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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CAROLYN FORD MATTEO
Plaintiff

CLEVELAND CLINIC FOUNDATION
Defendant

Case No: CV-11-757017

Judge: BRENDAN J SHEEHAN

JOURNAL ENTRY

OPINION AND JUDGMENT ENTRY. O.S.J.

Judge Signature Date

11/29/2011

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CAROLYN FORD MATTEO, Plaintiff, v. THE CLEVELAND CLINIC FOUNDATION, Defendant.	)	CASE NO. CV 11 757017 JUDGE BRENDAN J. SHEEHAN **OPINION AND JUDGMENT ENTRY**

I. ISSUES PRESENTED.

This matter is before the Court on Defendant's Motion to Dismiss Amended Complaint filed October 13, 2011. Plaintiff's Opposition to Defendant's Motion to Dismiss Amended Complaint was filed November 18, 2011 without leave of Court.

Plaintiff Carolyn Ford Matteo filed a Complaint on June 8, 2011 which alleged that she was wrongfully terminated by Defendant The Cleveland Clinic Foundation ("CCF"). Plaintiff states that she was "terminated from her job with the Clinic unjustifiably due to false accusations set forth under [CCF's Corrective Action Policy]." Complaint, ¶3. Plaintiff asserts that CCF "engaged in a bad faith decision and violated public policy against retaliation by posting her pharmacist job as a vacancy on March 12, 2010, one day after having with her a fit for duty meeting and having her complete her evening shift for that day." Complaint, ¶5. Plaintiff claims that CCF posted her job "in retaliation for her alleged confrontation with Dr. Kalinowski and nurse Inthihar." Complaint, ¶6. Apparently, Plaintiff's alleged altercation concerned "correcting a miscalculation in the dosage of medication in the interest of seeing to it that the proper dose was safely administered." Complaint, ¶12.

On July 14, 2011, twenty-three days after service was perfected on June 21, 2011, CCF filed a Motion to Dismiss Pursuant to Ohio Rule of Civil Procedure 12(B)(6) on the grounds that Plaintiff had failed "to identify the specific public policy at issue or explain how it was violated." Plaintiff did not contest CCF's argument; instead, she maintained that CCF was in default despite its timely Rule 12 motion.

The Court granted Plaintiff leave to amend her Complaint to conform to the pleading requirements for a wrongful discharge claim. On September 29, 2011, Plaintiff filed her Amended Complaint that purported to substitute a revised Count Two.[1] Plaintiff's amended Count Two states that her "conduct on the evening of December 19, 2010 and morning of December 20, 2010 was related to her upholding the ethics of her profession as a licensed pharmacist in the state of Ohio. Her insisting that the proper dosage of medicine be given as administratively ordered was consist [sic] with her duty to see that the medication was given to the patient in the pediatrics unit safely in the manner she had prescribed and sought to explain to Nurse Julie Intihar, who had another agenda." Amended Complaint, ¶4. The remainder of Plaintiff's Amended Complaint consists of legal conclusions ("Plaintiff can satisfy her burden and overcome the presumption of a dismissal pursuant to a 12(B)(6) motion". Amended Complaint, ¶5) or a bare restatement of the elements of a wrongful discharge claim.

As CCF has noted, Plaintiff did not certify service of the Amended Complaint as required by Civ.R.5. Nonetheless, for purposes of consideration under Civ.R. 12(B)(6), the Court will afford Plaintiff every benefit by considering the Amended Complaint as properly before it.

[1] Plaintiff did not restate Count I from the Complaint but stated only that Count 1 remained "in tact". While Defendant properly asserts that Plaintiff's Amended Complaint supplants the original Complaint to the effect that Plaintiff has abandoned Count I, for purposes of this Motion to Dismiss, the Court will construe all pleadings in a light most favorable to Plaintiff.

II. LAW AND ANALYSIS.

A. Standard of Review.

A motion to dismiss brought pursuant to Civ.R. 12(B)(6) should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *O'Brien v. University Community Tenants Union, Inc.* (1975), 42 Ohio St. 2d 242, *quoting Conley v. Gibson* (1957), 355 U.S. 41, 45. All factual allegations of the complaint must be taken as true and all reasonable inferences must be drawn in favor of the nonmoving party. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192. Further, the court is confined to the allegations of the complaint. *York v. Ohio State Highway Patrol* (1991), 60 Ohio St.3d 143, 144; *AAA American Const., Inc. v. Alpha Graphic* (2005), 2005 WL 1364892, 1.

"While a complaint attacked by a * * * motion to dismiss does not need detailed factual allegations, the [plaintiffs'] obligation to provide the grounds for their entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level." *Parsons,* 2010 -Ohio- 266 at ¶ 11, citing *Bell Atlantic Corp. v. Twombly* (2007), 550 U.S. 544, 555. Conclusory statements in a complaint not supported by facts are not afforded the presumption of veracity and are insufficient to withstand a motion to dismiss. *Id.; Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 193. "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations" to survive a motion to dismiss. *Ashcroft v. Iqbal* (2009), 556 U.S. 662.

B. Plaintiff's Wrongful Discharge Claim.

Employment relationships in Ohio are generally at will: an employer may terminate and employee with or without cause and the termination does not give rise to an action for damages. *Collins v. Rizkana* (1995), 73 Ohio St.3d 65, 67; *Mers v. Dispatch Printing Co.* (1985), 19 Ohio St.3d 100, ¶1 of the syllabus. However, an exception to this general rule exists if an employee is discharged or disciplined in contravention of a clear public policy articulated in the Ohio or United States Constitution, federal or state statutes, administrative rules and regulations, or common law. *Painter v. Graley* (1994), 70 Ohio St.3d 377, paragraph three of the syllabus; *Greeley v. Miami Valley Maintenance Contrs., Inc.* (1990), 49 Ohio St.3d 228, paragraph one of the syllabus.

To maintain a cause of action for wrongful discharge in violation of public policy, a plaintiff must establish:

1. That clear public policy existed and was manifested in a state or federal constitution, statute or administrative regulation, or in the common law (the clarity element);
2. That dismissing employees under circumstances like those involved in the plaintiff's dismissal would jeopardize the public policy (the jeopardy element);
3. The plaintiff's dismissal was motivated by conduct related to the public policy (the causation element); and,
4. The employer lacked overriding legitimate business justification for the dismissal (the overriding justification element).

Painter, 70 Ohio St.3d at 384, fn. 8, quoting Perritt, The Future of Wrongful Dismissal Claims: Where Does Employer Self–Interest Lie? (1989), 58 U.Cin.L.Rev. 397, 398–399.

The clarity and jeopardy elements are issues of law for the court's determination; the causation and overriding-justification elements are questions for determination by the fact-finder. *Collins,* 73 Ohio St.3d at 70.

To satisfy the clarity element, a plaintiff must "articulate a clear public policy by citation to specific provisions in the federal or state constitution, federal or state statutes, administrative

rules and regulations, or common law. A general reference to workplace safety is insufficient to meet the clarity requirement." *Dohme v. Eurand Am., Inc.* (2011), 956 N.E.2d 825, 2011-Ohio-4609, ¶24.

As concisely stated in *Dohme*, "[u]nless the plaintiff asserts a public policy and identifies federal or state constitutional provisions, statutes, regulations, or common law that support the policy, a court may not presume to sua sponte identify the source of that policy. There may be valid reasons for a plaintiff's failure to identify and assert a specific public policy or a specific source for that public policy. An appellate court may not fill in the blanks on its own motion." *Id.* at ¶23.

Plaintiff was afforded every opportunity to enunciate a clear public policy and identify federal or state constitutional provisions, statutes, regulations, or common law that support the policy. Instead, she asserted the elements of a cause of action as set forth in case law without any supporting facts. This strategy was rejected by the Ohio Supreme Court in *Dohme* wherein the plaintiff relied on a statement of public policy expressed in the syllabus of *Pytlinski v. Brocar Prod., Inc.* (2002), 94 Ohio St.3d 77. *Dohme,* ¶21 ("The mere citation to the syllabus in *Pytlinski* is insufficient to meet the burden of articulating a clear public policy of workplace safety.") In this regard, *Dohme* is directly on point to the effect that Plaintiff failed to articulate in the Complaint or Amended Complaint a clear public policy by relying only on the syllabus of another court case devoid of the pertinent statutory basis for the purported claim.

In the Complaint and Amended Complaint, Plaintiff's main contention is that her job was posted prior to her official termination which is apparently against CCF's policies. Internal organizational policies, however, are not *public* policies and cannot support a wrongful discharge claim without more. Plaintiff hints that her claim is related to her ethical obligations as a

pharmacist but such vague statements are insufficient to identify the clear public policy at issue. As the *Dohme* court expressly stated, courts may not fill in the blanks to guess which public policy, if any, Plaintiff claims was violated. As such, Plaintiff has failed as a matter of law to adequately set forth the clarity and jeopardy elements of a wrongful discharge claim and her claim must fail.

III. CONCLUSION.

For the foregoing reasons, **DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT IS GRANTED.**

PLAINTIFF'S AMENDED COMPLAINT IS DISMISSED WITH PREJUDICE.

EACH PARTY TO BEAR THEIR OWN COSTS.

IT IS SO ORDERED.

JUDGE BRENDAN J. SHEEHAN

Dated: 11.29.11

RECEIVED FOR FILING

NOV 30 2011

GERALD E. FUERST, CLERK
By B. Carnes Jr. Deputy

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed to the following this 29th day of November, 2011:

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