COURT OF APPEALS
DECISION
DATED AND FILED

May 5, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

No. 98-1058

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

ELAINE TEICHMILLER,

PLAINTIFF-APPELLANT,

V.

ROGERS MEMORIAL HOSPITAL INCORPORATED; SUE OTTO, INDIVIDUALLY AND AS AGENT FOR ROGERS MEMORIAL HOSPITAL INCORPORATED; DEBBIE BERGERSON-HAWKINS, INDIVIDUALLY AND AS AGENT FOR ROGERS MEMORIAL HOSPITAL INCORPORATED,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Waukesha County: MARIANNE E. BECKER, Judge. *Affirmed.*

Before Brown, Anderson and Ziegler,[1] JJ.

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[1] Circuit Judge Annette K. Ziegler is sitting by special assignment pursuant to the Judicial Exchange Program.

PER CURIAM. Elaine Teichmiller appeals from a summary judgment dismissing her claims for wrongful discharge and false imprisonment. Because we conclude that summary judgment was appropriate, we affirm.

Beginning in September 1994, Teichmiller, a registered nurse, was an at-will employee of Rogers Memorial Hospital at its main facility. In the spring of 1995, Teichmiller began working as a nurse at the hospital's Racine clinic. Her immediate supervisor was Christine Hansburg-Hotson. Hansburg-Hotson reported to Debbie Bergerson-Hawkins, the Director of Clinical Services. Bergerson-Hawkins reported to Sue Otto, Vice President of Patient Care Services.

One of Teichmiller's responsibilities at the clinic was to perform patient intake and multidisciplinary assessments. Another of her responsibilities was to complete medical records or charts. In her amended complaint, Teichmiller alleged that she was directed to falsify medical records and that her refusal to do so resulted in her forced resignation. In effect, Teichmiller claimed that she was wrongfully discharged[2] because she was forced to leave her employment after declining to falsify medical records.

Rogers, Bergerson-Hawkins and Otto moved for summary judgment on Teichmiller's wrongful discharge claim. An appeal from a grant of summary judgment raises an issue of law which we review de novo by applying the same

[2] The employment-at-will doctrine "generally allows an employer to discharge an employee for 'good cause, for no cause, or even for cause morally wrong, without being thereby guilty of legal wrong.'" ***Hausman v. St. Croix Care Ctr.,*** 214 Wis.2d 655, 663, 571 N.W.2d 393, 396 (1997) (quoted source omitted). However, "an employee has a cause of action for wrongful discharge when the discharge is contrary to a fundamental and well-defined public policy as evidenced by existing law." ***Id.*** at 664, 571 N.W.2d at 396 (quoted source omitted). We need not address this body of law because we conclude that Teichmiller has not established any facts substantiating that she was instructed to falsify medical records.

standards employed by the trial court. *See* ***Brownelli v. McCaughtry***, 182 Wis.2d 367, 372, 514 N.W.2d 48, 49 (Ct. App. 1994). We independently examine the record to determine whether any genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law. *See* ***Streff v. Town of Delafield***, 190 Wis.2d 348, 353, 526 N.W.2d 822, 824 (Ct. App. 1994).

When asked to describe how Bergerson-Hawkins attempted to compel her to falsify medical records, Teichmiller testified in her deposition that in August 1995, Bergerson-Hawkins and Otto posted a list of patients' medical charts with deficient or missing entries. The charts were listed by the individual or discipline responsible for completing them. When asked who told her to falsify charts, Teichmiller responded that the "management of the clinic" told her that "[t]he writing was on the wall. It couldn't be any clearer." In Teichmiller's view, the posting of the list of deficient charts was a directive to falsify the charts, although the list did not have any instructions on it. Teichmiller could not cite a conversation she had with Bergerson-Hawkins in which the latter directed her to falsify medical records. She claims that she learned of directions to falsify records through coworkers' statements to her about the record entry work they were doing; however, she did not see the entries the coworkers were making to confirm that they were somehow false.

Hansburg-Hotson said that staff was "to complete whatever was missing from the charts," but she never used the word "falsify." Teichmiller complained to Hansburg-Hotson that she could not complete the records because she did not have the information needed to make the entries since she had not conducted the multidisciplinary nursing admission assessments on some of the patients whose charts were on her list to be completed. Teichmiller declared that she would not tamper with or falsify the records assigned to her on the deficient

records posting. After consulting with Otto, Hansburg-Hotson reported back to Teichmiller that Otto said to "do them."

Teichmiller conceded that she would have been able to transfer information from the intake assessment to the multidisciplinary assessment but she did not do so prior to departing her employment because she viewed it as duplicating information. Thereafter, Teichmiller voluntarily resigned. From the time Teichmiller told Hansburg-Hotson that she would not falsify charts (at around the time the deficient chart lists were posted) until her final meeting with management at the clinic on September 12, 1995, Teichmiller did not have any further conversations with her superiors regarding her contention that she was being asked to falsify charts. Teichmiller was not disciplined prior to September 12 for not completing the charts on her list.

At the September 12 meeting held to discuss Teichmiller's impending departure from the clinic, Teichmiller was handed a memorandum whose subject was "Position Exit Requirements." The document stated that Teichmiller had been advised of the "specific documentation requirements" which she had to complete before leaving her employment. These documentation requirements included outstanding nursing assessments, progress notes and discharge notes. Teichmiller contends that the memorandum essentially directed her to falsify charts.

In her deposition, Otto testified regarding the procedure for making a "late entry" in a chart, *i.e.*, making an entry from existing information. However, the entry cannot be made if the chart does not already contain the necessary information. Bergerson-Hawkins confirmed this procedure. Teichmiller testified

that she did not recall being advised about the procedures for making a late entry on a chart.

Hansburg-Hotson testified that staff members were directed to chart what they remembered about a patient. Karen Maier, the risk manager, testified that with regard to alleged falsification of medical records, she was not "sure there was a problem at all" and that her information regarding possible falsification of records came from Teichmiller.

In its decision on summary judgment, the trial court ruled that Teichmiller left her employment voluntarily and that she was not actually or constructively discharged. Teichmiller was asked to complete medical records to the best of her ability which was not a direction to falsify records. Teichmiller left her employment after her request to leave the clinic and return to pool status at the hospital was held in abeyance until she completed the medical records assigned to her. The court concluded that Teichmiller made assumptions about the actions of other persons working on records at the clinic and that she was not disciplined for not completing her records.

We conclude that there are no material facts in dispute on the question of whether Teichmiller was asked to falsify records, the bedrock of her claim that she was wrongfully discharged for declining to do so. It is plain from Teichmiller's deposition that her belief that she was directed to falsify charts arose from her interpretation of the posting of the list of deficient charts and the terms of the exit requirements document. She could not point to any actual conversation or directive that she falsify patients' charts. Furthermore, Teichmiller's assumption that she was being directed to falsify documents was never tested because she resigned before she completed her charts to the best of her ability. Teichmiller's

assumption, in the absence of other proof, is insufficient to sustain her wrongful discharge claim and to raise a genuine issue of material fact sufficient to preclude summary judgment.

We turn to Teichmiller's false imprisonment claim. The claim arises from a confrontation between Teichmiller and her superiors at the September 12, 1995 meeting to discuss her impending departure. In her deposition, Teichmiller testified that she was asked to meet at the clinic with Hansburg-Hotson, Bergerson-Hawkins and Otto. The purpose of the meeting was to discuss Teichmiller's exit requirements, specifically the need to complete medical records before she departed. Teichmiller sat in the chair nearest the door, which remained open during the meeting. She was handed the exit requirements and was told that she would be assisted in completing her charts. Teichmiller refused to sign the form and stated that she had consulted an attorney. Bergerson-Hawkins and Otto became very excited and started shouting about Teichmiller's contact with an attorney.

When Teichmiller stated that she wanted to make a copy of the document, Otto and Bergerson-Hawkins left their chairs. Bergerson-Hawkins came to Teichmiller's right side and blocked the doorway. Otto came to Teichmiller's left side. Bergerson-Hawkins and Otto screamed at Teichmiller that she was stealing hospital property because she was going to take the exit requirements form to the copier in the conference room. Otto and Bergerson-Hawkins continued to stand on either side of Teichmiller and attempted to grab the form from Teichmiller's hands. Teichmiller felt caged and could not move left or right because Bergerson-Hawkins and Otto were on either side, her chair was behind her, and the office desk was in front of her. Bergerson-Hawkins and Otto held their hands approximately one-inch above Teichmiller's arms while they

were trying to grab the form. Teichmiller felt that Bergerson-Hawkins and Otto were being aggressive and were dangerous.

Bergerson-Hawkins blocked Teichmiller's movement to the right toward the open door. Teichmiller was afraid that if she moved, they would think she was being aggressive. The standoff took three to four minutes and then on Teichmiller's third attempt to move to the right, Bergerson-Hawkins stepped aside and Teichmiller left for the copier. Bergerson-Hawkins and Otto "chased" Teichmiller to the copy room where they stood on either side of her as she unsuccessfully tried to use the copier, followed her to her office, and "guarded" her from outside of the women's restroom where she fled after her first attempt to use the copier. Teichmiller later permitted Otto to speak privately with her in Teichmiller's office after Teichmiller had photocopied the exit requirements form. Teichmiller testified that she did not feel free to move when Bergerson-Hawkins and Otto were standing next to her in the office and at the copier. Teichmiller concedes that she was not touched or threatened with physical contact, although she felt threatened physically and verbally because Otto and Bergerson-Hawkins were in proximity to her and were excited.

Although Teichmiller stated that Bergerson-Hawkins and Otto refused to let her leave, she testified that she never actually asked to leave the office. Rather, she repeatedly stated that she needed to make a copy of the document and because the copier was not located in the office, she believes she made it clear that she had to leave the room.

Bergerson-Hawkins and Otto do not dispute most of Teichmiller's description of the confrontation in the office and at the copier. Nevertheless, they argue that Teichmiller's allegations do not rise to the level of false imprisonment.

In ruling on the summary judgment motion, the trial court concluded that the following facts were undisputed regarding the September 12 meeting. Teichmiller gave notice of her intention to leave the clinic. She was invited to a meeting with her supervisors to which she arrived last. The exit requirements document was presented to her in anticipation of her final day at the clinic. Teichmiller took the document, refused to return it and a three-minute standoff ensued during which no one blocked the door, which had been open the entire time, and no one obstructed Teichmiller. Teichmiller never stated that she wanted to leave her supervisor's office and her liberty was not restrained. Teichmiller was paid for the entire time she was at the clinic on September 12.

Regardless of possible factual disputes, the summary judgment record does not support Teichmiller's claim that she was intentionally and unlawfully restrained. *See* WIS J I—CIVIL 2100. Teichmiller did not ask to leave her supervisor's office; at best, she obliquely requested to leave when she demanded access to the copier. Teichmiller also states that after three to four minutes, Bergerson-Hawkins moved out of her way and she left the office. In light of the cases discussed below, Teichmiller's false imprisonment claim cannot stand.

In ***Herbst v. Wuennenberg***, 83 Wis.2d 768, 266 N.W.2d 391 (1978), political canvassers checking addresses against voting registration lists were approached in an apartment building vestibule by Wuennenberg, the area's alderperson. *See* ***id.*** at 770, 266 N.W.2d at 393. Wuennenberg demanded that they identify themselves, and when they refused, she directed her husband to call the police. *See* ***id.*** at 771, 266 N.W.2d at 393. Wuennenberg stood in front of the building's outer door and "[stood] there with her arms on the pillars to the door" which, the canvassers believed, blocked their exit. *See* ***id.*** The canvassers sued

for false imprisonment but conceded that Wuennenberg had not threatened or intimidated them and that they did not ask her permission to leave or make any attempt to get Wuennenberg to move away from the door. *See* ***id.*** at 771-72, 266 N.W.2d at 393. Each of the canvassers assumed that he or she would have to push Wuennenberg out of the way in order to leave the vestibule. *See* ***id.*** at 772, 266 N.W.2d at 393.

The central issue was whether the canvassers were confined by threat of physical force, i.e., an apparent intention and ability to apply force as expressed in words or acts. *See* ***id.*** at 775-76, 266 N.W.2d at 395-96. The court noted that Wuennenberg did not verbally threaten the canvassers and none of them asked her to step aside. Therefore, it was speculation to conclude that Wuennenberg would have refused a request to step aside and would have physically resisted the canvassers' attempt to leave. *See* ***id.*** at 778, 266 N.W.2d at 396. The court concluded that the evidence at best supported an inference that the canvassers remained in the vestibule because they assumed they would have to push Wuennenberg out of the way in order to leave. The court found this assumption insufficient to support the false imprisonment claim. *See* ***id.***

The ***Herbst*** court distinguished ***Dupler v. Seubert***, 69 Wis.2d 373, 230 N.W.2d 626 (1975), in which an employee claimed to have been falsely imprisoned by her employer when she was called to the office to be informed of her termination. The manager yelled at the employee, blocked the office door and told her in a loud voice to "sit down." The manager declined the employee's repeated requests to leave. *See* ***Dupler***, 69 Wis.2d at 376, 230 N.W.2d at 628. The jury found false imprisonment. *See* ***id.*** at 377, 230 N.W.2d at 629. On review, the court held that the employee was intentionally confined by an implied threat of actual physical restraint. *See* ***id.*** at 383, 230 N.W.2d at 632.

In distinguishing ***Dupler***, the ***Herbst*** court noted that the canvassers could not bring themselves within the purview of ***Dupler*** because they were not berated or screamed at by Wuennenberg, they outnumbered Wuennenberg three to one, and there was no evidence that they were frightened of Wuennenberg or that they feared harm. *See* ***Herbst***, 83 Wis.2d at 779, 266 N.W.2d at 397. The canvassers "did not submit to an apprehension of force" and therefore were not imprisoned. ***Id.*** at 780, 266 N.W.2d at 397.

Teichmiller's deposition testimony indicates that she was yelled at, outnumbered and feared she would be harmed. However, she never actually asked to leave the clinic manager's office and was able to leave the office on her third attempt to move past Bergerson-Hawkins, who apparently was standing between her and the door. While Teichmiller claims she was afraid force would be used, it appears that this was speculation.

There is also a question as to whether Teichmiller, an employee, could be "imprisoned" during paid work hours. In ***Dupler***, the court noted with approval the holding of ***Weiler v. Herzfeld-Phillipson Co.,*** 189 Wis. 554, 208 N.W. 599 (1926), that an employee detained during work hours in the employer's office prior to her discharge was not imprisoned because she was compensated for her time. *See* ***Dupler***, 69 Wis.2d at 383, 230 N.W.2d at 632. In ***Dupler***, the employee was compensated until 5:00 p.m., but remained in the manager's office until 6:00 p.m. *See* ***id.*** at 377, 383, 230 N.W.2d at 628, 632. The court concluded that the employee's imprisonment commenced at 5:00 p.m. In contrast, Teichmiller was paid for all of her time at the clinic on the day she contends she was imprisoned.

We conclude that there are no facts showing that Teichmiller was intentionally and unlawfully restrained, *see* WIS J I—CIVIL 2100, in an office whose door was open and from which she never asked to leave.

Because Teichmiller was neither wrongfully discharged nor falsely imprisoned,[3] we need only briefly address the trial court's dismissal of Teichmiller's claims against Otto and Bergerson-Hawkins as individuals. An employer may be liable for wrongful discharge; managers and supervisors of the employee are not individually liable under this theory. *See* ***Wandry v. Bull's Eye Credit Union,*** 129 Wis.2d 37, 384 N.W.2d 325 (1986) (employer, not president who demanded that employee reimburse employer for funds paid on a bad check, can be held liable for wrongful discharge).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

[3] Having so held, we need not address the other issue raised on appeal relating to the exclusivity provisions of the Worker's Compensation Act, ch. 102, STATS.