

M.B.M. v. COUNCE

Procedural History

M.B.M. was granted a summary judgment against Counce.
Counce appealed the summary judgment.

Issue

Is the summary judgment sound or is there cause for suit for recovering damages for wrongful discharge and intentional infliction of emotional distress?

Rule

Per employee contract, M.B.M. can discharge Counce at any time, without notice.

One is liable for Intentional Infliction of Emotional Distress if one--

- Causes emotional distress or bodily harm from that distress,
- By willful or wanton,
- Extreme and outrageous conduct.

Facts

When Counce, employed by M.B.M. was assigned to the cash register, \$99.00 went missing. Counce denied any knowledge of the missing money.

Then, Counce was discharged, M.B.M. said, because of too much counter help. M.B.M. told Counce that she must submit to a polygraph test, which she did and passed, to receive her pay. Then, Counce was paid \$.81 for 17 hours worked. When Counce asked the owner why her money was withheld, M.B.M.'s owner replied, "I need mine, too."

Counce was denied unemployment benefits, because M.B.M. said Counce was laid off because of "numerous customer complaints, a bad attitude and violation of company rules and policies."

Counce never had problems with customers. Counce was paid when the Labor Department investigated. M.B.M. did not have excess counter help when Counce was discharged. No one told Counce she stole the missing money.

Application

Counce's suit relies on a tort for Intentional Infliction of Emotional Distress without physical injury. Arkansas law requires damages for mental anguish only be provided if that mental anguish is a direct result of physical injury. It is the decision of this court, based on case precedent and persuasive argument, that Intentional Infliction of Emotional Distress is the equivalent of physical assault and is therefore a tort, liable for damages.

Counce cannot claim Intentional Infliction of Emotional Distress for wrongful discharge, because M.B.M. was within their contractual right to discharge Counce.

The Court determined that M.B.M.'s conduct *following* Counce's discharge is a different matter. Without cause, M.B.M. did not pay Counce. M.B.M. thwarted Counce's reasonable expectation of unemployment benefits, promised her pay only if she submitted to a polygraph test *after* her discharge, and caused her to endure a labor department investigation to collect her pay. M.B.M. never gave Counce a reasonable explanation for their actions towards her.

The Court believes there is material issue of fact as to whether M.B.M.'s conduct was extreme and outrageous, but it is uncertain that there is material issue of fact that Counce experienced severe emotional distress.

Conclusion

The Arkansas Supreme Court concluded that since Intentional Infliction of Emotional Distress is a tort, they agree with the Court of Appeals to reverse the summary judgment and remand the case to trial court for further proceedings.