Missouri Law Review

Volume 57
Issue 3 *Summer 1992*

Article 10

Summer 1992

Illusory Rights: The Missouri Approach to Employment Contracts

James M. Crabtree

Illusory Rights: The Missouri Approach to Employment Contracts

Main v. Skaggs Community Hospital[1]

I. INTRODUCTION

Does an employment contract give an employee contractual rights when the contract allows for termination only upon "just cause," yet fails to specify a duration of employment? In *Main v. Skaggs Community Hospital*, the Southern District of the Missouri Court of Appeals concluded that pursuant to the employment at will doctrine in Missouri, such agreements do not confer contractual rights.[2] This Note explores the history of the Missouri employment at will doctrine and the ramifications of the *Main v. Skaggs Community Hospital* decision.

II. FACTS AND HOLDING

On February 1, 1988, Doug G. Main (Main) and Skaggs Community Hospital (Skaggs Hospital) entered into what was ostensibly an employment contract[3] for Main to work as a nurse anesthetist at Skaggs Hospital.[4] Paragraph 1 of the contract stated that Skaggs Hospital "agrees to appoint the Nurse Anesthetist for an indefinite period . . . providing, however, that either party may terminate this agreement, with just cause, by giving sixty days' written notice by registered mail."[5]

Subsequently, Main was discharged from employment.[6] Main sued Skaggs Hospital under several theories. In particular, Count I claimed that Main met all contractual obligations imposed by the contract and that Skaggs Hospital breached the contract by discharging him without just cause.[7] At the trial level, Skaggs Hospital filed a motion for judgment on the pleadings, which the trial court granted as to Count I.[8] The trial court held that because there was no stipulated period of time in the contract, the contract merely

1. 812 S.W.2d 185 (Mo. Ct. App. 1991).
2. *Id.* at 189.
3. It was not alleged that the document in question was not an employment contract. *Id.* at 185-86.
4. *Id.* at 185.
5. *Id.* at 186.
6. *Id.*
7. *Id.* at 185-86.
8. *Id.* at 186.

created "an at will employment relationship which entitled [Skaggs Hospital] to terminate Plaintiff without cause, notwithstanding the language of paragraph 1 of said contract . . . ."[9]

In granting the motion for Skaggs Hospital, the trial court "made an express determination that . . . there was no just reason for delay in entering [the judgment]."[10] An appeal to the Southern District of the Missouri Court of Appeals followed.[11]

The court of appeals concluded that because the contract continued for an indefinite period of time, it imposed "an obligation in perpetuity."[12] The court noted that obligations of perpetuity were "condemned in *Paisley* and *Superior Concrete*."[13] Therefore, the contract in question created only an employment at will relationship, and Skaggs Hospital could discharge the plaintiff without cause.[14]

III. LEGAL BACKGROUND

A. General Background

The employment at will doctrine creates a presumption that an employment relationship is terminable at the will of either the employer or the employee.[15] Hence, an employer can discharge an employee "for good cause, no cause, or bad cause without incurring any legal liability."[16]

Originally, American courts followed one of three means of determining the length of an employment relationship: (1) they presumed a period of one year according to English common law; (2) they determined the length of employment based on the time of payment; or (3) they presumed employment was terminable at will.[17] Horace Wood's treatise of master and servant law

---

9. *Id.* at 187.

10. *Id.* at 185.

11. *Id.*

12. *Id.* at 189.

13. *Id.* (citations omitted). In *Paisley v. Lucus*, 143 S.W.2d 262, 271 (Mo. 1940), the court actually held that an obligation for life would only be upheld "where the intention, that the contract's duration is for life, is clearly expressed in unequivocal terms." In *Superior Concrete Associates, Inc. v. Kemper*, 284 S.W.2d 482, 490 (Mo. 1955), the court held that a contract for an unspecified amount of time only created an employment at will relationship.

14. *Main*, 812 S.W.2d at 197.

15. Peter S. Partee, *Reversing The Presumption of Employment At Will*, 44 VAND. L. REV. 689, 689 (1991).

16. *Id.* at 689-90.

17. Murray Tabb, *Employee Innocence and the Privileges of Power: Reappraisal*

printed in 1877 is generally credited with the development and wide acceptance of the employment at will doctrine in the United States.[18] Wood's treatise stated:

> With us the rule is inflexible, that a general or indefinite hiring is prima facie a hiring at will, and if the servant seeks to make it out a yearly hiring, the burden is upon him to establish it by proof. A hiring at so much a day, week, month, or year, no time being specified, is an indefinite hiring and no presumption attaches that it was for a day even, but only at the rate fixed for whatever time the party may serve.[19]

Although the cases that Wood relied on did not support the employment at will doctrine as stated above,[20] the theory was readily accepted by the great majority of states.[21] One reason suggested for this acceptance is that the doctrine suited the needs of "an emerging industrial nation where the economic concept of laissez-faire ruled supreme in the business and intellectual world."[22]

Another rationale for the employment at will doctrine is that the employee-employer relationship is one of agency[23] rather than contract law.[24] The relationship of principal and agent is primarily consensual in nature.[25] Because an agent can bind a principal, there is a need for protection of the principal.[26] The employment at will doctrine provides that protection by making the relationship terminable at the will of either party. This is not to say, however, that parties cannot specifically contract to limit the reasons for discharge. The issue in these cases almost always turns on

---

of Implied Contract Rights, 52 MO. L. REV. 803, 804 n.2 (1987).

18. *Id.* at 805 n.2 (citing HORACE WOOD, A TREATISE ON THE LAW OF MASTER AND SERVANT § 134, at 272 (1877)).

19. WOOD, *supra* note 18, § 134 (*quoted in* Timothy J. Heinsz, *The Assault on the Employment At Will Doctrine: Management Considerations*, 48 MO. L. REV. 855, 859 (1983)).

20. Cornelius J. Peck, *Penetrating Doctrinal Camouflage: Understanding the Development of the Law of Wrongful Discharge*, 66 WASH. L. REV. 719, 722 (1991).

21. *Id.*

22. Sami M. Abbasi et al., *Employment-at-will: An Eroding Concept in Employment Relationships*, 38 LAB. L.J. 21, 23 (1987).

23. Heinsz, *supra* note 19, at 860 (citing RESTATEMENT (SECOND) OF AGENCY § 2 cmt. a, § 25 (1958)).

24. *Id.*

25. *Id.* at 860-61.

26. *Id.*

whether the purported contract gives rise to contractual rights such that the employer must have just cause to discharge the employee.[27]

Where a written contract of employment exists, "the courts have analyzed the employee's status in contractual terms."[28] In doing so, the courts have sometimes required mutuality of obligation and/or separate consideration to support a contractual limitation on the right to discharge.[29] The mutuality of obligation doctrine states that unless both parties to a contract are bound, neither is bound.[30] The separate consideration test requires consideration beyond the employee's performance of his or her duties.[31]

However, the *Restatement (Second) of Contracts* expressly rejects mutuality of obligation as necessary for a binding contract.[32] Likewise, the Restatement rejects the necessity of separate consideration by recognizing that one promise is sufficient consideration for any number of covenants.[33] As a result, two distinct lines of reasoning have developed. A number of courts still adhere to the separate consideration requirement, but the majority of courts have adopted a "more flexible approach in deciding which benefits to the employer and detriments to the employee are sufficient to bind the employer to an obligation to discharge the employee only for cause."[34]

In recent years numerous legislative limitations on the employment at will doctrine have been promulgated.[35] In addition, courts in a number of jurisdictions have begun to carve out exceptions to the doctrine.[36] These

---

27. Robin V. Foster, Comment, *Employment at Will: When Must an Employer Have Good Cause for Discharging an Employee*, 48 MO. L. REV. 113, 117 (1983). This is true for an implied contract as well. *Id.* at 118.

28. Heinsz, *supra* note 19, at 865.

29. *Id.*

30. Tabb, *supra* note 17, at 819.

31. *Id.* at 815-16.

32. *Id.* at 819. The Restatement states that "[i]f the requirement of consideration is met, there is no additional requirement of . . . mutuality of obligation." *Id.* at 819 n.53 (quoting RESTATEMENT (SECOND) OF CONTRACTS § 79 (1981)).

33. RESTATEMENT (SECOND) OF CONTRACTS § 80 cmt. a (1981) (stating that because consideration does not have to be of equal value, "two or more promises may be binding even though made for the price of one."). *See also* Tabb, *supra* note 17, at 817.

34. Foster, *supra* note 27, at 119.

35. For a complete discussion of the statutory remedies and a listing of federal and state statutes limiting termination, see JOHN C. MCCARTHY, PUNITIVE DAMAGES IN WRONGFUL DISCHARGE CASES 277-306 (1985).

36. *See* Tabb, *supra* note 17, at 806 (defining three limitations courts have imposed on the employment at will doctrine); *see also* Partee, *supra* note 15, at 690 ("In recent years the at-will doctrine has suffered substantial erosion as a common-law principle. A vast majority of state courts have fashioned various tort- and contract-law

exceptions have generally been in response to "the doctrine's inherent potential for employer abuse."[37] Because the employment at will doctrine gives the employer the absolute power to discharge an employee, the doctrine has often sponsored discharges which are arbitrary or contrary to public policy.[38] The legislatures and courts have struggled with trying to find a balance between continued protection of the employer and recognition that the employee should often have some minimal protection from arbitrary or unjust discharges.

The earliest exceptions to the employment at will doctrine came from legislatures.[39] There are essentially two categories of legislative intervention in this field.[40] The first is legislation which specifically denies the ability to discharge for stated reasons.[41] The National Labor Relations Act of 1935, for instance, was one of the first statutes to chip away at the employment at will doctrine. It prohibited, among other things, termination for association with a union.[42] Likewise, federal statutes aimed at reducing employment discrimination have been promulgated. Title VII of the 1964 Civil Rights Act "prohibit[s] all employers from discharging an employee for various reasons, including race, color, religion, sex, national origin . . . and age."[43] The second category of legislative intervention in the employment at will context is legislation that specifically limits an employer's ability to discharge an employee unless good cause exists.[44] This has resulted in litigation regarding what constitutes "good cause."

The judicial exceptions to the employment at will doctrine include both contract and tort theories.[45] The contract theories can be separated into two categories:[46] first, recognition of an implied covenant of good faith and fair

---

exceptions in a piecemeal attempt to diminish the doctrine's inherent potential for employer abuse."); Peck *supra* note 20, at 734-35 (claiming that while courts have substantively changed employment law, they continue to use, and consequently stretch the meaning of, the original terminology).

37. Partee, *supra* note 15, at 690.

38. Abbasi et al., *supra* note 22, at 21 (noting that one study estimated "private industry discharges 1,000,000 employees each year without a fair hearing and that between 100,000 and 200,000 employees are unfairly terminated each year.").

39. JAMES N. DERTOUZOS ET AL., THE LEGAL AND ECONOMIC CONSEQUENCES OF WRONGFUL TERMINATION at v (1988).

40. Partee, *supra* note 15, at 700-01.

41. *Id.*

42. Foster, *supra* note 27, at 118. *See* 29 U.S.C. § 157(a) (1988).

43. Foster, *supra* note 27, at 115-16.

44. *See* Partee, *supra* note 15, at 701 and statutes cited within. *E.g.*, MONT. CODE ANN. §§ 39-2-901, -914 (1987); V.I. CODE ANN. tit. 24, §§ 76-79 (Supp. 1990).

45. Peck, *supra* note 20, at 735.

46. *Id.*

dealing within employment contracts;[47] and second, an implied contract exception which relaxes the evidentiary standard required to show that an oral contract exists.[48] Along with these exceptions, courts have also been less likely to find that separate consideration and/or mutuality of obligation are required to enforce a provision of an employment contract.[49]

A number of states now recognize a cause of action in tort for wrongful discharge.[50] The most prevalent tort theory is discharge which is contrary to public policy.[51] This theory recognizes that "an employer cannot dismiss an employee for reasons that undermine a firmly established principle of public policy."[52] However, the limits of the public policy exception are unclear. Some states limit the exception to policies expressed in a statute or constitution, while other states interpret the exception as encompassing much broader policy.[53] The most extreme approach is to let the jury decide whether a public policy exists.[54]

A number of other tort theories have been recognized in the wrongful discharge context.[55] These theories include intentional infliction of emotional harm, interference with contractual relations, fraudulent misrepresentation, defamation, prima facie tort, and conspiracy.[56]

In a number of jurisdictions, a contract with a just-cause provision is enforceable even though it fails to state a duration of employment.[57] Most of the courts in these jurisdictions conclude that a just-cause provision limits the employer's ability to discharge an employee. According to one commentator, "[T]he employer's power to terminate may be limited *either* by

---

47. Partee, *supra* note 15, at 699. Courts are unsure of the effect of the covenant if it does exist. *Id.* The covenant has been interpreted broadly in Cleary v. American Airlines, 168 Cal. Rptr. 722 (Cal. Ct. App. 1980), to prohibit the discharge of an employee who had worked for 18 years, but also interpreted more narrowly to only prohibit bad cause firings. Partee, *supra* note 15, at 699.

48. *See* Toussaint v. Blue Cross & Blue Shield, 292 N.W.2d 880, 892 (Mich. 1980) (finding implied covenant in policy manual and oral representations by employer). For a complete discussion, see also Peck, *supra* note 20, at 735-36; Tabb, *supra* note 17, at 813.

49. *See* Tabb, *supra* note 17, at 816, 819.

50. Foster, *supra* note 27, at 128.

51. Partee, *supra* note 15, at 693. Forty-three states have adopted some form of the public policy exception. *Id.* at 693 n.33.

52. Abbasi et al., *supra* note 22, at 24.

53. Partee, *supra* note 15, at 695.

54. *Id.* (referring to Cilley v. New Hampshire Ball Bearings, Inc., 514 A.2d 818 (N.H. 1986)).

55. *See generally* MCCARTHY, *supra* note 35, at 250-75.

56. *Id.*

57. *Id.*

establishing a contract for a definite term *or* by contractually providing for a limitation on the employer's power without establishing a term."[58]

B. Missouri Legal Background

Missouri courts have long recognized the employment at will doctrine.[59] In *Christy v. Petrus*,[60] the Missouri Supreme Court stated, as a well-established rule, "that in the absence of a contract for employment for a definite term or a contrary statutory provision, an employer may discharge an employee at any time, without cause or reason, or for any reason and, in such case, no action can be maintained for wrongful discharge."[61]

In *Dake v. Tuell*,[62] the supreme court specifically rejected the prima facie tort doctrine as a cause of action by an employee at will against his employer.[63] In *Dake*, the plaintiffs were allegedly terminated for informing the employer "that other employees . . . were making fraudulent misrepresentations to customers."[64] The court stated that plaintiffs cannot "maintain a suit for wrongful discharge against their former employers by cloaking their claims in the misty shroud of prima facie tort."[65] The court appeared to denounce any cause of action for wrongful discharge unless based on a contract or a statute.[66] The court stated that "unless there is a contrary statutory provision upon which to base his claim, an at-will employee must set forth in his petition for wrongful discharge 'the essential elements of a valid contract, and a discharge in violation thereof.'"[67]

In the early 1980s a number of claims based on the implied contract exception to employment at will found favorable results in the appellate courts of Missouri.[68] In 1988, however, the Missouri Supreme Court in *Johnson*

---

58. *Id.* at 201 (emphasis added). *See also* Mansell v. Texas & Pac. Ry., 137 S.W.2d 997, 999-1000 (Tex. Civ. App. 1940) (stating just cause standard "obviously" limited employer's ability to discharge).

59. Heinsz, *supra* note 19, at 857.

60. 295 S.W.2d 122 (Mo. 1956).

61. *Id.* at 124; *accord* Amaan v. City of Eureka, 615 S.W.2d 414, 415 (Mo.), *cert. denied*, 454 U.S. 1084 (1981).

62. 687 S.W.2d 191 (Mo. 1985).

63. *Id.* at 193.

64. *Id.* at 192.

65. *Id.*

66. *Id.* at 193.

67. *Id.* (quoting Maddock v. Lewis, 386 S.W.2d 406, 409 (Mo. 1965)).

68. *See, e.g.*, Enyeart v. Shelter Mut. Ins. Co., 693 S.W.2d 120 (Mo. Ct. App. 1985) (recognizing that implied contracts can be formed from language in personnel handbook and that any contractual ambiguities are to be construed against the

v. McDonnell Douglas Corp.[69] reaffirmed the employment at will doctrine in relation to the implied contract.[70]

In *Johnson*, the court reiterated that "for an at will employee to state a claim for wrongful discharge, he must plead 'the essential elements of a valid contract, and a discharge in violation thereof.'"[71] Those elements include "offer, acceptance and bargained for consideration."[72] The court decided that McDonnell Douglas' actions of publishing a handbook did not constitute a contract giving contractual rights to its employees.[73] Rather, "[a]n employer's offer to modify the at will status of his employees must be stated with greater definiteness and clarity than is found here."[74] Because no contract was formed from the employee handbook, the court concluded that the employment was at will, and consequently could be terminated without cause.[75]

The *Johnson* court also specifically rejected the opportunity to expand Missouri's recognition of the public policy exception.[76] The court made clear that unless the policy "has the benefit of a constitutional provision, a statute, or a regulation based on a statute," it will not support a claim for wrongful discharge.[77]

IV. INSTANT DECISION

The crux of Main's argument was that the "just cause" provision in the employment contract limited the reasons for which he could be discharged;

---

employer); William C. Martucci & Georgann H. Eglinski, *Recent Developments in Missouri: Wrongful Discharge and Related Actions*, 57 UMKC L. REV. 665, 667 (1989) (citing Arie v. Interthem, Inc., 648 S.W.2d 142 (Mo. Ct. App. 1983) (recognizing implied contract exception to employment at will)).

69. 745 S.W.2d 661 (Mo. 1988).

70. *Id.* at 663. *See also* Martucci & Eglinski, *supra* note 68, at 667.

71. *Johnson*, 745 S.W.2d at 662 (quoting *Dake*, 687 S.W.2d at 193).

72. *Id.*

73. *Id.* at 662-63.

74. *Id.* at 662.

75. *Id.* at 663.

76. *Id.* ("The Court does not deem it necessary to engraft a so-called 'public policy' exception onto the employment-at-will doctrine.").

77. *Id.* The court distinguishes: "Smith v. Arthur C. Baue Funeral Home, 370 S.W.2d 249 (Mo.1963) (discharge of an employee for asserting the constitutional right to choose collective bargaining representatives); Boyle v. Vista Eyewear, Inc., 700 S.W.2d 859 (Mo.App. 1985) (employee discharged for refusing to violate federal Food and Drug Administration regulations); Beasley v. Affiliated Hospital Products, 713 S.W.2d 557 (Mo.App. 1986) (employee discharged for refusing to violate false advertising and federal mail fraud statutes)."

therefore, he was not an employee at will.[78] Main also argued that there was an exception to "the general rule that at-will employment can be terminated by either party without cause."[79] Main's third argument contended the employment contract was ambiguous.[80]

Skaggs Hospital argued that because there was no specific duration of time stated in the contract, Main was merely an employee at will and therefore could be terminated without just cause.[81]

Main's first argument, that the "just cause" provision limited the reasons for discharge, is supported in the dissent in *Johnson v. McDonnell Douglas Corp.*[82] To address Main's first point, the court analogized to *Haith v. Model Cities Health Corp. of Kansas City.*[83] In *Haith*, the plaintiffs had an employment contract stating that the contract "may be terminated at any time by . . . mutual consent . . . ."[84] The contract provided a number of other reasons for which it could be terminated.[85] The plaintiffs argued that the mutual-consent clause limited the reasons for discharge; consequently, the employment at will doctrine did not apply.[86]

The *Haith* court focused on the fact that there was no duration of time stated in the contract.[87] In addition, the court referred to other Missouri cases in which employment contracts did not have a stated duration of time and were held to create an employment at will relationship, even though they had a "termination by mutual consent" clause.[88] However, the *Haith* court,

---

78. *Main*, 812 S.W.2d at 189.

79. *Id.* at 188.

80. *Id.* at 189.

81. *Id.* at 186.

82. 745 S.W.2d 661 (Mo. 1988) Judge Blackmar states:

> It is perfectly possible for an employer to enter into a contract with his employees, in which the employer promises continued employment, so long as business circumstances permit, and agrees to discharge only for cause. Most contracts negotiated with unions are of this nature. There is no reason why a similar contract could not be entered into with unorganized employees.

Id. at 664-65 (Blackmar, J., dissenting).

83. *Id.* (citing *Haith*, 704 S.W.2d 684 (Mo. Ct. App. 1986)).

84. *Haith*, 704 S.W.2d at 685.

85. *Id.* at 688. The contract could be terminated "by (1) mutual consent; (2) the death of one of the [plaintiffs]; (3) for failure of one of the [plaintiffs] to maintain licensure; (4) for behavior of one of the [plaintiffs] disruptive to the [defendant], (5) for failure by the [plaintiffs] to meet their professional responsibilities; or (6) for permanent disability of one of the [plaintiffs]." *Id.*

86. *Id.*

87. *Id.* at 686-87.

88. *Id.* at 686. The other cases the court cites are Paisley v. Lucas, 143 S.W.2d

in distinguishing the case from *Drsewiecki v. H & R Block*[89] (a case on which the plaintiffs in *Haith* relied), was careful to point out that no condition of termination solely for cause appeared in the contract.[90]

The *Haith* court,[91] as well as the court in *Main*,[92] relied on *Paisley v. Lucas*[93] and *Superior Concrete Accessories, Inc. v. Kemper*.[94] The contract at issue in *Paisley* stated that it would "not be canceled or modified, except by mutual agreement . . . ."[95] The court held that although contracts in perpetuity would be upheld if the "intention, that the contract is for life, is clearly expressed in unequivocal terms,"[96] the contract at issue was for an indefinite period of time and was therefore terminable at will.[97]

Likewise, a distributor's sales agreement in *Superior Concrete* contained a clause stating it would not be canceled except by "mutual agreement."[98] The court held that the duration of employment was indefinite; consequently, the contract was terminable at will.[99]

The court also cited *Christy v. Petrus*[100] for the proposition that "in the absence of a contract for employment for a definite term or a contrary statutory provision, an employer may discharge an employee at any time, without cause or reason, or for any reason and, in such case, no action can be maintained for wrongful discharge."[101]

---

262 (Mo. 1940) and Superior Concrete Accessories, Inc. v. Kemper, 284 S.W.2d 482 (Mo. 1955).

89. 101 Cal. Rptr. 169 (Cal. Ct. App. 1972).

90. *Haith*, 704 S.W.2d at 686-87. The court stated "no such condition [of termination only for cause] is in the contract in the present case, and therefore it must be held that the trial court did not err in entering summary judgment against plaintiffs . . . ." *Id.* at 687.

91. *Id.* at 685-86.

92. *Main*, 812 S.W.2d at 186-87.

93. 143 S.W.2d 262 (Mo. 1940).

94. 284 S.W.2d 482 (Mo. 1955).

95. *Paisley*, 143 S.W.2d at 269.

96. *Id.* at 271.

97. *Id.*

98. *Superior Concrete*, 284 S.W.2d at 489. The court noted that although an employment contract was not the same as a distributor sales agreement they were essentially the same in relation to power to terminate. *Id.*

99. *Id.* at 490. Note that the plaintiffs in *Superior Concrete* cited Harrington v. Kansas City Cable Railway Co., 60 Mo. App. 223 (1895) in an attempt to show separate consideration for the agreement not to cancel by mutual consent. The court, however, held that there was not sufficient separate consideration. *Superior Concrete*, 284 S.W.2d at 491.

100. 295 S.W.2d 122 (Mo. 1956).

101. *Main*, 812 S.W.2d at 194 (citing *Christy*, 295 S.W.2d at 124).

The court concluded that the employment contract between Main and Skaggs Hospital was for an indefinite period.[102] The court stated, "It is therefore a contract imposing an obligation in perpetuity, condemned in *Paisley* . . . and *Superior Concrete* . . . ."[103] Hence, Main was considered an employee at will.[104]

To support his second argument, Main cited *Hall v. St. Louis-San Francisco Railway. Co.* [105] In *Hall*, the court held that a discharge procedure contained in a collective-bargaining agreement was enforceable even though the employee was not employed for a definite period of time.[106] The Missouri Supreme Court later cited *Hall* in *Craig v. Thompson*[107] "as authority for the proposition that under an agreement or contract between a railway labor union and an employer, an employee coming under the contract may recover if his discharge was wrongful, even though engaged for only an indefinite period."[108]

However, because there was no evidence of wrongful discharge in *Craig*, the judgment was reversed.[109] Therefore, the *Main* court found "the proposition for which *Hall* was cited in *Craig* was arguably unnecessary, hence dictum."[110] In addition, the court cited *Maddock v. Lewis*[111] for the proposition that collective bargaining agreements are distinct from employment contracts.[112]

Finally, the court cited *Dake v. Tuell*[113] as the last controlling decision of the Missouri Supreme Court on employment at will.[114] In *Dake*, the court held that there is no action for wrongful discharge in Missouri unless the

---

102. *Id.* at 189 ("It purports to grant plaintiff the right to perpetual employment by Hospital unless plaintiff's performance becomes deficient enough to constitute 'just cause' for firing him.").

103. *Id.* (citations omitted).

104. *Id.*

105. 28 S.W.2d 687 (Mo. Ct. App. 1930).

106. *Main*, 812 S.W.2d at 195. In *Hall*, the court stated, "We do not think [the rule of employment-at-will] is so absolute and so technical as to nullify and make void an agreement not to discharge an employee without an investigation . . . ." *Id.* (quoting *Hall*, 28 S.W.2d at 689).

107. 244 S.W.2d 37, 41 (Mo. 1951).

108. *Main*, 812 S.W.2d at 188.

109. *Id.*

110. *Id.*

111. 386 S.W.2d 406 (Mo. 1965).

112. *Main*, 812 S.W.2d at 188-89 (citing *Maddock*, 386 S.W.2d at 410-11).

113. 687 S.W.2d 191 (Mo. 1985).

114. *Main*, 812 S.W.2d at 189.

claim falls within a statutory provision.[115] Therefore, even if *Hall* and *Dake* do conflict with each other, the court was "constitutionally bound by the last controlling decision of the Supreme Court of Missouri."[116]

The court summarily rejected Main's argument that the contract was ambiguous as to duration, which would have given him an opportunity to present evidence of the ambiguity.[117] In rejecting Main's contention, the court concluded that the contract attempted to give rights in perpetuity and created an employment at will relationship.[118] The court stated, "[C]onsequently, there is no ambiguity requiring evidentiary explanation."[119]

V. COMMENT

Suppose a potential employee has two job offers from two different companies—both willing to give employment contracts. The first company's contract states that the employer agrees to hire the employee for one year. The second company's contract states that the employer will only terminate the employee for "just cause." The future employee wishes to work for the company that offers greater job security. Which of these contracts appears to offer more job security to someone who has not studied Missouri law relating to employment contracts?

Missouri's tenacious adherence to the employment at will doctrine is disturbing in the case at bar. The *Main* decision results in illusory rights. As exemplified in the hypothetical above, an employee predictably will rely on the language of an employment contract without realizing that the words are meaningless because of judicial construction.

The very term "terminable at will" is inconsistent with a contract that allows termination only upon "just cause." Logic mandates that if the reasons for discharge are limited, an employer cannot discharge someone for any reason. To hold otherwise either defeats the intentions of the parties in making the contract, or rewards an employer for misrepresenting job security to an employee.

In addition, the employee is in the worst position to know and understand that a provision in the contract purporting to establish a "just cause" standard for discharge is unenforceable. Not only is the employee usually the one with

115. *Id.* "[I]t is firmly established in Missouri that absent a contrary statutory provision, an at will employee cannot maintain an action for wrongful discharge against his former employer." *Id.* (citing *Dake*, 687 S.W.2d at 192-93).

116. *Id.* (citing MO. CONST. art. V, § 2).

117. *Id.*

118. *Id.*

119. *Id.*

lower bargaining power, but the employee is also the least likely to have meaningful access to legal knowledge.

The problem with the employment contract in *Main* is that if the court gave the words of limitation effect, the contract could conceivably create an obligation in perpetuity (as long as Main competently performed). The court finds that this possibility is determinative of the issue. However, it is questionable whether the possibility of an obligation in perpetuity should be the deciding factor in this case.

There are three possible explanations for the use of this contract by Skaggs Hospital: first, Skaggs Hospital may have intended to create an obligation to hire Main for as long as he competently performed; second, Skaggs Hospital may have known that the words "with just cause" were meaningless, but wanted to represent to the employee that the position had more job security than it actually did; third, and most likely, the contract was poorly drafted.

If Skaggs Hospital intended to create an obligation for as long as Main competently performed, then there is no reason not to give the words of limitation effect. If Skaggs Hospital intended to give the impression of job security, then the words of limitation should be given effect as a matter of public policy. Finally, if the contract was poorly drafted, the next question is who should bear the responsibility for the bad drafting. The court seems to have chosen the employee to bear this burden.

A better rule may be to recognize that a "just cause" provision in an employment contract does limit the employer's rights to discharge an employee, regardless of whether a duration of employment is stated in the contract.[120] This would impose the burden of proper drafting on the employer who created the contract and who is usually in a position of superior bargaining power.

This would not create sweeping change in the employment at will doctrine. The *only* case that would be affected is the situation in which the employer specifically contracts to limit the reasons for discharge. If an employer is willing to create a contract which includes a "just-cause" provision but fails to state a duration of employment, the employer should also be willing to pay the consequences for breaching that contract.

The larger question facing Missouri is whether it is wise to continue to adhere to a strict construction of the employment at will doctrine if a written contract limiting the reasons for discharge does not exist. It is questionable whether the policy considerations which led to the acceptance of the employment at will doctrine are still applicable in the present employment context.

---

120. A number of courts have taken this approach. *See supra* note 57.

On the other hand, it is not easy to come up with a solution that protects both the employer's flexibility and the employee's expectation of job security. In other jurisdictions, courts have struggled with how to protect those competing interests without creating unjust situations for employers. Redefining a concept or creating a new rule is never without problems. One commentator has stated, "It is an open question whether the judicial 'cures' are better than the common law 'disease.'"[121]

Regardless, Missouri courts are not yet willing to embark on the process of redefining the employment at will doctrine. Both *Johnson* and *Dake* evidence an intention by the Missouri Supreme Court to hold fast to a clear rule of law which prohibits wrongful discharge actions unless based on statute or contract. *Main* represents the furthest extension of that intent. The construction of the employment contract in *Main* creates a degree of certainty in the law. However, that certainty may be coming at the expense of the expectations of the otherwise unprotected employee.

JAMES M. CRABTREE

121. Foster, *supra* note 27, at 136.