South Carolina Law Review

Volume 44
Issue 1 *ANNUAL SURVEY OF SOUTH CAROLINA LAW*

Article 9

Fall 1992

Employment Law

B. D. Pierce

EMPLOYMENT LAW

I. COURT REAFFIRMS AT-WILL EMPLOYMENT DOCTRINE

In *Epps v. Clarendon County*[1] the South Carolina Supreme Court reaffirmed the general rule that employment situations of an indefinite duration are terminable at will.[2] The court declined to extend the exceptions to the at-will employment doctrine beyond those previously recognized in South Carolina.[3]

The plaintiff, Epps, had been an employee of the Clarendon County Department of Public Works for approximately seven years. The Director of the Department originally hired Epps in 1980 as an at-will employee. In 1987, the newly appointed Director of the Department laid off Epps as part of a county-wide budget cut. Thereafter, Epps filed suit against the county for breach of contract and for wrongful discharge. The trial court granted the county's motion for summary judgment, and Epps appealed.[4]

Epps argued on appeal that the trial court improperly granted summary judgment because the Clarendon County Personnel Policy Manual created an implied employment contract.[5] Although Epps received an employee handbook during his employment, the court noted that the handbook contained no provision that altered his at-will employment status.[6] Therefore, the court concluded that Epps's termination was not a breach of contract.[7]

The court also dismissed Epps's claim for wrongful discharge. Epps alleged that he was fired because of his political association with his former boss.[8] However, the court concluded that this claim did not involve a right to employment.[9] While the *Epps* court did not address the validity of this claim, the court refused to extend the public policy exception of *Ludwick* to situations in which "the employee has an existing remedy for a discharge which allegedly violates rights other than

---

1. 304 S.C. 424, 405 S.E.2d 386 (1991) (per curiam).
2. *Id.* at 425-26, 405 S.E.2d at 386-87.
3. *Id.* at 426, 405 S.E.2d at 387.
4. *Id.* at 425, 405 S.E.2d at 386.
5. *Id.* See text accompanying *infra* notes 16-17 for a discussion of Small v. Springs Industries, 292 S.C. 481, 357 S.E.2d 452 (1987) (finding employment contract from employee manual).
6. *Epps*, 304 S.C. at 426, 405 S.E.2d at 386-87.
7. *Id.* at 426, 405 S.E.2d at 387.
8. *Id.*
9. *Id.*

the right to the employment itself."[10] Accordingly, the court ruled that Epps was an at-will employee subject to termination without cause.[11]

The South Carolina Supreme Court first adopted the at-will employment doctrine in *Shealy v. Fowler*.[12] According to the *Shealy* court, "a contract for permanent employment, so long as it is satisfactorily performed, which is not supported by any consideration other than the obligation of service to be performed on the one hand and wages to be paid on the other, is terminable at the pleasure of either party."[13] Although this rule continues to control employment of an indefinite duration in South Carolina, this state recognizes two exceptions to the at-will doctrine. In *Ludwick v. This Minute of Carolina, Inc.*[14] the supreme court recognized an exception to the general rule when the discharge "constitutes [a] violation of a clear mandate of public policy."[15] Additionally, in *Small v. Springs Industries*[16] the supreme court held that a jury may consider whether the terms of an employee handbook alter an employee's at-will employment status.[17]

Generally, courts have recognized three exceptions to the at-will employment doctrine: the implied-contract exception, the public policy exception, and the good-faith-and-fair-dealing exception.[18] The South Carolina Supreme Court recognized the first two exceptions in *Small* and *Ludwick*, respectively.[19] Three states have adopted the third exception by

---

10. *Id.* The court noted that a civil cause of action exists under 42 U.S.C. § 1983 (1988), when a government official infringes upon an individual's rights to free speech and association. *Epps*, 304 S.C. at 426, 405 S.E.2d at 387. However, the court could have easily dismissed this claim as being outside the scope of the public policy exception. *See* Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 337 S.E.2d 213 (1985).

11. *Epps*, 304 S.C. at 426, 405 S.E.2d at 387.

12. 182 S.C. 81, 188 S.E. 499 (1936).

13. *Id.* at 87, 188 S.E. at 502.

14. 287 S.C. 219, 337 S.E.2d 213 (1985).

15. *Id.* at 225, 337 S.E.2d at 216. The *Ludwick* court followed the trend of other jurisdictions in adopting a public policy exception. *See, e.g.*, Frampton v. Central Ind. Gas Co., 297 N.E.2d 425, 428 (Ind. 1973); Amos v. Oakdale Knitting Co., 416 S.E.2d 166, 173 (N.C. 1992).

16. 292 S.C. 481, 357 S.E.2d 452 (1987).

17. *Id.* at 486, 357 S.E.2d at 455.

18. *See generally* Note, *Protecting Employees at Will Against Wrongful Discharge: The Public Policy Exception*, 96 HARV. L. REV. 1931, 1935-37 (1983).

19. For a discussion of *Small*, see *supra* text accompanying notes 16-17. For a discussion of *Ludwick*, see *supra* text accompanying notes 14-15. A majority of jurisdictions also recognize these two exceptions. *See generally* Michael A. DiSabatino, Annotation, *Modern Status of Rule that Employer May Discharge At-Will Employee for Any Reason*, 12 A.L.R.4TH 544 (1982); Theresa L. Kruk, Annotation,

implying a duty of good faith and fair dealing in all employment relationships.[20] However, South Carolina has not adopted this minority position. Skepticism about the good-faith exception is warranted because this exception, if adopted, could severely restrict the right of an employer to terminate an employee without cause. In fact, dissatisfaction with the good-faith exception is evidenced by New Hampshire's narrow construction of the exception[21] and the California Supreme Court's disapproval of that state's good-faith-and-fair-dealing exception.[22]

The *Epps* decision, based upon the court's prior holdings, is both predictable and well-reasoned. The primary importance of this opinion is the court's reaffirmation of the general at-will employment doctrine as modified by the implied contract[23] and public policy exceptions.[24] Although the court was quick to reaffirm its loyalty to the at-will doctrine, the court failed to define the doctrine's limits. Specifically, the court failed to state whether claims alleging a violation of rights other than the right to employment fall within the public policy exception. The court refused to broaden the public policy exception under the facts of *Epps*, but the court left open the possibility of extending the exception in a similar case without an alternative remedy.

B. Dean Pierce

Right to Discharge Allegedly "At-Will" Employee as Affected by Employer's Promulgation of Employment Policies as to Discharge, 33 A.L.R.4TH 120 (1984) (discussing implied-contract exceptions to the at-will employment doctrine).

20. *E.g.*, Cleary v. American Airlines Inc., 168 Cal. Rptr. 722 (Ct. App. 1980), *disapproved of in* Foley v. Interactive Data Corp., 765 P.2d 373 (Cal. 1988) (en banc); Fortune v. National Cash Register Co., 364 N.E.2d 1251 (Mass. 1977); Monge v. Beebe Rubber Co., 316 A.2d 549 (N.H. 1974).

21. *See* Cloutier v. Great Atl. & Pac. Tea Co., 436 A.2d 1140, 1143 (N.H. 1981) (stating explicitly New Hampshire's retreat from the good-faith exception); Howard v. Dorr Woolen Co., 414 A.2d 1273, 1274 (N.H. 1980) (limiting *Monge* to discharges involving infractions of public policy or actions encouraged by public policy).

22. *See Foley*, 765 P.2d at 401 n.42.

23. *See* Small v. Springs Indus., 292 S.C. 481, 357 S.E.2d 452 (1987).

24. *See* Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 337 S.E.2d 213 (1985).