Montana Law Review Online

Volume 77 Article 16

7-15-2016

Great Falls Clinic, LLC v. Montana Eighth Judicial District Court: When is an "Employee" an "Employee"?

Erik Anderson
Alexander Blewett III School of Law

PRECAP; *Great Falls Clinic, LLC v. Montana Eighth Judicial District Court*: When is an "Employee" an "Employee"?

Erik Anderson

I. QUESTION PRESENTED

Did the Eighth Judicial District err in finding that the exclusive remedy provisions of the Wrongful Discharge from Employment Act ("WDEA") do not apply to the relationship between a business and an individual *before* the individual's first day at work?

This question is of particular importance because the WDEA does not specifically address exactly when an individual becomes an "employee" subject to the exclusive remedy provisions of the WDEA.

II. INTRODUCTION

The WDEA was enacted by the legislature to be the exclusive remedy for wrongfully discharged employees.[1] As a compromise between protecting employees while still allowing employers to have flexibility in whom they hire and retain, the WDEA allows employers to discharge employees within a probationary period at the beginning of employment for "any reason or for no reason."[2] Furthermore, the WDEA preempts any claim arising in tort or contract.[3] Therefore, whether the WDEA and its probationary period are applicable to an individual's relationship with a business is critical in determining an individual's remedy following an allegedly wrongful breach early in the relationship.

III. FACTUAL AND PROCEDURAL BACKGROUND

Lisa Warrington ("Warrington") brought this action against Great Falls Clinic, LLP ("the Clinic") alleging breach of contract, promissory estoppel, and breach of the covenant of good faith and fair dealing.[4]

In September 2014, Warrington applied for the Clinical Manager position at the Clinic while she was still employed at Benefis Healthcare ("Benefis"), her employer for the past 20 years.[5] On October 7, 2014, the

---

[1] MONT. CODE ANN. § 39–2–902 (2015).
[2] MONT. CODE ANN. § 39–2–904(2)(a) (2015).
[3] MONT. CODE ANN. § 39–2–913 (2015).
[4] Response to Writ of Supervisory Control at 3, *Great Falls Clinic, LLP v. Montana Eighth Judicial District Court*, https://supremecourtdocket.mt.gov/view/OP%2016-0335%20Petition%20for%20Writ%20--%20Response/Objection?id={70237F55-0000-CA22-B8A1-449714F318A6} (Mont. June 23, 2016) (No. OP 16-0335).
[5] *Id*. at 1.

Clinic decided to offer Warrington the position, which she accepted.[6] Warrington promptly gave Benefis her two weeks' notice.[7]

Two days later, on October 9, 2014, Warrington was sent an employment agreement from the Clinic that included her terms and conditions of employment, which she signed and returned.[8] In doing so, she agreed that her start date would be October 27, 2014.[9] The agreement also stated that she would be subject to the Clinic's typical six-month probationary period, which begins running for their employees on the "first date of employment."[10] However, on Warrington's last day at Benefis, the Clinic's Director of Nursing, Lori Henderson ("Henderson"), called Warrington with an update. Here, the parties' allegations take a critical divergence. According to the Clinic, Henderson informed Warrington over the phone that "the Clinic [had] decided to terminate her employment."[11] Crucially, Warrington disagrees, claiming that Henderson had told Warrington that the Clinic had "decided not to employ her after all."[12] Although word choice is always important, the specific phraseology used and the definition of specific terms plays an outsized role in this litigation.

Following commencement of the suit, the parties filed cross motions for summary judgment on Warrington's breach of contract and promissory estoppel claim.[13] The District Court granted Warrington's motion on the breach of contract claim and denied her motion for summary judgment regarding promissory estoppel.[14] The Clinic filed a Petition for Supervisory Control with the Montana Supreme Court relating only to the breach of contract claim.[15] The Clinic argued there would be "procedural entanglements" and an overall savings in judicial economy if the Court were to exercise its constitutionally granted power of review over the district court.[16] The Court accepted the invitation, partly because the issue is one of first impression and partly because the issue's resolution may prove dispositive of Warrington's entire case.[17]

---

[6] *Id*.
[7] *Id*.
[8] *Id*.
[9] *Id*.
[10] Response to Writ of Supervisory Control at 1.
[11] Petition for Writ of Supervisory Control at 1, *Great Falls Clinic, LLP v. Montana Eighth Judicial District Court*, https://supremecourtdocket.mt.gov/view/OP%2016-0335%20Petition%20for%20Writ%20--%20Response/Objection?id={70237F55-0000-CA22-B8A1-449714F318A6} (Mont. June 7, 2016) (No. OP 16-0335).
[12] Response to Writ of Supervisory Control at 1.
[13] *Id*. at 3.
[14] *Id*.
[15] *Id*.
[16] Petition for Writ of Supervisory Control at 7.
[17] Order at 1, *Great Falls Clinic, LLP v. Montana Eighth Judicial District Court*, https://supremecourtdocket.mt.gov/view/OP%2016-0335%20Respond%20to%20Pleading%20--%20Order?id={80B03655-0000-C71D-9871-CF4B3B0FF36B} (Mont. July 12, 2016) (No. OP 16-0335).

IV. SUMMARY OF ARGUMENTS

A. Petitioner Great Falls Clinic, LLP

The Clinic argues that Warrington was a full-fledged employee of the Clinic at the time they contacted her on her last day at Benefis, that she had agreed to an employment contract, and that she was not covered by a collective bargaining agreement.[18] Based on these facts, the Clinic maintains that the WDEA must apply and, further, that it provides her exclusive remedy.[19] The Clinic contends that the law is clear in regards to WDEA preemption of common-law claims, such as breach of contract, when "a party's claims are inextricably intertwined with their termination."[20]

The Clinic supports their argument with excerpts of legislative history from HB241, which it claims reveals that the WDEA was intended for actions of wrongful discharge even when the discharge is "prospective."[21] The fact that Warrington had signed an employment agreement, but had not yet reached her start date, leads the Clinic to assume that its action qualified as "prospective discharge."[22] Furthermore, the Clinic maintains that its decision to "terminate" Warrington falls under the definition of "discharge" as defined by the WDEA.[23] The Clinic's entire argument is premised on the fact that Warrington became an "employee" of the Clinic the moment she signed her employment agreement. The Clinic ends by noting the inconsistency in the district court's conclusion that Warrington signed an employment contract, but somehow shouldn't be considered an "employee."[24]

B. Response of Warrington on behalf of Montana Eighth Judicial District Court

In her response, Warrington maintains that she never became an "employee," that the Clinic never became an "employer," and that Warrington could therefore never have been "discharged."[25] To support this argument, Warrington relies on Judge Kutzman's reasoning in the district court proceeding as well as the reasoning of a separate district court ruling with similar facts.[26]

---

[18] Petition for Writ of Supervisory Control at 10.
[19] *Id*. at 8.
[20] *Id*.
[21] *Id*. at 11.
[22] *Id*.
[23] *Id.* (citing MONT. CODE ANN. § 39–2–903(2) (2015)).
[24] Petition for Writ of Supervisory Control at 10.
[25] Response to Writ of Supervisory Control at 2.
[26] *Id.* at 3 (citing *Simpson v. Benefis Hospital Inc.*, Docket No. DDV-09-321).

Channeling her inner Merriam and Webster, Warrington details an extensive list of definitions, all but one of which are pulled directly out of the WDEA, which collectively suggest that a person is only an employee when he or she "works" for an employer.[27] Warrington argues that, because she never performed services for the Clinic and never received any wages or salary or benefits from the Clinic, she could not have actually "worked" for the Clinic.[28] In her opinion, she was never even allowed to begin her probationary period.[29] To support this, Warrington cites a recent Montana Supreme Court case in which the Court held that the only "reasonable construction" of when the six-month probationary period begins to run is when the employee "began work" for her new employer.[30]

In a footnote, Warrington highlights the fact that the Clinic's employee handbook elaborates on the purpose of a probationary period.[31] The handbook describes it as a period that is used to determine if the employee is a "good fit," and gives the employee a chance to "get oriented…to the job."[32] The implication is that the Clinic only finds their probationary period useful once the employee has begun performing work for them, so it defies common sense to believe it starts prior to that occurrence. Because the probationary period is an essential part of the WDEA and the Court has suggested it only begins when the individual "begins to work" for the employer, Warrington concludes that the exclusive remedy provisions should similarly start only after the individual "begins to work."

Next, Warrington counters the Clinic's use of legislative history with the plain meaning rule of statutory interpretation. Because the language in the WDEA expresses clearly and unambiguously that the statute only applies during employment, legislative history should be left out of the Court's analysis. Warrington further argues that, even if the legislative history were instructive, it would weigh, instead, in her favor, as the WDEA was enacted in part to prevent employers from taking advantage of employees.[33] Warrington claims that the legislature never intended, in enacting the WDEA, to protect employers who perform "bait-and-switch" tactics to achieve a competitive advantage.[34]

Finally, Warrington makes an appeal to public policy.[35] She begins by suggesting employers may be practicing similar "bait-and-

---

[27] *Id.* at 4.
[28] *Id.* at 5.
[29] *Id.*
[30] *Id* at 7 (citing *Blehm v. St. John's Lutheran Hosp.*, 2010 MT 258, ¶16, 358 Mont. 300, 246 P.3d 1024).
[31] Response to Writ of Supervisory Control at 2 n. 8.
[32] *Id.*
[33] *Id.* at 11.
[34] *Id.*
[35] Id. at 10.

switch" hiring techniques on a regular basis and in direct conflict with the purpose of the WDEA.[36] If employers are allowed to "terminate" a new employee before giving them a chance to work, a new employer could simply steal good employees from a competitor, thereby gaining a competitive advantage, all without any repercussions. Worse, the employee is left without a job and with nowhere to turn.

V. ANALYSIS

The Court granted the Clinic's petition for supervisory control, concluding that the case presents a threshold issue of first impression. To promote judicial efficiency and justice, the threshold issue must first be resolved. The Court clarified that it would only be addressing the applicability of the WDEA to the specific facts in Warrington's case, with no further consideration of the remedies available to her if the WDEA does not apply. [37]

Warrington's argument in this case appears persuasive. The identification of at least one other district court opinion that reached the same conclusion, while not binding authority, is telling. Furthermore, the assumptions made by the Clinic are hard to ignore. Rather than argue that Warrington was actually an employee and therefore subject to the WDEA, the Clinic focuses on the applicability of the WDEA to someone who is already assumed to be an employee. But as Warrington explains, the crux of the issue is whether she was actually employed by the Clinic at the time she was notified by Henderson. A deeper analysis of the employment agreement and terms and conditions likely would have been more persuasive.

On the other hand, the argument by Warrington that she should not be consider an employee because she never "worked" a day for the Clinic is not incredibly convincing. Although Warrington signed an employment agreement, she suggests the plain meaning of "works for," within the MCA definition of "employee," can only be interpreted to mean that the person has physically "clocked-in" for the employer. However, an alternate interpretation could simply be that a person "works for" an employer when she is "in the employment of" a person or organization. Warrington may well be included within that definition.

Ultimately, the Court's determination will likely come down to an interpretation of the purpose of the WDEA, with an eye toward previous WDEA decisions. In order for the Court to reconcile its unanimous holding in *Blehm*, it will likely agree that the exclusive remedy provision of the WDEA, like that of the probationary period, begins to apply when the individual "starts to work" — that is, when the employer begins to

[36] Response to Writ of Supervisory Control at 10.
[37] Order at 1.

make use of the individual in an employment capacity.[38] Whether such an interpretation would put an end to such unethical hiring, or whether businesses would simply wait until the probationary period becomes applicable, remains to be seen.

[38] Notably, Black's first sense of "employ" is "to make use of." BLACK'S LAW DICTIONARY 639 (Bryan A. Garner ed., 10th ed. 2009).