

### Case Analysis #3

#### Christine Brooks v. Cooke County Hospital District

##### **Background**

Christine Brooks was placed on probation in February 1994, after working for ten years with the Cooke County Hospital District (“CCHD”), for exhibiting poor work attitude, breaching patient confidentiality, and engaging in personal business at work. CCHD terminated Brook’s employment, while she was on probation, because of additional policy violations. Brooks filed suit against CCHD on December 28, 1994.

This case is related to the employer-employee relationship and at-will employment. The big issues in this case seem to be:

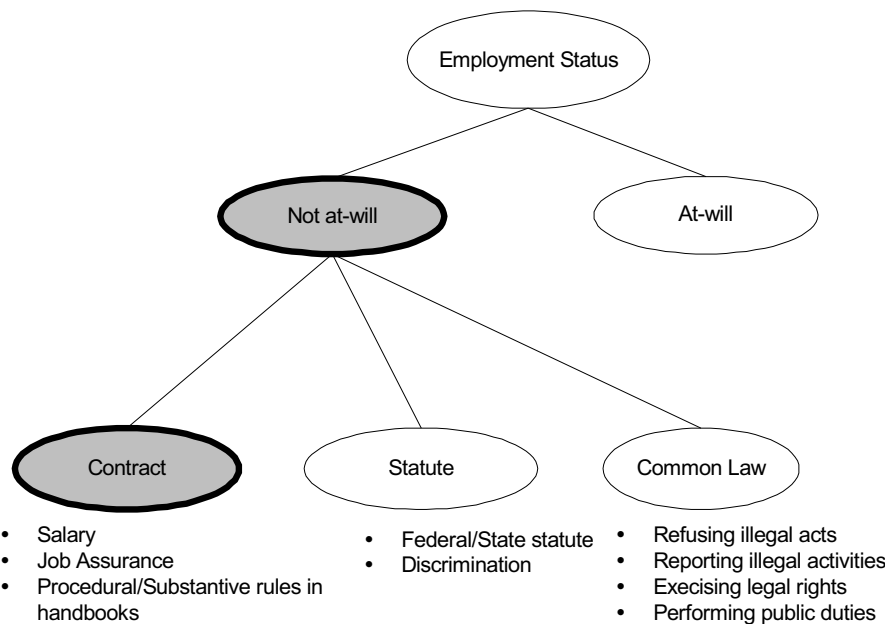
- Did a contract exist between Brooks and CCHD, as opposed to a traditional at-will employment?
- Was there a violation of either the contract or the at-will employment doctrine by CCHD?
- Was there a serious violation of policy by Brooks?

The sub issues are:

- Was there any discrimination or retaliation against Brooks?
- Was Brooks being penalized twice for the same cause?
- Was Brooks negligent in discussing the situation in an open setting?

**Christine Brooks' case**

Christine Brooks had been employed with CCHD for almost ten years. In 1994 she was terminated while on probation. The following text attempts to analyze Brooks' position and the approach that she should take to make her case against CCHD. Brooks' case should focus on proving that her status with CCHD was not at-will and that CCHD broke a contract that they had. Given that the burden of proof was on Brooks', here is how she should analyze and start presenting her case:



Given the sequence of events and the contents of section 18 of CCHD's personnel policy manual, it seems like Christine Brooks could claim a wrongful discharge against CCHD. Termination of an employee in violation of an exception to the at-will employment doctrine is wrongful discharge. The traditional at-will employment doctrine provides that either the employer or the

employee may terminate the relationship at any time for any or for no reason without liability. There are, however, limitations to this doctrine that limit the employer's ability to terminate the employee without liability.<sup>1</sup> The specific limitations or exceptions are:

- **Contracts:** The existence of a contract between the employee and the employer introduces limitations to the at-will employment doctrine. Examples of such contracts are: statements made regarding salary per period, statements of job assurance, substantive or procedural job security statements listed in the employee handbook.
- **Statute:** An employer cannot violate the limitations imposed by state or federal statute. The employer cannot end the relationship by discriminating the employee on the basis of sex, color, national origin, race and religion.
- **Public policy:** An employer may not terminate an employee for any reason that violates a state's public policy. As public policy is a matter of common law, it varies from state to state. Most public policy exceptions fall into one or more of four broad categories as follows: (1) refusing to perform an illegal act, (2) reporting illegal activity, (3) exercising legal rights, and (4) performing public duties.<sup>2</sup>

Brooks could claim a breach of contract against CCHD. In order to substantiate her claim Brooks will need to provide evidence for the following:

- A legally enforceable contract existed between her and CCHD, and
- Some terms of the contract had been breached.

CCHD's personnel policy manual stated the following related to terminations:

"Employment at the hospital is by mutual agreement and may be terminated by either the employee or the employer. All employee records will indicate the nature of termination which will be one of the following: (1) resignation, (2) quitting (3) layoff, (4) dismissal, (5) termination during probationary period, or (6) retirement."<sup>3</sup> This statement seems to convey at-will employment. In the same section, the manual states:

"e. Dismissal - Employees may be dismissed for cause such as insubordination, serious misconduct, or for inability to perform the duties of their job satisfactorily. Department Heads and Supervisors may place an employee on suspension but all dismissal action must be reviewed by the Personnel Officer and approved by the Administrator before action will be taken. Dismissal will be classified as follows:

(1). Dismissal with Notice - Employees judged incapable of performing the duties of their job satisfactorily and have worked beyond the probationary period will receive two weeks notice or two weeks pay in lieu of notice, at the discretion of the Department Head.

(2). Dismissal without Notice - Serious violations of policy. Employee will receive no terminal benefits."<sup>4</sup> These statements clearly indicate that an employee can be dismissed only if they are incapable of performing their duties satisfactorily or if they have performed serious violations of policy. This contradicts the earlier statements about at-will employment. The statements about dismissal in the

manual could lead a reasonable person to believe that a contract existed between CCHD and Brooks. Hence, Brooks can contend that a contract existed between her and CCHD. In Hicks v. Methodist Medical Center, where Steve Hicks could have reasonably believed that the statements in the handbook constituted promises clear and certain enough to become a part of an offer of employment. Similarly, it was reasonable for Brooks to believe that the statements in the manual were promises and that an employee could be dismissed only under the conditions stated in the manual. Brooks can further contend that there was no conspicuous disclaimer that gave CCHD reprieve from the contract.

In order to prove that the terms of the contract were violated, Brooks would have to present evidence that she was terminated without cause. CCHD's argument here was that Brooks had breached patient confidentiality and hence was in violation of policy. Assuming, for now, that Brooks had breached patient confidentiality, Brooks could argue that she had already been penalized for that by being put on probation. Unless she had done something else that violated additional policies, it was unreasonable for CCHD to put Brooks on probation and terminate her for the same reason. Terminating Brooks under these circumstances was similar to terminating her without cause.

Brooks can also claim that her termination was a retaliatory discharge by CCHD. Brooks had discussed the problems, she had seen in her aunt's room, with some management employees of the hospital district. By doing so, she had, presumably, made someone in her chain of command unhappy. Brooks can

claim that CCHD was retaliating against her by terminating her. Brooks had noticed inefficiencies in the hospital's treatment of its patients. Voicing her concerns to the four individuals may be considered as whistleblowing by CCHD. The four elements of retaliatory discharge are 1) whether a clear public policy exists, 2) whether that policy will be jeopardized unless the activity in issue is protected, 3) whether employers in general have "overriding justification" for wanting to use the activity in issue as a factor affecting the decision to discharge and 4) whether the particular employee's activity in the case at bar was a substantial factor in the particular employer's decision to discharge. CCHD being a local government entity should abide by the policies of the state that it is in. Assuming that the state CCHD was in has a public policy against firing employees because of whistleblowing, the first element is satisfied. The second element is also satisfied because the policy will be jeopardized if Brooks is not protected from dismissal on these grounds. CCHD did have a justification for terminating Brooks. One or more managers in her chain of command were presumably affected by the comments made by Brooks. This can be considered as the overriding justification and hence the third element is satisfied. On the fourth element, a jury could potentially infer that the reason for Brooks' termination was her conversation related to the inefficiencies at the hospital. This is similar to the situation in Lins' v. Children's Discovery Center of America, Inc., where the defendant fired Lins for not carrying out an unlawful order which was protected by public policy.

Brooks could further strengthen her case by proving that her conversation with McLure, Albrighton, Beathe and Jones did not breach any patient confidentiality. Brooks can make the following arguments in this regard:

The individuals involved in the conversation were all supervisors or members of management of CCHD. By discussing the issues with other employees, who were also bound by similar confidentiality, Brooks had not breached patient confidentiality. Brooks did not refer to her aunt or the aunt's roommate by their names. It is impractical to assume that any non-employee in the cafeteria would, first, comprehend the conversation and, second, understand who the aunt and her roommate were without hearing their names. Based on their experience of working in the health care industry, neither Albrighton nor Beathe nor Jones, thought that Brooks had breached any patient confidentiality. Brooks had visited her aunt, who was a patient at the hospital with a broken hip, on a weekend. During the visit Brooks observed that her aunt's morning care had not been given, she had not been given a bath, and she had not been fed. Also, her aunt's roommate was vomiting off the side of her bed. The primary reason for Brooks' conversation was her concern for the patients, not attacking CCHD personnel.

Although the case does not provide sufficient details into effects of termination on Brooks, she could potentially bring a tort claim against CCHD. Torts commonly related to wrongful discharge claims include defamation and intentional infliction of emotional distress. Defamation is the act of injuring another's reputation through the publication of an injurious falsehood. The defamatory statement may be oral (slander) or written (libel). Defamation may

also occur where the defendant's conduct clearly conveys a defamatory message about the plaintiff. The elements required for defamation are: 1. A defamatory statement, 2. Communication to a third party (aka publication), and 3. Harm to the defamed party.<sup>5</sup>

CCHD placed Brooks on probation for exhibiting poor work attitude, breaching patient confidentiality, and engaging in personal business at work. While on probation, CCHD terminated Brooks' because of additional policy violations. According to Brooks, these allegations were false. Depending on mode of communication that CCHD used to convey this information, it could be considered either slander (oral) or libel (written). The first element is thus satisfied. Given that CCHD's actions led to Brooks' termination, it is safe to assume that this information was placed in Brooks' personnel file. Most courts hold that placing information in an employee's personnel file is not publication.<sup>89</sup> It is not evident from the case whether this information had been disclosed to a third party. Hence, we cannot conclusively say whether the second element is satisfied. Brooks can claim that her termination was harmful to her professional reputation and that it would cause problems in finding a job. The third element is satisfied. Brooks would have a valid claim only if the information was intentionally or negligently communicated to a third party, as required by the second element.

To claim infliction of emotional distress, CCHD's conduct must be extreme and outrageous. This is generally defined as "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community."<sup>6</sup> This



conduct does not appear to be evident in this case and hence Brooks should not claim intentional infliction of emotional distress.

Taking a managerial view of the situation, Christine Brooks should have followed the appropriate protocol to report her concerns to CCHD. She could have avoided getting into this situation which became the apparent cause of her termination. Brooks exercised poor judgment by discussing the issue loudly in an open setting, but that doesn't seem to be a reason that should have resulted in a termination.

### **Cooke County Hospital District's case**

CCHD had placed Christine Brooks on probation in February 1994. CCHD terminated Brooks' employment while she was on probation. CCHD would be required to legally justify their action of terminating Brooks. The primary issue that CCHD has to deal with is the justification for the termination. CCHD's employee manual includes breach of confidentiality of patient information and/or treatment as actions that could result in immediate disciplinary action or discharge. CCHD's position on the sequence of events should be as follows:

1. CCHD placed Brooks' on probation for exhibiting poor work attitude, breaching patient confidentiality, and engaging in personal business at work.
2. During the probationary period they reviewed Brooks' actions and decided that the actions were serious violations of policy that warranted Brooks' termination.

In support of their arguments as stated above, CCHD would be required to provide sufficient evidence to prove that Brooks' actions were serious violations of policy. CCHD can use the following arguments in their defense:

**Breach of patient confidentiality:** In her conversation with Carol McLure, Brooks explained that her aunt was a patient in the hospital being treated for a broken hip. Brooks also mentioned that her aunt's roommate was vomiting off the side of her bed, when Brooks was visiting her aunt. By disclosing information related to why the patients were in the hospital and by describing what had happened in the room, CCHD can claim that Brooks had breached patient confidentiality. Although Brooks was discussing these issues with other employees, they were not directly related to her position as a collections supervisor with the hospital. Hence, CCHD can claim that the discussion was not work related and should qualify as breach of patient confidentiality.

**Exhibiting poor work attitude:** CCHD can claim that by discussing the issue loudly in a cafeteria, which was an open setting, Brooks had exhibited a poor work attitude. By discussing the matter in the hospital cafeteria, Brooks had not followed the protocol to report problems or concerns related to customer service or hospital operations. Although information about the protocol has not been provided in the case, it is assumed that CCHD had some processes and/or protocols defined for customers to report their grievances and for employees to report problems and concerns. CCHD could claim that Brooks should have used the appropriate method to lodge a formal complaint as opposed to openly discussing the matter with the management employees of the hospital district.

**Using hospital equipment for personal business:** While visiting her aunt over the weekend, Brooks went to the nurse's station to get assistance. Brooks took a basin for her aunt's roommate and then came back for a washcloth. CCHD could contend that the only reason why Brooks felt comfortable doing this was because she was an employee of the hospital. Although Brooks was not on duty when this incident happened, using hospital property for personal use was similar to engaging in personal business at work.

By presenting the above arguments, CCHD can attempt to prove that they did not terminate Brooks without cause. Another approach that CCHD could take could focus on their compliance with the at-will employment doctrine. To begin with, CCHD will need to prove that there was no enforceable contract between CCHD and Brooks. CCHD can present the fact that at the very beginning of Section 18, the manual states "Employment at the hospital is by mutual agreement and may be terminated by either the employee or the employer".<sup>7</sup> CCHD can contend that the personnel policy manual was intended to provide guidelines for employees and that it did not in a meaningful and special way limit CCHD's right to terminate the employment at will.<sup>8</sup>

If Brooks were to claim defamation, CCHD could overcome the claim based on the publication element that is required for defamation. CCHD can contend that the publication of information was privileged because the other individuals who knew about the actions were managerial employees of the hospital. Also, placing the information in the employee's personnel file is not publication.<sup>9</sup>

Although there is no evidence of any defamatory statements made by Brooks against CCHD, there is a possibility that if CCHD had evidence of any such statements they could make a defamation claim against Brooks. The elements required for defamation are: 1. A defamatory statement, 2. Communication to a third party (aka publication), and 3. Harm to the defamed party.<sup>10</sup> CCHD can contend that the comments made by Brooks were defamatory i.e. false. As Brooks was in a public place and was loud, there was potential for some third party to get that information. Brooks may have negligently satisfied the second element. CCHD can claim that Brooks' comments were harmful to the hospital's reputation.

CCHD could investigate the possibility of claiming that Brooks had breached her duty of loyalty as an agent of CCHD. Pursuant to his duty of loyalty, the agent may not

- Accept outside, secret benefits,
- Represent more than one principal without the consent of all principals,
- Disclose or use for his own benefit any confidential information learned during the agency relationship, and
- Compete with the principal during the term of the agency relationship.<sup>11</sup>

Brooks may have potentially used the information she had about the hospital for personal reasons i.e. helping her aunt.

The CCHD management team could have done things differently in Brooks' termination process and would have saved themselves the lawsuit. They should have acknowledged the fact that the statements made in Section 18 of

the personnel manual did modify the at-will employment status of their employees. In order to comply with the details in Section 18, CCHD should either have dismissed Brooks immediately upon violation of policy or they should have waited until the end of the probationary period to give her a two week notice. CCHD should also look at revising the contents of their personnel manual. The current manual has conflicting information and CCHD should work on clarifying the contents.

<sup>1</sup> "The Legal Environment of Business", At-Will Employment, page 153

<sup>2</sup> "The Legal Environment of Business", Wrongful Discharge, page 154

<sup>3</sup> Case text

<sup>4</sup> Case text

<sup>5</sup> "The Legal Environment of Business", Defamation, page 2

<sup>6</sup> "The Legal Environment of Business", page 35 and Barron's Law Dictionary 30 (2d ed. 1984)

<sup>7</sup> Case text

<sup>8</sup> Judwin Properties v. William H. Willis, page 165

<sup>9</sup> "The Legal Environment of Business", Defamation, page 2

<sup>10</sup> "The Legal Environment of Business", Defamation, page 2

<sup>11</sup> "The Legal Environment of Business", pages 113,114