

Tulsa Law Review

Volume 30 | Issue 3

Spring 1995

Groce v. Foster: Expansion of Oklahoma's Public Policy Exception to the Employment-At-Will Doctrine

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Recommended Citation

Jennifer L. Holland, *Groce v. Foster: Expansion of Oklahoma's Public Policy Exception to the Employment-At-Will Doctrine*, 30 Tulsa L. J. 525 (2013).

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NOTES AND COMMENTS

GROCE v. FOSTER: EXPANSION OF OKLAHOMA'S PUBLIC POLICY EXCEPTION TO THE EMPLOYMENT- AT-WILL DOCTRINE

I. INTRODUCTION

An employment-at-will relationship was once defined as allowing either the employer or the employee to terminate the relationship at any time for any reason.¹ Gradually, however, exceptions to the employment-at-will doctrine were created.² The courts of several jurisdictions have held that an at-will employee may not be terminated if the termination is in violation of a clearly defined public policy.³ Oklahoma is among the states which have adopted this public policy exception to the at-will doctrine.⁴

The Oklahoma Supreme Court, in a five to four decision, recently applied Oklahoma's public policy exception to the employment-at-will doctrine in *Groce v. Foster*.⁵ The issue presented was one of first impression in Oklahoma.⁶ The *Groce* majority made a well-reasoned determination that the discharge of an employee in retaliation for his refusal to abandon a lawsuit against a customer of the employer for an on-the-job injury was a breach of public policy.⁷ The basis for the

1. Michelle Blake Johnson, *Burk v. K-Mart Corporation: The Oklahoma Supreme Court Adopts a Narrow Exception to the Employment-At-Will Rule?*, 14 OKLA. CITY U. L. REV. 645, 645 (1989); Harry F. Tepker, Jr., *Oklahoma's At-Will Rule: Heeding the Warnings of America's Evolving Employment Law?*, 39 OKLA. L. REV. 373, 373 (1986).

2. Johnson, *supra* note 1, at 646.

3. Tepker, *supra* note 1, at 373.

4. Johnson, *supra* note 1, at 650; Chris S. Quillin, Note, *The Expansion of the Public Policy Exception to the At-Will Termination Rule after Tate v. Browning-Ferris, Inc.*, 29 TULSA L.J. 207, 210 (1993).

5. 880 P.2d 902 (Okla. 1994).

6. *Id.* at 903.

7. *Id.* at 908.

court's opinion, however, was not raised by the plaintiff.⁸ Instead, the Oklahoma Supreme Court itself found an applicable public policy.⁹ In doing so, the *Groce* court expanded Oklahoma's public policy exception to the employment-at-will rule.

II. *GROCE V. FOSTER*

A. *Facts*

William Groce (Groce) was an employee-at-will of Midwestern Services, Inc. (Midwestern), an oil field service company owned by Bob Foster (Foster).¹⁰ Groce was involved in an accident while working at a wellsite.¹¹ When the injury occurred, Groce was helping employees of Hydraulic Well Control, Inc. (Hydraulic).¹² Hydraulic, a service contractor at the job site, is also a customer of Midwestern.¹³ As Groce was assisting in the lifting of a pipe, Hydraulic employees dropped the pipe on his foot.¹⁴

Initially, Groce filed for workers' compensation from Midwestern and obtained benefits.¹⁵ Groce then filed a third-party claim against Hydraulic for his injuries.¹⁶ When Foster learned of Groce's action against Hydraulic, Groce was told that his employment with Midwestern would be terminated unless he dismissed the suit against Hydraulic.¹⁷ Groce refused to comply with Foster's demand and was subsequently fired.¹⁸ Following his termination, Groce filed an action against Foster for wrongful discharge.¹⁹

The district court granted Foster's motion to dismiss for failure to state a claim.²⁰ The court of appeals affirmed the decision.²¹ Groce appealed, and the Supreme Court of Oklahoma granted certiorari.²²

8. See *infra* notes 31-33 and accompanying text.

9. See *infra* notes 36-42 and accompanying text.

10. *Groce*, 880 P.2d at 903.

11. *Id.*

12. *Id.*

13. *Id.* at 904.

14. *Id.* at 903.

15. *Id.*

16. *Id.* The court did not discuss whether Groce followed the procedures required by § 44 of the Oklahoma Workers' Compensation Act, OKLA. STAT. tit. 85, § 44 (1991), for bringing a third-party action in addition to filing for workers' compensation. For cases which have construed the language of § 44 with regard to these procedures, see *infra* note 74.

17. *Groce*, 880 P.2d at 904.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

B. Issue Presented to the Supreme Court of Oklahoma

May an employee-at-will sue his or her employer for wrongful discharge when the employee is terminated for filing a claim against a customer of the employer to recover compensation for job-related injuries caused by the customer?²³

III. THE PUBLIC POLICY EXCEPTION IN OKLAHOMA

The Oklahoma Supreme Court expressly adopted a public policy tort exception to the employment-at-will rule in *Burk v. K-Mart Corp.*²⁴ According to *Burk*, the termination of an employee-at-will violates public policy if it “is contrary to a clear mandate of public policy as articulated by constitutional, statutory or decisional law.”²⁵ In defining this public policy exception, the *Burk* court stressed that the newly recognized exception is to be construed very narrowly.²⁶ Hence, for the *Burk* exception to apply, an employee bringing a wrongful termination action is required to support the claim with specific law — a constitutional provision, a statute, or case law.²⁷ The *Burk* public policy exception provides the basis for the decision in *Groce*.²⁸

IV. THE GROCE DECISION

In *Groce*, the Oklahoma Supreme Court vacated the opinion of the court of appeals, reversed the dismissal order of the district court,

23. *Id.* at 903.

24. 770 P.2d 24, 28 (Okla. 1989).

25. *Id.*

26. *Id.* at 28-29. The *Burk* court used specific language to convey the intent of narrow construction. First, the court stated that it “adopt[s] . . . the public policy exception to the at-will termination rule in a narrow class of cases . . .” *Id.* at 28. Second, the court asserted that “the public policy exception must be tightly circumscribed,” concluding that “the circumstances which present an actionable tort claim under Oklahoma law is where an employee is discharged for refusing to act in violation of an established and well-defined public policy or for performing an act consistent with a clear and compelling public policy.” *Id.* at 29. Finally, the court declared that it recognizes “a limited public policy exception to the terminable-at-will rule as an actionable tort claim in cases in which the discharge is contrary to a clear mandate of public policy.” *Id.* See also *Smith v. Farmers Co-Op. Ass’n of Butler*, 825 P.2d 1323, 1326 (Okla. 1992) (acknowledging the narrow scope of the *Burk* definition of the public policy exception). It is, however, questionable how narrow the *Burk* exception really is when it permits reliance upon decisional law.

27. *Burk*, 770 P.2d at 28. For cases applying *Burk*, see *Tate v. Browning-Ferris, Inc.*, 833 P.2d 1218 (Okla. 1992); *Pearson v. Hope Lumber & Supply Co.*, 820 P.2d 443 (Okla. 1991); *Sargent v. Central Nat’l Bank & Trust Co.*, 809 P.2d 1298 (Okla. 1991); *Vannerson v. Board of Regents of the Univ. of Oklahoma*, 784 P.2d 1053 (Okla. 1989); *Todd v. Frank’s Tong Serv., Inc.*, 784 P.2d 47 (Okla. 1989).

28. 880 P.2d 902 (Okla. 1994).

and remanded the case.²⁹ In doing so, the court held that an employee-at-will may bring an action for wrongful discharge against an employer who fires him or her for refusing to dismiss a suit against a third party, who is a customer of the employer, for injuries received while working.³⁰

Groce argued that the Open-Court-of-Justice Clause of the Oklahoma Constitution³¹ provided him with a constitutional right to seek compensation for his injuries against Hydraulic.³² Thus, he asserted, any discharge from employment for exercising this right was a violation of an Oklahoma public policy embodied in the Oklahoma Constitution and, therefore, should not be permitted.³³

Conversely, Foster claimed Groce had not provided sufficient evidence to suggest that any public policy had been violated.³⁴ In addition, Foster argued that the "open courts" provision was not applicable to this case because the clause addresses the public administration of legal process rather than the rights of private individuals.³⁵

The Oklahoma Supreme Court did not adopt the view of either party. Instead, the court based its decision on the public policy mandated by several sections of the Oklahoma Workers' Compensation Act.³⁶ First, the court found that Groce was forced to decide between retaining his job at Midwestern and continuing his suit against Hydraulic.³⁷ Because Groce's suit is legally protected under section 44 of the Workers' Compensation Act,³⁸ his discharge violated public policy.³⁹ Next, the court reasoned that since an employer may not dismiss an employee for seeking compensation for work-related injuries, the employer is also prohibited from terminating an employee for

29. *Id.* at 908.

30. *Id.* at 905.

31. OKLA. CONST. art. II, § 6. This provision, entitled "Courts of justice open — Remedies for wrongs — Sale, denial or delay," provides: "The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice." *Id.*

32. *Groce*, 880 P.2d at 905.

33. *See id.*

34. *Id.*

35. *Id.* Specifically, Foster characterized the "open courts" provision as follows: "the constitutional command for open access to the courts (a) is directed only to those who administer legal process rather than to private individuals, (b) was framed to provide for equality in the administration of legal process, and (c) creates neither a new private right nor claim." *Id.*

36. OKLA. STAT. tit. 85, §§ 1-95 (1991).

37. *Groce*, 880 P.2d at 905.

38. OKLA. STAT. tit. 85, § 44 (1991).

39. *Groce*, 880 P.2d at 905-06.

bringing a section 44 action against a third party for the same harm.⁴⁰ Finally, the court determined Foster's action breached the public policy of the Workers' Compensation Act,⁴¹ specifically that policy which dictates that the Workers' Compensation Court has exclusive jurisdiction "over all agreements reached between the injured employee and either his/her employer or the responsible third party."⁴²

In addition, the court rejected the reasoning set forth in the dissenting opinion.⁴³ The dissent focused on the "open courts" provision, the specific constitutional provision upon which the plaintiff based his cause of action, arguing that the clause did not apply to this situation.⁴⁴ The majority refuted this argument by reiterating its reliance on Oklahoma statutes rather than the Oklahoma Constitution,⁴⁵ thus reaching beyond the plaintiff's complaint to determine the appropriate public policy.

V. ANALYSIS

The majority in *Groce v. Foster*⁴⁶ relied on the Oklahoma Workers' Compensation Act⁴⁷ in reaching its decision.⁴⁸ The Act provides a statutory basis for the public policy exception set forth in *Burk v. K-Mart Corp.*⁴⁹ Specifically, sections 44⁵⁰ and 5⁵¹ of the Act provide clear support for the exception. Likewise, the purpose of the Workers' Compensation Act itself supplies a basis for applying the public policy exception.⁵²

40. *Id.* at 906.

41. The *Groce* court specifically relied on §§ 5-7, 12, 44-47 and 84 of the Workers' Compensation Act. *Id.*

42. *Groce*, 880 P.2d at 906.

43. *Id.* at 907-08.

44. *Id.* at 909-12 (Simms, J., dissenting). An additional argument raised by the dissent was that the termination of Groce had not resulted in a denial of Groce's access to the courts. *Id.* at 909. The dissent relied on *DeMarco v. Publix Super Mkts., Inc.*, 384 So. 2d 1253 (Fla. 1980). In *DeMarco*, the employee claimed he was discharged for suing his employer over injuries his daughter received in the employer's store. *DeMarco*, 384 So. 2d at 1253. The *DeMarco* court noted, however, that because this suit was still pending after the employee was terminated, the employee had not been denied access to the courts. *Id.* at 1254.

45. *Groce*, 880 P.2d at 907.

46. *Id.*

47. OKLA. STAT. tit. 85, §§ 1-95 (1991).

48. *Groce*, 880 P.2d at 907.

49. 770 P.2d 24 (Okla. 1989).

50. OKLA. STAT. tit. 85, § 44 (1991).

51. OKLA. STAT. tit. 85, § 5 (1991).

52. See *infra* notes 87-91 and accompanying text.

On the other hand, as the *Groce* dissent correctly determined, the Open-Court-of-Justice Clause does not provide proper support for application of the public policy exception.⁵³ Thus, the *Groce* majority implicitly rejected use of the “open courts” provision, reasoning that specific sections of the Workers’ Compensation Act provided the necessary public policy to conclude the employee had been wrongfully discharged.⁵⁴

A. Section 44 of the Workers’ Compensation Act

The *Groce* majority relied most heavily on section 44 of the Workers’ Compensation Act.⁵⁵ Section 44 applies to an employee entitled to workers’ compensation under the Act but whose job-related injury was caused by the negligence of a third party.⁵⁶ In that situation, section 44 provides that the employee may elect to bring an action against the third party.⁵⁷ Construing section 44 in previous cases, the Oklahoma Supreme Court has recognized that employees have a right to sue third parties who have contributed to their on-the-job injuries.⁵⁸ Some of these decisions indicate that this right is not a new right created by the statute, but is a right which existed at the common law.⁵⁹

In *Parkhill Truck Co. v. Wilson*,⁶⁰ the court determined that the Workers’ Compensation Act⁶¹ did not have any effect on the right of an injured employee to bring an action against a third party who caused the employee’s injury.⁶² The *Parkhill* court indicated that the legislative intent behind the Act provided support for this conclusion: “It was never intended by the Legislature by the enactment of the

53. See *Groce*, 880 P.2d at 910-12 (Simms, J., dissenting).

54. *Id.* at 907.

55. OKLA. STAT. tit. 85, § 44 (1991).

56. *Id.*

57. *Id.* Section 44(a) provides, in relevant part:

If a worker entitled to compensation under the Workers’ Compensation Act is injured or killed by the negligence or wrong of another not in the same employ, such injured worker shall, before any suit or claim under the Workers’ Compensation Act, elect whether to take compensation under the Workers’ Compensation Act, or to pursue his remedy against such other. Such election shall be evidenced in such manner as the Administrator may by rule or regulation prescribe.

Id.

58. See *infra* notes 60-77 and accompanying text.

59. See *infra* notes 60-70 and accompanying text.

60. 125 P.2d 203 (Okla. 1942).

61. At the time of the *Parkhill* decision, the Act was entitled the Workmen’s Compensation Act. *Id.* at 205. However, the language of § 44 is almost identical to the language of the current § 44. Compare OKLA. STAT. tit. 85, § 44 (1991) with OKLA. STAT. tit. 85, § 44 (1931).

62. *Parkhill*, 125 P.2d at 206.

Workmen's Compensation Act to abrogate, modify, or in anyway [sic] affect the common-law right to exact payment of a negligent third party or tort-feasor."⁶³ Furthermore, the *Parkhill* court stated that section 44 does not "increase or decrease such third party's liability under the common law for negligence."⁶⁴ In reaching this conclusion, the *Parkhill* court affirmed the common law right of an employee to sue a third party, a right that is codified in section 44.

The court in *Horwitz Iron & Metal Co. v. Myler*⁶⁵ also concluded that the right to sue a third party under section 44 is not a new right: "Section 44 of the Act did not create a new right, for the common-law right always existed."⁶⁶ Relying on *Parkhill*, the *Horwitz* court determined that the common law liability of a third party for negligence in injuring the employee of another has not been altered by section 44.⁶⁷ Therefore, the *Horwitz* decision also affirmed the common law right codified by section 44.

A final decision linking section 44 to the common law is *Travelers Ins. Co. v. Leedy*.⁶⁸ In *Leedy*, the court asserted that section 44 provides procedures an employee must follow to bring a common law action against a third party.⁶⁹ Furthermore, the *Leedy* court acknowledged that section 44 includes the common law right of an employee to sue a third party for work-related injuries caused by the third party.⁷⁰ Thus, *Leedy* recognized the right of employees to sue third parties under the Workers' Compensation Act.

In addition to the cases linking the section 44 right to sue a third party to the common law right, the Oklahoma Supreme Court has declared that section 44 provides an independent right of employees.⁷¹ In *Ladd v. Hudson*,⁷² the court relied on the language of the statute⁷³ to assert that an injured employee may elect to sue a third party who

63. *Id.*

64. *Id.* at 208.

65. 252 P.2d 475 (Okla. 1952).

66. *Id.* at 480.

67. *Id.* at 481.

68. 450 P.2d 898 (Okla. 1969).

69. *Id.* at 900. The *Leedy* court relied on the *Parkhill* decision for the reasons for such procedures. *Id.*

70. *Id.*

71. *Ladd v. Hudson*, 288 P. 331 (Okla. 1930).

72. *Id.*

73. The statute in the *Ladd* decision is the equivalent of the current § 44 of the Workers' Compensation Act. *Id.* at 332.

contributed to the employee's injury.⁷⁴ Additionally, the court expressly stated that a right exists according to the statute: "If the employee believes his cause of action is such that he might recover more against the third person than he would be permitted to recover against his employer under the Compensation Law, then he doubtless would sue the third party. The law intended he should have that right."⁷⁵ Thus, the *Ladd* court interpreted the language of the statute as providing a right to employees to sue third parties.

An additional decision that discusses the right of an employee to sue a third party for work-related harm is *German v. Chemray, Inc.*⁷⁶ The *German* court reasoned that according to both section 44 and previous findings of the court, this right of the employee has to be protected: "A right of action against third persons is reserved to an injured employee by statute and decided cases."⁷⁷ Therefore, section 44 does express a specific right of employees to sue third parties who contribute to their work-related injuries.

Considering the decisions of the Oklahoma Supreme Court in conjunction with the language of section 44 of the Workers' Compensation Act leads to the conclusion that section 44 does provide employees a right to sue third parties. Because this right is protected by statute, it violates the public policy of the state when an employer terminates an employee for exercising this right. Thus, the *Groce* court properly determined that section 44 is a basis for the public policy exception established by the *Burk* decision.⁷⁸

74. *Id.* Oklahoma courts have interpreted the meaning of the term "elect," but a discussion of this is beyond the scope of this note. See *Weiss v. Salvation Army*, 556 P.2d 598, 600-01 (Okla. 1976) (An employee "injured by third party negligence, has a choice to pursue one of two procedures as a means of seeking relief. . . . First an injured workman may elect to seek workmen's compensation. . . . Second, a workman injured by one not in the same employ may proceed directly against the negligent third party."); *Parkhill*, 125 P.2d at 209 ("If the injured employe [sic] fails to comply with the Workmen's Compensation Act . . . and pursues his remedy against the third party without asserting his election and complying with the rules and regulations of the Commission relative thereto he may waive his right thereafter to proceed against the employer."); *Ladd*, 288 P. at 333 ("The employee . . . is required by law to elect which remedy he will pursue.").

75. *Ladd*, 288 P. at 332-33. See also *State Highway Dep't v. Elledge*, 209 P.2d 704, 709 (Okla. 1949) (holding employee "had a right to pursue his remedy against . . . the third party causing his injuries").

76. 564 P.2d 636 (Okla. 1977).

77. *Id.* at 639.

78. *Groce*, 880 P.2d at 908.

B. Section 5 of the Workers' Compensation Act

Interpretation of section 5 of the Workers' Compensation Act⁷⁹ further supports the *Groce* court's conclusion that the right of an employee to sue a third party for work-related injuries is protected by statute. Section 5 provides that an employer may not terminate an employee because the employee files a claim, hires an attorney to represent him or her regarding a claim, institutes a proceeding under the Workers' Compensation Act, or testifies in a proceeding.⁸⁰ This language is applicable to the *Groce* decision because a section 44 suit against a third party may be considered a proceeding within the meaning of section 5.⁸¹ Two recent Oklahoma decisions provide compelling interpretations of section 5.

First, in *Buckner v. General Motors Corp.*,⁸² the court relied on the legislative intent behind section 5 in interpreting the institution of proceedings language: "[T]he legislature intended to frame a standard to fit the circumstances of individual cases which involved retaliation for any substantial exercise of a right under the Act."⁸³ Thus, the court determined that a decision as to what actually constitutes the institution of a proceeding must be made in each individual case.⁸⁴ Because *Groce's* third-party action constituted the exercise of a right under section 44 of the Act, his third-party action qualified as a proceeding protected by section 5 of the Act.

A second case, *Mann v. City of Norman*,⁸⁵ also provides an interpretation of section 5. The *Mann* court stated that "[w]rongful termination in violation of [section 5] is an action sounding in tort."⁸⁶ Thus, according to *Mann*, an employee may bring a wrongful discharge suit against his or her employer when the employer violates section 5.

79. OKLA. STAT. tit. 85, § 5 (1991).

80. *Id.* The specific language of § 5 provides, in relevant part:

No person, firm, partnership or corporation may discharge any employee because the employee has in good faith filed a claim, or has retained a lawyer to represent him in said claim, instituted or caused to be instituted, in good faith, any proceeding under the provisions of Title 85 of the Oklahoma Statutes, or has testified or is about to testify in any such proceeding.

Id.

81. *See infra* notes 82-84 and accompanying text.

82. 760 P.2d 803 (Okla. 1988).

83. *Id.* at 808.

84. *Id.* In addition, the *Buckner* court discussed what may constitute the institution of a workers' compensation claim beyond the actual filing of a claim. *Id.* at 808-811.

85. 782 P.2d 152 (Okla. Ct. App. 1989).

86. *Id.* at 154.

This suggests a public policy of prohibiting employers from terminating employees for attempting to receive compensation for work-related injuries. Because a section 44 suit is protected under section 5 as a means of receiving compensation, section 5 creates a statutory basis for the public policy exception to the at-will employment rule. Therefore, section 5 supports the *Groce* court's conclusion that the right of an employee to sue a third party for work-related injuries is protected by statute.

C. *Purpose of the Workers' Compensation Act*

The purpose behind the Oklahoma Workers' Compensation Act provides additional support for the decision reached by the *Groce* court. The complete title of the original Act⁸⁷ consists of the following language: "AN ACT providing for the compulsory compensation of injured employees in hazardous industries, placing the supervision of the act under a commission herein created. Fixing a schedule of awards, and providing penalties for the violation of the act."⁸⁸ This title suggests that the Act was created to provide employees with a system of redress for injuries received while working.⁸⁹ Thus, it is public policy that employees should be protected when seeking compensation. In *Groce*, the court determined that the case qualified for the public policy exception to the at-will employment rule.⁹⁰ *Groce*, therefore, should have an opportunity to seek compensation, whether it be from his employer, the responsible third party, or both. This decision is consistent with the public policy set forth in the Workers' Compensation Act. In addition, because this public policy has been codified, it falls under the guidelines established by the *Burk* court to govern the use of the public policy exception.⁹¹ Therefore, the purpose of the Workers' Compensation Act provides support for the right of *Groce* to sue the third party to receive compensation for his work-related injuries.

87. The short title of this original act was "Workmens Compensation Law." 1915 Okla. Sess. Laws 574. While the Act has been amended several times since it was initially enacted, much of the Act remains the same today as it was originally.

88. *Id.*

89. *See also* Parkhill Tract Co. v. Wilson, 125 P.2d 203, 206 (Okla. 1942) ("The Workmen's Compensation Act was enacted by the Legislature for the benefit of injured employees engaged in the hazardous employments described therein.").

90. *Groce*, 880 P.2d at 905.

91. *Burk*, 770 P.2d at 28.

D. *The Open-Court-of-Justice Clause of the Oklahoma Constitution*

The Oklahoma Constitution's Open-Court-of-Justice Clause⁹² does not provide support for application of the public policy exception to the employment-at-will rule. In *Groce*, the employee argued that the "open courts" provision provided him with the right to sue a third party for his work-related injuries.⁹³ Thus, the employee claimed his employer had wrongfully terminated him when he refused to drop the suit against the third party.⁹⁴ Acceptance of the employee's argument would provide a constitutional mandate of public policy, which would satisfy the *Burk* requirement.

The *Groce* majority did not expressly reject the employee's "open courts" argument. Instead, the *Groce* majority stated that its "analysis reaches beyond the private-versus-public-remedy dichotomy and finds its anchor in clearly declared public policy."⁹⁵ According to the *Groce* dissent, the majority opinion did rely on the "open courts" provision in reaching its decision.⁹⁶ Contrary to the view of the *Groce* dissent, however, the *Groce* majority implicitly rejected use of the "open courts" clause by relying on the statutory provisions of the Workers' Compensation Act.⁹⁷ Had the *Groce* majority accepted the employee's "open courts" argument, there would have been no need for reliance on the provisions of the Workers' Compensation Act.

The *Groce* dissent properly rejected the use of the "open courts" provision as a basis for the public policy exception to the at-will rule.⁹⁸ The purpose of this clause of the Oklahoma Constitution is to prevent

92. OKLA. CONST. art. II, § 6.

93. *Groce*, 880 P.2d at 905.

94. *Id.*

95. *Id.* at 907.

96. *Id.* at 909 (Simms, J., dissenting).

97. *Id.* at 906.

98. This is consistent with the decisions of other courts. See *Beam v. Ipco Corp.*, 838 F.2d 242, 247 (7th Cir. 1988) (stating that the employee "presented no basis for his suggestion that protecting access to the courts entails allowing any employee who faces termination to obtain just cause protections simply by consulting a lawyer at the first sign of trouble."); *Deiters v. Home Depot U.S.A., Inc.*, 842 F. Supp. 1023, 1029 (M.D. Tenn. 1993) (The Tennessee Constitution "open courts" provision "does not create a clear and unambiguous public policy exception to the employment at will doctrine."); *Whitman v. Schlumberger Ltd.*, 793 F. Supp. 228, 231 (N.D. Cal. 1992) (asserting that the California Constitution's "open courts" provision "is silent on the question of whether Plaintiff has a right of access to the courts free from retaliation by another."); *Kavanaugh v. KLM Royal Dutch Airlines*, 566 F. Supp. 242, 244 (N.D. Ill. 1983) ("[A] party does not violate another party's right to counsel or to free access to the courts by taking measures, even though retaliatory and spiteful in nature, which lawfully are available to him simply because resort to these measures somehow penalizes the other party for suing."); *McCloskey v. Eagleton*, 789 S.W.2d 518, 520 (Mo. Ct. App. 1990) (Because the employee did not "advance a cause of action under a recognizable exception to the employment-at-will doctrine, this constitutional provision [Missouri "open courts" provision] is not implicated.").

public officials from denying parties access to the judicial system.⁹⁹ Therefore, this clause does not apply to private individuals, such as the employer in *Groce*, who prevent others from bringing or continuing a suit. Consequently, the “open courts” provision can not be used as a basis for the public policy exception to the employment-at-will rule.

VI. IMPLICATIONS OF THE *GROCE* DECISION

The impact of the *Groce* decision on employees is positive. Employees will now be fully protected when they seek a remedy for work-related injuries. Prior to *Groce*, an employee could receive worker's compensation from his or her employer without being subject to termination by the employer.¹⁰⁰ Now, the employee is also protected from termination for bringing an action against any third party who contributes to the employee's injury. In addition, if the lower courts follow the *Groce* decision closely, the employee will no longer be required to point to the particular public policy which provides an exception to the employment-at-will rule. If some public policy exists, the court may find it for the employee as did the *Groce* majority. Thus, the *Groce* decision represents a victory for employees.

99. For an interpretation of the Oklahoma Constitution “open courts” provision, see *Woody v. State*, 833 P.2d 257, 260 (Okla. 1992) (“The clear language of art. 2, § 6 requires that the courts must be open to all on the same terms without prejudice.”); *Moses v. Hoebel*, 646 P.2d 601, 604 (Okla. 1982) (“Under the Open-Court-of-Justice Clause of the state constitution, the obligation adjudicated against [plaintiff] cannot serve as a bar to his courthouse access for the prosecution of another case.”); *Thayer v. Phillips Petroleum Co.*, 613 P.2d 1041, 1044-45 (Okla. 1980) (“The courts must be open to all on the same terms without prejudice.”); *Adams v. Iten Biscuit Co.*, 162 P. 938, 942 (Okla. 1917) (“[S]ection 6, art. 2, was intended to preserve a right of action in the courts of the state to persons for injuries that may happen in the future . . . [T]his was a mandate to the judiciary.”).

For the construction of the “open courts” provision of other state constitutions, see *DeMarco v. Publix Super Markets, Inc.*, 384 So. 2d 1253, 1254 (Fla. 1980) (declaring that “there is no civil cause of action for interference with the exercise of one's right under [the Florida Constitution “open courts” provision].”); *Simpson v. Kilcher*, 749 S.W.2d 386, 389 (Mo. 1988) (asserting that the Missouri Constitution “open courts” provision “was not designed to create rights, but only to allow a person claiming those rights access to the courts when such a person has a legitimate claim recognized by the law.”); *McCloskey v. Eagleton*, 789 S.W.2d 518, 520 (Mo. Ct. App. 1990) (The Missouri Constitution “open courts” provision “has been interpreted many times as not being designed to create rights, but only allowing a person claiming rights ‘access to the courts when such a person has a legitimate claim recognized by the law.’”); *Meech v. Hillhaven*, 776 P.2d 488, 493 (Mont. 1989) (“Clauses insuring equal administration of justice are aimed at the judiciary, . . . [thus] our remedy guarantee [Montana Constitution “open courts” provision] does not create a fundamental right to full legal redress.”).

100. See *Ingram v. Oneok, Inc.*, 775 P.2d 810, 815 (Okla. 1989) (“[T]he intent of the Legislature, embodied in 85 O.S. 1931 §§ 5-7, created a new and separate cause of ‘action upon a liability created by statute other than a forfeiture or penalty.’”); *Mann v. City of Norman*, 782 P.2d 152, 154 (Okla. Ct. App. 1989) (“Wrongful termination in violation of 85 O.S. §§ 5-7 is an action sounding in tort.”).

Although the decision in *Groce* was well-reasoned, application of the *Groce* decision in future cases may present some problems for the courts. One problem which may arise in the future involves an expansion of the public policy exception to the at-will rule as defined in *Burk v. K-Mart Corp.*¹⁰¹ Courts will likely interpret the *Groce* opinion, as did the *Groce* dissent,¹⁰² as an expansion of Oklahoma's public policy exception. As recognized by the *Groce* dissent, "[t]he burden was on the employee, Groce, to prove that he was discharged in contravention of a clear mandate of public policy."¹⁰³ By basing its decision on a public policy not advanced in the plaintiff's petition, the *Groce* majority has shown that it is not necessarily the responsibility of the plaintiff to advance the appropriate public policy but that the court may find the public policy itself. The intent of the *Burk* court was to create an exception that was to be construed very narrowly.¹⁰⁴ After the *Groce* decision, future courts may attempt to expand the exception well beyond the narrow *Burk* rule. Further expansion of the exception may create additional problems for employers and employees that can not be determined at this time.

Another future problem involves the Open-Court-of-Justice Clause of the Oklahoma Constitution.¹⁰⁵ While the *Groce* court implicitly rejected use of the Open-Court-of-Justice Clause as a basis for the public policy exception to the employment-at-will rule,¹⁰⁶ some courts might reach a different interpretation of the decision. Because the "open courts" clause is not expressly repudiated by *Groce*, future courts may determine that the clause is an acceptable support for a public policy exception. In light of the decisions construing "open courts" provisions,¹⁰⁷ this is not an accurate construction of the Oklahoma clause. Such an interpretation would create a right to bring an action that is not actually protected by the Oklahoma Constitution. The *Groce* dissent accurately explained the rationale for not allowing the "open courts" provision to be used as a basis for the public policy exception to the employment-at-will rule.¹⁰⁸ Thus, if future courts do not find that the *Groce* majority rejected the "open courts" provision, they should adopt the reasoning of the *Groce* dissent and

101. 770 P.2d 24 (Okla. 1989).

102. *Groce*, 880 P.2d at 909-12 (Simms, J., dissenting).

103. *Id.* at 912.

104. *See supra* note 26 and accompanying text.

105. OKLA. CONST. art. II, § 6.

106. *Groce*, 880 P.2d at 903-08.

107. *See supra* notes 98-99.

108. *Groce*, 880 P.2d at 909-13 (Simms, J. dissenting).

reject the “open courts” provision as a basis for the public policy exception to the employment-at-will rule.

VII. CONCLUSION

In *Groce v. Foster*,¹⁰⁹ the Oklahoma Supreme Court made a well-reasoned determination that the discharge of an employee in retaliation for refusing to abandon a lawsuit against a customer of the employer arising from an on-the-job injury is a breach of public policy. Because the *Groce* majority relied on a public policy other than that which the plaintiff advanced, the court expanded Oklahoma’s public policy exception to the employment-at-will rule. The *Groce* majority relied on the Oklahoma Workers’ Compensation Act as a basis for the public policy exception to the employment-at-will doctrine as defined in *Burk v. K-Mart Corp.*¹¹⁰ Section 44 of the Act provides employees with the right to bring an action against third parties who contribute to their work-related injuries. In addition, section 5 of the Act and the purpose behind the Act indicate that this right is protected by the Workers’ Compensation Act. Moreover, the *Groce* majority correctly refused to recognize the Open-Court-of-Justice Clause of the Oklahoma Constitution as a basis for the public policy exception to the employment-at-will doctrine.

By determining the applicable public policy on its own, the *Groce* court provided a positive outcome for employees. The victory for employees and loss for employers is that Oklahoma courts are given the message that as long as some statute, constitutional provision, or case law exists upon which a *Burk* public policy argument can be based, the employee will have a cause of action against the employer. Not only must employers be cautious not to terminate employees in violation of commonly known public policies, such as age, race, and sex, now they must familiarize themselves with all public policy to make certain that they are not in violation.

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109. 880 P.2d 902 (Okla. 1994).

110. 770 P.2d 24 (Okla. 1989).