COURT OF APPEALS
DECISION
DATED AND FILED

June 12, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-2473

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

KAREN R. BAMMERT,

PLAINTIFF-APPELLANT,

v.

DON'S SUPERVALU, INC.,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dunn County: ERIC J. WAHL, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 HOOVER, P.J. Karen Bammert appeals a judgment dismissing her action for wrongful discharge, claiming that her termination from employment violates public policy. Bammert alleges that she was fired because her husband, a police officer, participated in her employer's wife's arrest for driving under the

influence of alcohol. Because Wisconsin is an employment-at-will state and Bammert does not present circumstances that meet an exception to this rule, we affirm the dismissal.

BACKGROUND

¶2 The case is before us as a result of a motion to dismiss. Thus, the following allegations are deemed admitted. ***Heinritz v. Lawrence Univ.***, 194 Wis. 2d 606, 610, 535 N.W.2d 81 (Ct. App. 1995). Bammert worked for Don's SuperValu, Inc., for approximately twenty-six years. Bammert is married to a Menomonie police officer. Don's is owned by Don Williams, whose wife, Nona Williams, was pulled over for a traffic violation. Bammert's husband administered a Breathalyzer test to Nona, who was subsequently arrested for driving under the influence. Bammert was terminated because of her husband's role in Nona's arrest.

¶3 Bammert filed this action alleging wrongful discharge.[1] Don's moved to dismiss on several grounds, including failure to state a claim. The circuit court only addressed whether Bammert had stated a claim for violating a public policy exception to the employment-at-will doctrine. The court concluded that Bammert's claim did not meet an exception and dismissed the action. Bammert now appeals that judgment.

[1] Bammert also filed a claim with the Wisconsin Equal Rights Division stating that she was discriminated against on the basis of "marital status," prohibited under WIS. STAT. §§ 111.31 through 111.395. (All references to the Wisconsin Statutes are to the 1999-2000 version.) The division dismissed her complaint stating that these statutes did not prohibit discrimination based on the identity, characteristics or actions of one's spouse. This dismissal was affirmed on appeal. *See* ***Bammert v. LIRC***, 232 Wis. 2d 365, 606 N.W.2d 620 (Ct. App. 1999).

ANALYSIS

¶4 Bammert argues that her employment was terminated because her husband fulfilled his legal obligation by assisting in the arrest of her employer's wife for driving under the influence. She contends that termination for this reason contravenes several public interests. Bammert further argues that the public policy exceptions to the employment-at-will doctrine should be expanded to cover not only the employee upon whom an affirmative legal obligation is imposed, but also that person's spouse.

¶5 On a motion to dismiss under WIS. STAT. § 802.06(2), not only are the facts pled taken as admitted, inferences are drawn in favor of the non-moving party. ***Heinritz***, 194 Wis. 2d at 610. The pleadings are liberally construed and the claim will only be dismissed if the plaintiff cannot recover under any circumstances. ***Id.*** at 610-11. Whether to grant a motion to dismiss is a question of law that we review without deference to the trial court. ***Id.*** at 610.

¶6 The general rule regarding relations with employees in Wisconsin is the employment-at-will doctrine. The doctrine generally allows an employer to "discharge an employee for good cause, for no cause, or even for a cause morally wrong, without being thereby guilty of legal wrong." ***Brockmeyer v. Dun & Bradstreet***, 113 Wis. 2d 561, 567, 335 N.W.2d 834 (1983) (citation omitted).

¶7 The case law provides some exceptions to the employment-at-will doctrine, but they are limited and narrow. *See* ***Tatge v. Chambers & Owen, Inc.***,

219 Wis. 2d 99, 115, 579 N.W.2d 217 (1998).[2] "A wrongful discharge is actionable when the termination clearly contravenes the public welfare and gravely violates paramount requirements of public interest. The policy must be evidenced by a constitutional or statutory provision." ***Brockmeyer***, 113 Wis. 2d at 573. Where the law imposes an affirmative obligation upon an employee and the employee fulfills that obligation, termination for that reason violates public policy. ***Hausman v. St. Croix Care Ctr.***, 214 Wis. 2d 655, 669, 571 N.W.2d 393 (1997).

¶8 Bammert argues that the ***Brockmeyer*** and ***Hausman*** exceptions should be expanded to include two public policies. She first argues that WIS. STAT. § 343.63 evidences the public policy against the operation of a motor vehicle while under the influence of an intoxicant or other drug. As a law enforcement officer, her husband was under an affirmative obligation to identify and arrest those who pose a threat to public safety. "Society doesn't want our law enforcement officers to take into account, when determining whether to make an arrest, whether the officer's spouse might be retaliated against as a result." Terminating her employment because her husband did his duty by assisting in an OWI investigation violates the public policy of assuring that OWI violations are fully investigated.

¶9 Second, she contends that WIS. STAT. § 765.001(2) evidences the public policy to promote the stability of marriage and family. She argues that an

[2] One exception exists under the Wisconsin Fair Employment Act. An at-will employee may not be terminated because of the employee's marital status. WIS. STAT. §§ 111.31-111.395. However as we noted earlier, Bammert's claim under this Act was dismissed in ***Bammert***, which concluded that the Act was intended to "protect the status of being married in general rather than the status of being married to a particular person." ***Id.*** at 369.

exception to employment-at-will should be made to support the sanctity of the marital relationship and the importance of families in general.

¶10 Under ***Hausman***, an employer cannot fire an employee because the employee fulfilled a legal obligation the law affirmatively imposes on the employee. ***Hausman***, 214 Wis. 2d at 669. However, the law currently does not prohibit firing an employee because his or her spouse fulfilled an affirmatively imposed legal obligation.[3] The court of appeals is primarily an error correcting court. ***Cook v. Cook***, 208 Wis. 2d 166, 188, 560 N.W.2d 246 (1997). If public policy demands that ***Brockmeyer*** and ***Hausman*** should be extended to cover the actions of a spouse, the legislature or the supreme court must make that pronouncement. *See* ***Cook***, 208 Wis. 2d at 189-90; ***State v. LIRC***, 136 Wis. 2d 281, 297, 401 N.W.2d 585 (1987).

¶11 Under our employment law, an employee can be fired for a good reason, a bad reason, a morally wrong reason or no reason at all. While one could

[3] Bammert's OWI policy argument rests upon the presumption that an officer's decision whether to perform his or her duty would be influenced by the prospect that his or her spouse would be terminated. We are not convinced that this is a plausible presumption. Moreover, Bammert's extension of the exception takes us into the field of exploring a *spouse's* legal duty, which can be a complicated exercise. Given this and our perception that the argued extension would arise infrequently, we think it is unwarranted.

As to the family relationship public policy, Bammert recognizes that the argument does not provide its own discernible logical stopping point. She thus suggests that the exception be limited to spouses, but she does not demonstrate why the public policy should only protect spouses. Given the policy in question, why not include, for example, parents or siblings? Bammert does not suggest a principled answer.

Bammert attempts to demonstrate that courts have prohibited adverse employment decisions against family members for the act of another family member by citing to ***N.L.R.B. v. Advertisers Mfg. Co.***, 823 F.2d 1086 (7th Cir 1987). However, that case is not persuasive because the court interpreted the National Labor Relations Act and prohibited acts that prevented the free exercise of union activities protected by this Act. ***Id.*** at 1088. The court did not review the firing in the context of the employment-at-will doctrine or its exceptions. Bammert does not contend that her rights under this Act were at issue.

present a persuasive argument that Bammert was terminated for a morally wrong reason, Bammert has not demonstrated that her case qualifies as a recognized exception to the employment-at-will doctrine.

By the Court.—Judgment affirmed.

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