2016

Law Orientation

Academic Academy Course Packet

Day 2 of Orientation, Thursday, August 18th, will focus on providing students a greater understanding of legal education. Designated as the Academic Development Day, students will attend a series of Academic Academy sessions designed to deconstruct the unique learning process of law school, while providing practical skills to assist students in successfully engaging with their legal studies. As part of the Academic Academy, students will also attend their first Legal Writing & Analysis class session on Thursday at 1:15 pm.

Please prepare for the Academic Academy by reading this course packet in advance of Day 2 of Orientation.
On July 23, 1969, she ran out of boxes for her machine. When she reported this to the foreman, he told her to make her own, which she claims she could not do while keeping up her production. When she spoke to the union steward about it, the foreman ordered her back to her machine and fired her at 2 o'clock in the morning when she refused to comply with his order. After complaining to the union, she was reinstated with a warning.

On Saturday, July 26, she called the personnel manager at his home to tell him that on advice of her lawyer she was calling to say she would not be in on Sunday because of illness. She also called in on Sunday, July 27, to say she would not be able to work because of illness and would enter the hospital the next day. The company's records show her absent with excuse on July 28 through 31.

She testified that when she reported for work at 11 p.m. on the night of August 4, the personnel manager was there, although she had never seen him at the plant before at that time of day, and that he asked her "What kind of face I got to come back?" After being at work for two and one-half hours that same night, she was found unconscious in the ladies' room and was taken to the hospital. The company records show her hospitalized for the next four days including August 8. Nothing is shown in these records regarding the next two days but they show her absent on August 11, 12 and 13 without having called in. On August 13, 1969, the personnel manager sent her a letter stating that since she failed to report for work for three consecutive days without notification to the company, she was "deemed a voluntary quit."

There was evidence both from the plaintiff and the foreman that she did in fact call in on Sunday, August 10, to report that she was still sick. There was also evidence that some time after defendant had refused her foreman's advances, the personnel manager had visited her at home about some annoying telephone calls she was receiving. In the course of their conversation, he told her he knew her foreman used his position to force his attentions on the female employees under his authority and he asked her "not to make trouble."
Plaintiff sued for breach of an employment contract for an indefinite period of time. The employer has long ruled the workplace with an iron hand by reason of the prevailing common-law rule that such a hiring is presumed to be at will and terminable at any time by either party. 53 Am. Jur. 2d Master and Servant § 43 (1970); 9 S. Williston, Contracts § 1017 (W. Jaeger ed. 1967); Restatement (Second) Agency § 442 (1958); see Blumrosen, Seniority and Equal Employment, 23 Rutgers L. Rev. 270 (1969). When asked to reconsider the longstanding common-law rule of property based on an ancient feudal system which fostered in a tenancy at will a relationship heavily weighted in favor of the landlord, this court did not hesitate to modify that rule to conform to modern circumstances. Kline v. Burns, 111 N.H. 87, 90, 276 A.2d 248, 250 (1971); Sargent v. Ross, 113 N.H. 388, 308 A.2d 528 (1973).

The law governing the relations between employer and employee has similarly evolved over the years to reflect changing legal, social and economic conditions. 3A A. Corbin, Contracts § 674, at 205, 206 (1960). In this area "[w]e are in the midst of the period in which the pot boils the hardest and the process of change the fastest." Id. Although many of these changes have resulted from the activity and influence of labor unions, the courts cannot ignore the new climate prevailing generally in the relationship of employer and employee. See Comment, Contracts - Termination of Employment at Will - Public Policy May Modify Employer's Right to Discharge, 14 Rutgers L. Rev. 624 (1960); Blumrosen, Employee Discipline, 18 Rutgers L. Rev. 428, 431-33 (1964).

In all employment contracts, whether at will or for a definite term, the employer's interest in running his business as he sees fit must be balanced against the interest of the employee in maintaining his employment, and the public's interest in maintaining a proper balance between the two. See Note, California's Controls On Employer Abuse of Employee Rights, 22 Stanford L. Rev. 1015 (1970). We hold that a termination by the employer of a contract of employment at will which is motivated by bad faith or malice or based on retaliation is not in the best interest of the economic system or the public good and constitutes a breach of the employment contract. Frampton v. Central Indiana Gas Co., 297 N.E.2d 425 (Ind. 1973); see Petermann v. Teamsters Local 396, 174 Cal. App. 2d 184, 189, 344 P.2d 25, 27 (1959); Blades, Employment At Will v. Individual Freedom: On Limiting the Abusive Exercise of Employer Power, 67 Colum. L. Rev. 1404, 1418 (1967). Such a rule affords the employee a certain stability of employment and does not interfere with the employer's normal exercise of his right to discharge, which is necessary to permit him to operate his business efficiently and profitably.

The sole question on appeal is whether there was sufficient evidence to support the jury's finding that defendant, through its agents, acted maliciously in terminating plaintiff's employment. It is the function of the jury to resolve conflicts in the testimony, Kiffoyle v. Malastea, 101 N.H. 473, 475, 147 A.2d 111, 113 (1958), and the law is settled that a jury verdict will not be disturbed on appeal if there is evidence to support it. See O'Brien v. Public Service Co., 93 N.H. 79, 88 A.2d 507 (1948); Benoit v. Perkins, 79 N.H. 11, 104 A. 254 (1918).

The jury could draw the not-so-subtle inference from the evidence before it that the hostility of defendant's foreman and connivance of the personnel manager resulted in the letter of August 13, 1969, and that that letter was in effect a discharge. See Colorado Civil Rights Comm'n v. State School Dist. No. 1, 488 P.2d 83, 86 (Colo. App. 1971). The foreman's overtures and the capricious firing at 2 a.m., the seeming manipulation of job assignments, and the apparent connivance of the personnel manager in this course of events all support the jury's conclusion that the dismissal was maliciously motivated.

In our opinion, however, the verdict includes elements of damage not properly recoverable. The plaintiff lost 20 weeks employment at an average pay of $ 70.81 per week. This would account for $ 1,416.20 of the verdict, leaving $ 1,083.80 attributable to mental suffering. Such damages are not generally recoverable in a contract action. Dunn & Sons, Inc. v. Paragon Homes of New Eng., Inc., 110 N.H. 215, 218, 265 A.2d 5 (1970); Francoeur v. Stephen, 97 N.H. 80, 81 A.2d 308 (1951); Johnson v. Waisman Bros., 93 N.H. 133, 36 A.2d 634 (1944). They could not be found in this case to have resulted from the discharge. Defendant had been having difficulty with her husband and had been receiving annoying telephone calls which upset her. She presented no medical testimony. Although she alleged that her discharge caused her mental suffering, her difficulties all preceded the discharge. We therefore remand the case for a new trial unless the plaintiff consents to a reduction of the verdict by the amount of $ 1,083.80.

Remanded.

GRIFFITH, J., did not sit; GRIMES, J., dissented; the others concurred.

Grimes, J. (dissenting):

In my view, reasonable men could not find for the plaintiff on the evidence in this case even under the new rule of law which the court has fashioned today. The substance of the plaintiff's claim is that she was discharged because she did not accept an invitation of her foreman to go out with him. Although it was denied by the foreman, the jury could find on plaintiff's
testimony alone that the invitation was extended. It was a single instance, however, and there is no claim that it was repeated or further pursued. It is not findable that this single refusal was the reason for the termination of plaintiff's employment. There was evidence, and none to the contrary, that it was a shortage of work and her lowest seniority that caused her press machine to be shut down and her loss of overtime. When her machine was shut down, she was given work on a degreasing machine at a higher rate of pay than when she started. When she told the foreman she "needed the money" from the overtime, he offered what from the uncontradicted evidence was the only work available to help her out until her overtime was restored. The only so-called harassment and ridicule claimed amounts to no more than once saying "How do you like my floor boy?" and "My wife wouldn't do that." It is uncontradicted that when she was having trouble with annoying phone calls and needed help, the personnel manager personally went to the police and then to her home to talk with her and her husband; that when she could not pick up her Christmas turkey, the foreman personally delivered two instead of one to her home; and that he also at her request gave her husband, a mechanic, work on his automobile.

Her final termination was in accordance with established company rules and she neither contested the termination nor pursued the grievance procedures under the union contract. She was denied unemployment compensation on the ground that she was a "voluntary quit" and did not appeal that finding.

A finding that this company discharged the plaintiff because she refused her foreman a date eight months before could not reasonably be made and should not be permitted to stand. Apart from the facts, I cannot subscribe to the broad new unprecedented law laid down in this case. *Frampton v. Central Indiana Gas Co.*, 297 N.E.2d 425 (Ind. 1973), cited for its support was a tort action to recover actual and punitive or exemplary damages for a discharge in retaliation for filing a workmen's compensation claim. The court treated the threat of discharge as a "device" prohibited by the Workmen's Compensation Act to avoid the employer's statutory obligations. The Indiana court stated that it could find no case anywhere to support such an action but held the discharge to be an intentional wrong prohibited by statute and in clear contravention of the public policy. That case, however, is not authority for the court's new contract law. *Petermann v. Teamsters Local 396*, 174 Cal. App. 2d 184, 344 P.2d 25 (1959) is also inapposite. There, the court allowed recovery only in order to uphold a public policy against perjury. The protection given by the union contract governing the right to discharge and the grievance procedures therein established remove this plaintiff from that class of employee for which concern is expressed in the law review articles cited by the court. Not a single case has been found which supports the broad rule laid down by the court to support an action for breach of contract in this case. In fact, the law everywhere, uniformly supported by scores of cases is that an employment contract for an indefinite period is one "at will and is terminable at any time by either party" regardless of motive for "good cause, bad cause or no cause" and for "any reason or no reason". *Harp v. Administrator, Bureau of Unemploy. Comp.*, 12 Ohio Misc. 34, 230 N.E.2d 376 (1967); *Portable Electric Tools, Inc. v. NLRB*, 309 F.2d 423 (7th Cir. 1962); *Reale v. International Bus. Mach. Corp.*, 34 App. Div. 2d 936, 311 N.Y.S.2d 767 (1970); *Mallard v. Boring*, 182 Cal. App. 2d 390, 6 Cal. Rptr. 171 (1960); *Swaffield v. Universal Esco Corp.*, 271 Cal. App. 2d 147, 76 Cal. Rptr. 680 (1969).
Supreme Court of Alabama.
206 So. 2d 371 (Ala. 1968).

RUSSELL-VAUGHN FORD, INC., et al.
v.
E. W. ROUSE.

Jan. 11, 1968.

[372]
SIMPSON, Justice.

The plaintiff in this case filed suit against Russell- Vaughn Ford, Inc. and several individuals. All individual defendants were stricken by plaintiff before trial except the appellant James Parker, and one Virgil Harris who has not participated in this appeal.

The complaint was amended several times but ultimately issue was joined and the case went to the jury on a common count for conversion of plaintiff's 1960 Falcon automobile and a second count charging the defendants with conspiracy to convert the automobile.

Essentially the facts are as follows:

On April 24, 1962, the appellee went to the place of business of Russell-Vaughn Ford, Inc., to discuss trading his Falcon automobile in on a new Ford. He talked with one of the salesmen for a while who offered to trade a new Ford for the Falcon, plus $1,900. The trade was not consummated on this basis, but Mr. Rouse went to his house and picked up his wife and children and returned to the dealer. With his wife and children there Mr. Rouse discussed further the trade but no deal was made that night.

The following night he returned with a friend where further discussions on the trade were had. At the time of this visit one of the salesmen, Virgil Harris, asked Mr. Rouse for the keys to his Falcon. The keys were given to him and Mr. Rouse, his friend, and appellant Parker looked at the new cars for a time and then proceeded with the negotiations with regard to the trade. The testimony indicates that in this conversation the salesman offered to trade [373] a new Ford for the Falcon, plus $2,400. The plaintiff declined to trade on this basis.

At this stage of the negotiations, Mr. Rouse asked for the return of the keys to the Falcon. The evidence is to the effect that both salesmen to whom Rouse had talked said that they did not know where the keys were. Mr. Rouse then asked several people who appeared to be employees of Russell-Vaughn for the keys. He further asked several people in the building if they knew where his keys were. The testimony indicates that there were a number of people around who were aware of the fact that the appellee was seeking to have the keys to his car returned. Several mechanics and salesmen were, according to plaintiff’s testimony, sitting around on cars looking at him and laughing at him.

After a period of time the plaintiff called the police department of the City of Birmingham. In response to his call Officer Montgomery came to the showroom of Russell-Vaughn Ford and was informed by the plaintiff that he was unable to get his keys back. Shortly after the arrival of the policeman, according to the policeman’s testimony, the salesman Parker threw the keys to Mr. Rouse with the statement that he was a cry baby and that “they just wanted to see him cry a while.”

The evidence is abundant to the effect that Mr. Rouse made a number of efforts to have his keys returned to him. He talked to the salesmen, to the manager, to mechanics, etc. and was met in many instances with laughter as if the entire matter was a “big joke.”

As noted, the case was tried to a jury, and submitted on a conversion count in code form and on a second count charging conspiracy to convert. The jury returned a general verdict in favor of the plaintiff in the amount of $5,000. This appeal followed, after the trial court denied a motion for new trial.

The appellants have made several assignments of error. Initially it is argued that the facts of this case do not make out a case of conversion. It is argued that the conversion if at all, is a conversion of the keys to the automobile, not of the automobile itself. It is further contended that there was not under the case here presented a conversion at all. We are not persuaded that the law of Alabama supports this proposition. As noted in Long-Lewis Hardware Co. v. Abston, 235 Ala. 599, 180 So. 261,
“It has been held by this court that ‘the fact of conversion does not necessarily import an acquisition of property in the defendant.’ Howton v. Mathias, 197 Ala. 457, 73 So. 92, 95. The conversion may consist, not only in an appropriation of the property to one’s own use, but in its destruction, or in exercising dominion over it in exclusion or defiance of plaintiff’s right. McGill v. Hollan, 208 Ala. 9, 93 So. 848, 515; St. Louis & S.F. Ry. Co. v. Georgia, F. & A. Ry. Co., 213 Ala. 108, 104 So. 33.”

It is not contended that the plaintiff here had no right to demand the return of the keys to his automobile. Rather, the appellants seem to be arguing that there was no conversion which the law will recognize under the facts of this case because the defendants did not commit sufficient acts to amount to a conversion. We cannot agree. A remarkable admission in this regard was elicited by the plaintiff in examining one of the witnesses for the defense. It seems that according to salesman for Russell-Vaugh Ford, Inc. it is a rather usual practice in the automobile business to “lose keys” to cars belonging to potential customers. We see nothing in our cases which requires in a conversion case that the plaintiff prove that the defendant appropriated the property to his own use; rather, as noted in the cases referred to above, it is enough that he show that the defendant exercised dominion over it in exclusion or defiance of the right of the plaintiff. We think that has been done here. The jury so found and we cannot concur that a case for conversion has not been made on these facts.

Further, appellants argue that there was no conversion since the plaintiff could have called his wife at home, who had another set of keys and thereby gained the ability to move his automobile. We find nothing in our cases which would require the plaintiff to exhaust all possible means of gaining possession of a chattel which is withheld from him by the defendant, after demanding its return. On the contrary, it is the refusal, without legal excuse, to deliver a chattel, which constitutes a conversion. Compton v. Sims, 209 Ala. 287, 96 So. 185.

We find unconvincing the appellants contention that if there were a conversion at all, it was the conversion of the automobile keys, and not of the automobile. In Compton v. Sims, supra, this court sustained a finding that there had been a conversion of cotton where the defendant refused to deliver to the plaintiff “warehouse tickets” which would have enabled him to gain possession of the cotton. The court spoke of the warehouse tickets as a symbol of the cotton and found that the retention of them amounted to a conversion of the cotton. So here, we think that the withholding from the plaintiff after demand of the keys to his automobile, without which he could not move it, amounted to a conversion of the automobile.

It is next argued by appellants that the amount of the verdict is excessive. It is not denied that punitive damages are recoverable here in the discretion of the jury. In Roan v. McCaleb, 264 Ala. 31, 84 So. 2d 358, this court held:

“If the conversion was committed in known violation of the law and of plaintiff’s rights with circumstances of insult, or contumely, or malice, punitive damages were recoverable in the discretion of the jury.”

We think that the evidence justifies the jury’s conclusion that these circumstances existed in this case.

We have carefully considered each assignment of error made and argued by appellants. We are clear to the conclusion that the evidence supports the verdict of the jury and find no error in the court’s refusal to grant a new trial. In our opinion no assignment justifies a reversal.

Affirmed.
203 Mont. 263

Supreme Court of Montana.

Debra Jo HARDY, Plaintiff and Appellant,

v.

LaBELLE'S DISTRIBUTING CO., Steven E. Newsom, Loss Prevention Manager; David Kotke, Showroom Manager, Defendants and Respondents.

No. 82-110.
Decided March 31, 1983.

Rehearing Denied April 21, 1983.

[264]

GULBRANDSON, Justice.

Plaintiff, Debra Jo Hardy brought this action against defendants for false imprisonment. The District Court of the Thirteenth Judicial District, Yellowstone County, issued judgment after a jury verdict in favor of defendants and plaintiff appeals.

Defendant, LaBelle's Distributing Company (LaBelle's), hired Hardy as a temporary employee on December 1, 1978. She was assigned duty as a sales clerk in the jewelry department.

On December 9, 1978, another employee for LaBelle's, Jackie Renner, thought she saw Hardy steal one of the watches that LaBelle's had in stock. Jackie Renner reported her belief to LaBelle's showroom manager that evening.

On the morning of December 10, Hardy was approached by the assistant manager of LaBelle's jewelry department and told that all new employees were given a tour of the store. He showed her into the showroom manager's office and then left, closing the door behind him.

There is conflicting testimony concerning who was present in the showroom manager's office when Hardy arrived. Hardy testified that David Kotke, the showroom manager, Steve Newsom, the store's loss prevention manager, and a uniformed policeman were present. Newsom and one of the [265] policemen in the room testified that another policeman, instead of Kotke, was present.

Hardy was told that she had been accused of stealing a watch. Hardy denied taking the watch and agreed to take a lie detector test. According to conflicting testimony, the meeting lasted approximately from twenty to forty-five minutes.

Hardy took the lie detector test which supported her statement that she had not taken the watch. The showroom manager apologized to Hardy the next morning and told her that she was still welcome to work at LaBelle's. The employee who reported seeing Hardy take the watch also apologized. The two employees then argued briefly, and Hardy left the store.

Hardy brought this action claiming that defendants had wrongfully detained her against her will when she was questioned about the watch.

On appeal Hardy raises basically two issues
1. Whether the evidence is sufficient to support the verdict and judgment and
2. Whether the District Court erred in the issuance of its instructions.

The two key elements of false imprisonment are the restraint of an individual against his will and the unlawfulness of such restraint. 32 Am.Jur.2d, False Imprisonment, § 5. The individual may be restrained by acts or merely by words which he fears to disregard. Panisko v. Dreibelbis (1942), 113 Mont. 310, 124 P.2d 997; Kroeger v. Passmore (1908), 36 Mont. 504, 93 P. 805.

Here, there is ample evidence to support the jury's finding that Hardy was not unlawfully restrained against her will. While Hardy stated that she felt compelled to remain in the showroom manager’s office, she also admitted that she wanted to stay and clarify the situation. She did not ask to leave. She was not told she could not leave. No threat of force or otherwise was made to compel her to stay. Although she followed the assistant manager into the office [266] under pretense of a tour, she testified at trial that she would have followed him voluntarily if she had known the true purpose of the meeting and that two policemen were in the room. Under these circumstances, the jury could easily find that Hardy was not detained against her will. See also, Meinecke v. Skaggs (1949), 123 Mont. 308, 213 P.2d 237, and Roberts v. Coleman (1961), 228 Or. 286, 365 P.2d 79.

Hardy also claims the District Court erred by issuing court's instructions 10, 12, 13, and 14, and by refusing her proposed instructions 7, 11, 17, 19, and 30. Hardy argues that the court's instructions failed to comply with the facts and law, which were more accurately represented in her proposed instructions.


Here, the court's instructions adequately stated the law on false imprisonment. Appellant's proposed instructions 7, 11, 17, 19, and 30 either reiterated the court's instructions or were inappropriate, and therefore were properly refused by the District Court.

Instruction 10 given by the District Court provided that there was no false imprisonment if the plaintiff voluntarily complied with the request to remain in the showroom manager’s office. This is one of the key elements of false imprisonment and was properly given. 32 Am.Jur.2d, False Imprisonment, § 10; Griffin v. Clark (1935), 55 Idaho 364, 42 P.2d 297.

Court's instruction 12 provided that an employer upon reasonable cause may request a police investigation. Instruction 13 provided that a store employee may temporarily detain another person to investigate a theft only upon probable cause. These instructions paraphrase the standard rule requiring probable cause before a person may be detained. Duran v. Buttrey Food, Inc. (1980), Mont., 616 P.2d 327, 38 St.Rep. 1545.

[267] Appellant failed to object to instruction 14, and finding no plain error, we need not review the instruction. State Highway Commission v. Beldon (1975), 166 Mont. 246, 531 P.2d 1324.

Finding substantial evidence to support the judgment and no error in the issuance of the instructions, the District Court's judgment is affirmed.

HASWELL, C.J., and SHEA, WEBER and MORRISON, JJ., concur.