Feb 15 - filed

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ROBERT D. DUMBRYS, Appellant,	)	CASE NO. CV-11-767392
	)	JUDGE MICHAEL K. ASTRAB
v.	)	
DWORKEN & BERNSTEIN CO., et al.	)	
Appellees	)	**OPINION AND JUDGMENT ENTRY**

CASE SUMMARY

Robert Dumbrys (Appellant) worked as an attorney for the law firm of Appellee Dworken & Bernstein Co. LPA (Dworken) from February 15, 2008 through March 26, 2010 (*incorrectly identified as March 26, 2011 in the Decision of the Unemployment Compensation Review Commission*). The Appellant left his employment with Dworken on March 26th (having given notice to his employer on or about March 15, 2010) and thereafter, on or about December 19, 2010, filed an Application for Determination of Benefit Rights with Appellee Ohio Department of Job and Family Services (ODJFS). On or about February 17, 2011, ODJFS issued a determination that the Appellant was eligible for unemployment compensation benefits for a one-year period to commence on December 19, 2010. The total amount awarded was $9,750 and the reasoning of the determination from ODJFS was as follows:

> The claimant (Appellant) quit Dworken & Bernstein Co., LPA on 3/1/2010. Facts establish that the employer required the claimant to perform duties that were beyond the normal scope of the job. The claimant informed the employer of his/her objections, but the employer failed to end the practice. Ohio's legal standard that determines if a quit is with just cause is whether the claimant acted as an ordinary person would have under similar circumstances. After a review of the facts, this agency finds that the claimant quit with just cause under Section 4141.29(D)(2)(a), Ohio Revised Code.

On or about March 10, 2011, Dworken filed an appeal of the 2/17/11 Determination. A redetermination affirming the original allowance was issued by ODJFS on 3/31/11. An appeal of the redetermination was filed by Dworken on or about April 21, 2011. On or about April 26, 2011 ODJFS transferred the appeal to the Unemployment Compensation Review Commission

(UCRC) for purposes of holding a hearing. A hearing was held in the matter on July 7, 2001, with Appellant and Appellee Dworken participating via telephone.

On or about August 16, 2011, the UCRC, by and through Hearing Officer Stephanie Mitchell-Hughes, issued a Decision finding that the Appellant did not have just cause to quit his employment with Appellee Dworken, and, as such, was not entitled to benefits.

The instant appeal follows from the Decision of the UCRC.

FACTUAL SUMMARY

As this Court is not charged with making factual determinations, ***the following factual summary is derived directly from the 8/16/11 Decision of the OCRC***:

Dworken & Bernstein Co. LPA employed claimant (Appellant) as an Associate Attorney from February 15, 2008 to March 26, 2010. When he was hired, the employer advised claimant that he would report to Howard Rabb, Partner, and Jodi Tomaszewski, Partner, and that his principal area of concentration would be business transactional law. Litigation is part of the transactional law practice. In order to gain sufficient experience to properly represent the employer's clients, attorneys in the transactional law practice group also handle general litigation cases from the litigation practice group.

Claimant was hired directly out of law school. As a new attorney, claimant did not possess the expertise and experience to handle the employer's transactional law cases entirely on his own. Like many new associate attorneys in other law firms, claimant was initially assigned to work on smaller projects within a larger transactional law case under the direction of Ms. Tomaszewski or another partner who was lead counsel for the case. The smaller projects claimant worked on included litigation matters such as drafting pleadings, motions and briefs. In traditional law firms it is customary for young associates who have become sufficiently proficient to be gradually assigned smaller, less complex cases to handle entirely on their own. On or about January 20, 2010 the employer determined that claimant had gained sufficient experience to handle simple cases on his own from start to finish. Claimant was initially assigned to litigate collection cases where the employer was the only client so that he could gain experience while allowing the employer to limit its liability for any errors he committed. When she was a young associate, Ms. Tomaszewski, like claimant, was initially

assigned to handle collection cases where the employer was the only client. Claimant also continued to work on and assist Ms. Tomaszewski and other partners with transactional law cases. He still held the position of Associate Attorney and the terms and conditions of his employment remained the same. At no point did Ms. Tomaszewski or any other supervisory level employee inform claimant that he was the employer's collection agent. Claimant did not present his concerns about any change in his job duties to Ms. Tomaszewski or any other supervisory level employee before his separation from employment. He also did not tell Ms. Tomaszewski or any other supervisory level employee that he was dissatisfied and concerned about his continued growth and development within the law firm because his job duties had changed.

On or about March 15, 2010, claimant advised Ms. Tomaszewski that he was quitting his employment effective March 26, 2010. Claimant told Ms. Tomaszewski that he made the difficult decision to quit because he was finally debt free and wanted to travel to South America to learn how to speak Spanish. At no point did claimant inform Ms. Tomaszewski or any other supervisory employee that he was resigning because of a substantial change in his job duties. After he announced his resignation, claimant exchanged e-mails with several co-workers in which he repeatedly stated he was quitting to travel to Argentina. He also sent e-mails to senior partners expressing his gratitude for the opportunity to learn and develop as an attorney. In the e-mails, claimant stated that his work experience with the employer exceeded his expectations.

OPINION OF THE COURT

This Court is bound by the Ohio Revised Code with regard to the standards that it must apply when reviewing a decision of the UCRC. Code Section 4141.282(H) states that

> The court shall hear the appeal on the certified record provided by the commission. If the court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

In the instant matter, the Court is guided by R.C. 4141.29(D)(2)(a), which states that benefits shall not be paid out to an individual who "quit work without just cause." The UCRC

found in this case that the Appellant did not have "just cause" to leave his employment, overruling two findings by ODJFS to the contrary. The Ohio Supreme Court has defined "just cause" as "that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act." **Irvine v. Unemployment Comp. Bd. of Review** (1985), 19 Ohio St.3d 15, 17.

The review that this Court undertakes on unemployment compensation cases is a narrow one. The **Irvine** Court provided further guidance in this area, stating that

> The determination of whether just cause exists necessarily depends upon the unique factual considerations of each particular case. Determination of purely factual questions is primarily within the province of the referee and the board. Upon appeal, a court of law may reverse such decisions only if they are unlawful, unreasonable, or against the manifest weight of the evidence...like other courts serving in an appellate capacity, we sit on a court with limited power of review. Such courts are not permitted to make factual findings or to determine the credibility of witnesses...The duty or authority of the courts is to determine whether the decision of the board is supported by the evidence in the record...the fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision. (internal citations omitted) 19 Ohio St.3d at 17-18.

This Court has reviewed the voluminous transcript submitted in this matter, including all of the filings with ODJFS and the UCRC, the hearing transcript of the UCRC hearing, the brief filed by the Appellant following the UCRC decision and the briefs filed by all parties to the instant matter. Following said review, the Court concurs with the decision of the UCRC that the Appellant did not have "just cause" to leave his employment with Appellee Dworken and thereafter receive unemployment benefits, for the reasons that follow.

The bulk of the arguments set forth by Appellee Dworken rely upon their belief that the Appellant left his employment to travel to Argentina, and the UCRC hearing officer utilized that position in her factual findings and in her decision. While reasonable minds may come to a different conclusion regarding whether or not the Appellant truly left to go to Argentina or if the intent was mistakenly inferred by Appellee Dworken following after-action reviews of the Appellant's e-mails, the hearing officer, based upon the testimony and evidence before her, concluded that indeed the Appellant had left his employment, in part, to travel to Argentina.

Appellant is a practicing attorney and had the opportunity to present his own witnesses to the tribunal on this factual issue. For reasons only known to Appellant, he chose not to present such evidence to the UCRC. The record contained sufficient evidence to support this finding.

The more compelling legal issue in this matter revolves around the Appellant's dissatisfaction with his working conditions and his stubborn and completely misplaced position that he had an employment contract with Appellee Dworken. Based upon a review of the offer letter and the evidence in the record, this Court finds no legal grounds to dispute the findings of the UCRC that found that the change in job duties complained of by the Appellant did not rise to the level of "just cause" as required by the Revised Code and case law.

Appellant cites to the matter of **Sachs Corporation v. Rossmann** (1983), 9 Ohio App.3d 188, for his argument that his job duties were eliminated and he was relegated to an inferior position below his skill level. In **Rossmann**, the claimant was an executive with a contract that set forth specific duties and responsibilities, including a term of employment specifically defined from July 1, 1978 through December 31, 1981. 9 Ohio App.3d at 188. His position, through the actions of his employer, was re-configured so that the authority outlined in his contract essentially ceased to exist. **Id.** at 191. The 8th District Court of Appeals held that "where a corporate executive has been employed under a contract setting forth specific contractual duties involving significant supervisory responsibilities intended to utilize his creative talents, where those responsibilities are taken away from him to the extent that his status is reduced to that of a mere figurehead and he continues to hold his corporate title as a formality only...shall be deemed to have quit with just cause..." **Id.**

The Appellant, throughout every single filing in this case, insists that the offer letter contained in the record of his matter was an employment contract, even condescendingly reminding the UCRC, and this Court by extension, that "Contract Law is a first year law school course." Perhaps Appellant was absent from class on a few days, because it is this Court's understanding that under Ohio law, an employment relationship with no fixed duration is deemed to be at will, meaning that the employee is free to seek work elsewhere and the employer may terminate the employment relationship without cause, "unless the terms of the contract or other circumstances clearly manifest the parties' intent to bind one another." *See,*

Henkel v. Educational Research Council of America (1976), 45 Ohio St.2d 249, 255. The **Henkel** Court adopted with approval in its opinion text from 2 Restatement of Agency 2d 339, Section 442, which stated in part that

> Comment b to that section adds:
> 'Salary proportioned to time units. The fact that a servant or other agent is employed under a contract which merely specifies a salary proportionate to units of time which are commonly used for the purposes of accounting or payment, such as a month or a year, does not, of itself, indicate that the parties have agreed that the employment is to continue for the stated unit of time. Such a specification merely indicates the rate at which the salary is earned or is to be paid, and either party is privileged to terminate the relationship at any time unless further facts exist. However, the fact that payment is to be made in accordance with a time unit is evidence, in connection with other relevant facts, indicating that the agreement is for such unit. Thus, an agreement for the period of time mentioned as that for payment, or as the basis for payment, is indicated if one party pays consideration aside from his promise to employ or to serve; or if the agency is an important one and of a kind such that a temporary appointment would not be likely to be made; or if, as the principal has notice, the employee has made an important change in his general relations in order to accept the position, such as the removal of himself and his things to a new place; or if he has given up a position of some value in order to enter the employment.

The UCRC hearing officer had before her, as does this Court, the offer letter given to Appellant by Appellee Dworken on or about March 11, 2008. In that letter, Appellee Dworken states that the Appellant will be paid $44,000 per year to serve as an "Associate Attorney" with the law firm. The letter further states that the Appellant's "principle area of practice concentrated in the business transactional area." The final paragraph of the letter states that "[n]othing herein shall be construed as creating an employment agreement for a definite term, the relationship between you and the Firm being expressly agreed to be one of employment at will."

Nothing in the record, including the offer letter, supports the Appellant's *severely* misplaced belief that he was hired strictly as a "transactional attorney" nor that a contract for term was created from the offer letter. The evidence before the UCRC supports the UCRC's decision that the Appellant was hired as an "Associate Attorney" for Appellee Dworken. Appellant presented no evidence to the hearing officer that would constitute proof that even an implied contract existed. The Appellant's reliance on the **Sachs** decision is thus misplaced –

nothing in the record evidences that the Appellant had a valid contract of employment for a specific term or under conditions that would remove him from the "at-will" employment doctrine that exists in the State of Ohio. Further, the record contains no evidence to show that the Appellant had significant supervisory responsibilities and/or was removed from his position and relegated as a "figurehead" as happened to the claimant in the **Sachs** case. The record relied upon by the UCRC hearing officer clearly contains evidence that the Appellant was merely an associate attorney and that the firm utilized discretion in how to utilize his skills while an at-will employee of the firm. The Appellant's constant drumbeat that a "transactional attorney" is somehow a higher level of attorney than any other is not at all well-received by this Court, and does not carry any weight with regard to the applicable law in this matter – an attorney is an attorney, be he or she a civil litigator, criminal defense attorney or a collections lawyer.

The record is further replete with evidence that the Appellant, following his departure from Appellee Dworken, showered the firm with praise through e-mail correspondence to various attorneys at the firm, including the managing partner of the firm. If the Appellant truly believed he had been wronged by the employer, he could have raised the issue in a professional manner in those e-mails, but chose not to do so, for reasons once again known only to the Appellant.

The Court is persuaded by the opinion of the 3rd District Court of Appeals in the case of **Gossard v. Director, Ohio Dept. of Job & Family Services**, 2004-Ohio-5098, which under a similar fact pattern stated that

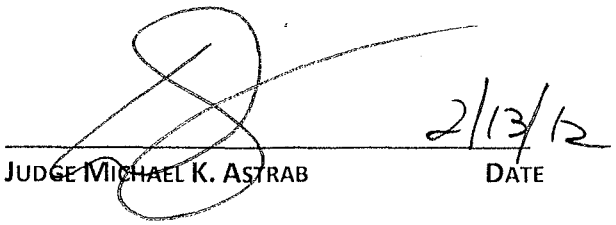
> {¶ 18} Conditions which might motivate a person to look for new employment more favorable to one's personal and professional goals and desires do not, for unemployment compensation benefit purposes, necessarily equate to "just cause" to voluntarily terminate one's existing employment. There is no doubt that appellant's disappointment and disillusionment with her employer, co-workers, and lack of professional advancement was real. Further, any decision to voluntarily terminate her employment for those reasons was entirely up to her. Nevertheless, such personal disenchantment, however genuine and justified, is not the trigger that activates unemployment compensation benefits.

This Court finds that, based on the record, the UCRC's finding that the Appellant left his employment without just cause was supported by the evidence and was not unlawful,

unreasonable, or against the manifest weight of that evidence. As such, the decision of the UCRC is **AFFIRMED**.

IT IS SO ORDERED. FINAL.

Costs taxed to Appellant Dumbrys.



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JUDGE MICHAEL K. ASTRAB DATE

CERTIFICATE OF SERVICE

The Clerk of Courts is directed to send a copy of this Opinion to counsel of record for the parties:

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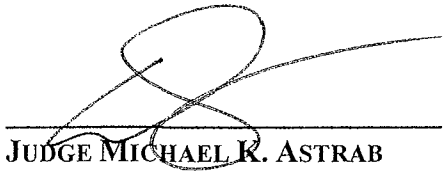

JUDGE MICHAEL K. ASTRAB

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