District was justified in terminating the employment of plaintiff for her inability to perform, and that the defendant is entitled to a Summary Judgment of No Cause of Action.

NOW, THEREFORE, IT IS ORDERED that defendant Grand County School District's Motion for Summary Judgment be, and hereby is, granted.

DATED this 16 day of June, 1985.

BY THE COURT:


Boyd Bunnell, District Court Judge