

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
July 12, 2006 Session

**ANNE MCLEAY v. WAVA HUDDLESTON, ET AL.**

**A Direct Appeal from the Circuit Court for Davidson County  
No. 03C-123 The Honorable Barbara N. Haynes, Judge**

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**No. M2005-02118-COA-R3-CV - Filed on October 6, 2006**

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Plaintiff filed suit against her employer for common law and statutory retaliatory discharge, violation of 42 U.S.C. § 1983, tortious interference with an employment contract, defamation, and negligence after being terminated from her position as a physician assistant. The trial court granted motions for summary judgment to all defendants. Plaintiff appeals. We affirm.

**Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Circuit Court Affirmed**

W. FRANK CRAWFORD, P.J., W.S., delivered the opinion of the court, in which ALAN E. HIGHERS, J. and HOLLY M. KIRBY, J., joined.

Martin D. Holmes of Nashville, Tennessee for Appellant, Anne McLeay

Rita Roberts-Turner of Nashville, Tennessee for Appellees, The Department of Law of the Metropolitan Government of Nashville and Davidson County

James A Crumlin, Jr. and Sharon O. Jacobs of Nashville, Tennessee for Appellee, Wayne Moore, M.D.

**OPINION**

Anne McLeay (“Plaintiff,” “Appellant,” “McLeay”) filed suit against the Metropolitan Hospital Authority of the Metropolitan Government of Nashville and Davidson County, Tennessee (“Hospital Authority”), Wava Huddleston (“Huddleston”), Dr. Wayne Moore (“Moore”), and Jean Pennington (“Pennington”) for common law and statutory retaliatory discharge, violation of 42

U.S.C. § 1983, tortious interference with an employment contract, defamation, and negligence after being terminated from her position as a physician assistant for the Hospital Authority. Plaintiff was employed as a physician assistant in the emergency department at Nashville General Hospital (“NGH”), a hospital owned and operated by the Metropolitan Hospital Authority (“Hospital Authority”) of the Metropolitan Government of Nashville and Davidson County, from December 2000 until November 13, 2002. Wava Huddleston (“Huddleston”) held the position of Director of Nursing at NGH. Jean Pennington (“Pennington”) was Director of Patient Services at NGH. Dr. Wayne Moore (“Moore”) was an employee of Meharry Medical College working at NGH on a contract basis during McLeay’s employment with the Hospital Authority.

In April 2002, an annual evaluation was completed which noted the following positive comments regarding McLeay:

1. Displays high energy and drive;
2. Compassionate, caring, takes time to provide quality patient education and instructions;
3. Makes continuing education a priority;
4. Completed Spanish class offered by hospital to better care for Hispanic population.

However, the evaluation also noted six areas in which McLeay’s performance was rated below standard:

1. Recognizes conditions which require physician care and notifies physician accordingly;
2. Consults physician preceptor and/or other physicians on health care team in planning care for acute or chronic disease patients;
3. Accepts accountability of actions by utilization of self-evaluation, peer and supervisor recommendation to modify job performance;
4. Demonstrates accurate knowledge and appropriate application of clinical administrative policies and procedures;
5. Ensures compliance with government standards and adheres to the Rules and Regulations of Metro Hospital Authority;
6. Demonstrates awareness of legal implications relating to patient care.

McLeay also received two formal disciplinary warnings in 2002. In September 2002, McLeay received an oral warning for tardiness. In October 2002, McLeay received a written warning for writing medically irrelevant statements on a patient’s chart.

The events of November 5, 2002, ultimately led to McLeay's termination. On that date, McLeay treated a pregnant Hispanic patient who did not speak English. The defendants assert that McLeay improperly initiated a surgery consent form for a Spanish speaking patient, resulting in the patient being prematurely prepped for surgery without the prior knowledge of the surgeon or McLeay's attending physician, Dr. Moore. Specifically, the defendants assert that the patient was given Valium in preparation for the surgery, resulting in her being under the influence of the medication when the surgeon consulted with the patient prior to surgery. McLeay admits that she partially completed the surgery consent form, but claims that it was common practice for physician assistants to partially complete the form prior to the surgeon's arrival.

On or about November 9, 2002, McLeay received a "charge letter" in the mail notifying her of an upcoming disciplinary hearing on November 11, 2002. Based on the November 5 incident, McLeay was charged with insubordination towards department supervisors, neglect or disobedience to the lawful and reasonable orders or instructions given by supervisors, violation of the written rules or procedures of the Hospital Authority or the hospital department or unit, and violation of safety regulations and procedures. A disciplinary hearing was held on November 11, 2002, and McLeay was terminated from her employment on November 13, 2002. McLeay then appealed her termination to Dr. Roxane Spitzer, CEO of the Hospital Authority. A meeting was held with Dr. Spitzer in which McLeay was allowed to discuss her termination with Dr. Spitzer. Dr. Spitzer upheld the decision to terminate McLeay.

The defendants maintain that McLeay's termination was the result of her misconduct. However, McLeay asserts that she was terminated in retaliation for her complaints regarding illegal, unethical, and improper activities which were taking place in the hospital. Namely, McLeay alleges that patients were being denied treatment based on their abilities to pay, that she was instructed to not order certain reasonably necessary medical treatment for uninsured patients, and that she was instructed to violate hospital policy and protocol. Further, McLeay asserts that a prematurely born infant was suffocated and died as a result of the negligence of hospital employees. McLeay alleges that she complained to her supervisors about the improper activities which were allegedly taking place, but that her complaints were ignored. McLeay further alleges that she was retaliated against and ultimately terminated because of her complaints.

On January 14, 2003, McLeay filed suit against Huddleston, Moore, Pennington, and the Metropolitan Government for Nashville and Davidson County, Tennessee. On March 14, 2003, the Metropolitan Government of Nashville and Davidson County filed a motion to dismiss, asserting that it was not a proper defendant. In response, McLeay filed a Motion to Amend on April 17, 2003, requesting that she be allowed to add the Metropolitan Hospital Authority as a party defendant. By Agreed Order, McLeay's motion was granted, and she filed her first Amended Complaint on May 13, 2003. On November 25, 2003, the trial court entered an order dismissing the Metropolitan Government of Nashville and Davidson County with prejudice.

On January 23, 2004, the Metropolitan Hospital Authority filed a Motion to Dismiss McLeay's claims against it. On April 28, 2004, the trial court ordered that the claims of defamation, libel, slander and tortious interference with Plaintiff's employment contract were dismissed against the Metropolitan Hospital Authority, but that the case was allowed to proceed against the Hospital Authority under McLeay's negligence and retaliatory discharge claims.

Plaintiff was granted leave to file a Second Amended Complaint. On May 21, 2004, McLeay filed a Second Amended Complaint which included the claims of common law and statutory retaliatory discharge as to all Defendants, violation of 42 U.S.C. § 1983 as to all Defendants, tortious interference with an employment contract as to Defendants Huddleston, Moore, and Pennington, defamation as to Defendants Huddleston, Moore, and Pennington, and negligence as to Defendant Hospital Authority. In her Prayer for Relief, McLeay sought declaratory relief, equitable relief, compensatory damages, punitive damages, attorneys' fees, costs, and expenses.

In her Second Amended Complaint, McLeay alleged that while she was employed by the Hospital Authority, she was instructed, directed or requested by employees and agents of the Hospital Authority to engage in activities that were illegal, unethical, and/or improper, including but not limited to actions which violated: federal and state law; federal, state and local rules and regulations; medical protocol and/or hospital policy; and malpractice. Additionally, McLeay alleged that she observed conduct and activities by employees or agents of the Hospital Authority that were unethical and illegal, including but not limited to actions which violated: federal and state law; federal, state and local rules and regulations; medical protocol and/or hospital policy; and malpractice. McLeay further alleged that she complained, protested and opposed these activities and as a result, Defendants retaliated against her, culminating in her discharge. McLeay further alleged that her rights to due process were violated under color of state law because she was denied proper notice to the disciplinary hearing of November 11, 2002, and she was denied a proper appeal.

On August 3, 2004, Defendant Moore filed an Answer to Plaintiff's Second Amended Complaint denying all of McLeay's claims. On September 21, 2004, Defendants Hospital Authority, Huddleston, and Pennington filed an Answer to Plaintiff's Second Amended Complaint in which they denied all of McLeay's claims.<sup>1</sup> On June 17, 2005, the Hospital Authority filed a Motion for Summary Judgment, arguing (1) that there is no evidence that the Hospital Authority has a custom, policy, or practice of violating its employees' due process, equal protection, or First Amendment rights, and (2) that there is no evidence that the Hospital Authority negligently supervised its employees or breached any duty which resulted in injuries to McLeay. Also on June 17, 2005, Dr. Moore filed a Motion for Summary Judgment, arguing (1) that McLeay failed to state a claim upon

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<sup>1</sup> Defendants Hospital Authority, Huddleston, and Pennington had previously filed an Answer to Plaintiff's Second Amended Complaint in which they denied all of McLeay's claims on July 7, 2004. They filed another Answer on September 21, 2004.

which relief could be granted as to all causes of action against Dr. Moore, and (2) that even if all the allegations contained in the Complaint, Amended Complaint, and Second Amended Complaint were taken as true, McLeay could not prevail on those claims as they pertain to Dr. Moore.

The trial court granted defendants' motions for summary judgment by two orders entered on August 11, 2005.

Plaintiff filed a notice of appeal on September 2, 2005. McLeay raises five issues for review as stated in her brief:

1. Whether the trial court erred in granting summary judgment on Plaintiff's retaliatory discharge claims;
2. Whether the trial court erred in granting summary judgment on Plaintiff's § 1983 claim;
3. Whether the trial court erred in dismissing McLeay's defamation claim against Moore, Huddleston and Pennington;
4. Whether the trial court erred in dismissing McLeay's claim for negligent supervision; and
5. Whether the trial court erred in dismissing McLeay's claim for tortious interference with a business contract claim.

A motion for summary judgment should be granted when the movant demonstrates that there are no genuine issues of material fact and that the moving party is entitled to a judgment as a matter of law. *See* Tenn. R. Civ. P. 56.04. The moving party for summary judgment bears the burden of demonstrating that no genuine issue of material fact exists. *See Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997). On a motion for summary judgment, the court must take the strongest legitimate view of evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence. *See id.* In *Byrd v. Hall*, 847 S.W.2d 208 (Tenn. 1993), our Supreme Court stated:

Once it is shown by the nonmoving party that there is no genuine issue of material fact, the nonmoving party must then demonstrate, by affidavits or discovery material, that there is a genuine, material fact dispute to warrant a trial. In this regard, Rule 56.05 provides that the nonmoving party cannot simply rely upon his pleadings but must set forth *specific facts* showing that there is a genuine issue of material fact for trial.

*Id.* at 210-11 (citations omitted) (emphasis in original).

Summary judgment is only appropriate when the facts and the legal conclusions drawn from the facts reasonably permit only one conclusion. *See Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn. 1995). Because only questions of law are involved, there is no presumption of correctness regarding a trial court's grant or denial of summary judgment. *See Bain*, 926 S.W.2d at 622. Therefore, our review of the trial court's grant of summary judgment is *de novo* on the record before this Court. *See Warren v. Estate of Kirk*, 954 S.W.2d 722, 723 (Tenn. 1997).

## I. Retaliatory Discharge

The retaliatory discharge cause of action provides an exception to the employment-at-will doctrine, a doctrine which is firmly and historically embedded in this state. *Guy v. Mutual of Omaha Ins. Co.*, 79 S.W.3d 528, 535 (Tenn. 2002). An employee-at-will may be terminated for good cause, bad cause, or for no cause at all. *Id.*; *see also Mason v. Seaton*, 942 S.W.2d 470, 474 (Tenn. 1997). In 1984, the Tennessee Supreme Court restricted the application of the common law employment-at-will doctrine in situations where an employee was terminated in contravention of a well-established public policy. *Id.* (citing *Clanton v. Cain Sloan*, 677 S.W.2d 441, 444-45 (Tenn. 1984)). The objective of the exception was, and remains, to sanction employers who terminate employees in retaliation for the employee's refusal to assist in the perpetuation of illegal activities or activities which contravene a clear, certain, unambiguous public policy of this state as "evidenced by an unambiguous constitutional, statutory or regulatory provision," whether such assistance be by active participation or by silence. *Id.* The purpose of the cause of action is to "encourage the employee to protect the public interest." *Crews v. Buckman Labs., Int'l*, 78 S.W.3d 852, 860 (Tenn. 2002).

The Tennessee Public Protection Act, passed by the legislature in 1990 and codified as T.C.A. § 50-1-304, evidences the public policy of this state that at-will employees may not be discharged solely for reporting or refusing to participate in activities which violate the laws, regulations and rules of this state or the United States. *Mason*, 942 S.W.2d at 475. This exception to the employment-at-will doctrine is a narrow one, however, and is applicable only in "limited circumstances, [where] certain well-defined, unambiguous principles of public policy confer upon employees implicit rights which must not be circumscribed or chilled by the potential of termination." *Stein v. Davidson Hotel*, 945 S.W.2d 714, 717 (Tenn. 1997). Inherent in the underlying philosophy of the retaliatory discharge cause of action is that at-will employees should not be placed in the moral, ethical and legal dilemma of being forced to choose between reporting or participating in illegal activities and keeping their jobs. *See Griggs v. Coca-Cola Employees' Credit Union*, 909 F.Supp. 1059, 1064 (E.D. Tenn. 1995); *Henderson v. Corrections Corp. of America*, 918 F.Supp. 204, 210 (E.D. Tenn. 1996).

McLeay asserts claims for retaliatory discharge against all of the defendants, under both the Tennessee Public Protection Act and the common law.

**A. Tennessee Public Protection Act**

McLeay claims that she was terminated from her employment in violation of the Tennessee Public Protection Act, commonly referred to as the Whistle Blower Statute. The statute provides in pertinent part:

- (a) No employee shall be discharged or terminated solely for refusing to participate in, or for refusing to remain silent about, illegal activities.
- ...
- (c) As used in this section, “illegal activities” means activities that are in violation of the criminal or civil code of this state or the United States or any regulation intended to protect the public health, safety or welfare.

T.C.A. § 50-1-304.

In order to determine if a violation of the statute has occurred, Tennessee courts have relied on a shifting burden of proof analysis. *Smith v. Bridgestone/Firestone, Inc.*, 2 S.W.3d 197, 200 (Tenn. Ct. App. 1999). The burden first rests upon the plaintiff to establish a prima facie retaliatory discharge. *Id.* (citation omitted). After such a showing, the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the decision to terminate or discharge the plaintiff. *Id.* The burden then shifts back to the plaintiff to prove that the proffered reasons offered by the defendant are pretextual. *Id.* (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 804 (1973)).

For a plaintiff to establish a prima facie case of retaliatory discharge, she must establish: (1) her status as an employee of the defendant; (2) her refusal to participate in, or remain silent about, illegal activities; (3) her termination; and (4) an exclusive causal relationship between her refusal to participate in or remain silent about illegal activities and her termination by the employer. T.C.A. § 50-1-304.

It is undisputed that McLeay was an employee of The Hospital Authority and that she was terminated from her position. McLeay claims that she refused to remain silent about illegal

activities. Namely, McLeay claims that she was instructed by employees of the Hospital Authority to spend less time and money on “self-pay” or uninsured patients. McLeay claims that she was reprimanded and criticized for spending too much time and money on “self-pay” or uninsured patients. McLeay further alleges that she was instructed to refrain from ordering certain tests which were medically necessary to make a proper diagnosis. Finally, McLeay alleges that an infant who was born prematurely was suffocated and died due to the negligence of hospital employees. McLeay claims that the defendants retaliated against her for complaining about the alleged illegal and unethical activities to her superiors.

However, a review of the record in this case does not support McLeay’s claims. McLeay’s annual evaluation reflected several areas that needed improvement, including properly notifying and utilizing physicians in administering care. Further, she had received previous formal disciplinary warnings. The record reflects that McLeay was terminated for violating hospital protocols and policies. Namely, McLeay admitted that she initiated a surgery consent form by partially completing the form. Those actions caused a patient to be improperly prepped for surgery before the surgeon had an opportunity to consult with the patient.

Finally, McLeay fails to establish the element that an exclusive causal relationship existed between her alleged refusal to remain silent about illegal activities and her termination by the Hospital Authority. The record reflects that McLeay violated hospital policies and procedures, resulting in her termination.

## **B. Common law**

The elements required in order to prove a common law retaliatory discharge claim are similar to a statutory retaliatory discharge claim: (1) that an employment-at-will relationship existed; (2) that she was discharged; (3) that the reason for her discharge was that she attempted to exercise a statutory or constitutional right, or for any other reason which violates a clear public policy evidenced by an unambiguous constitutional, statutory, or regulatory provision; and (4) that a substantial factor in the employer’s decision to discharge her was her exercise of protected rights or compliance with clear public policy. *Crews v. Buckman Laboratories Int’l, Inc.*, 78 S.W.3d 852, 862 (Tenn. 2002). The primary difference between the statutory cause of action and the common law cause of action is the employee’s activity, whistle blowing or refusing to participate in unlawful activities, must be the sole reason for the discharge under the statute, while under common law cause of action, the employee’s action must merely be a substantial factor in bringing about the discharge. *Guy v. Mutual of Omaha Ins. Co.*, 79 S.W.3d 528, 537 (Tenn. 2002).

In the instant case, it is undisputed that The Hospital Authority was an employer of McLeay and that she was discharged from her employment. However, McLeay has failed to establish that



the reason for her discharge was that she attempted to exercise a statutory or constitutional right, or for any other reason which violates a clear public policy evidenced by an unambiguous constitutional, statutory, or regulatory provision. Again, the evidence in the record is that McLeay was terminated because she improperly initiated a surgery consent form. Therefore, McLeay can not establish the final element of a common law retaliatory discharge claim, that a substantial factor in the employer's decision to discharge her was her exercise of protected rights or compliance with clear public policy.

## II. § 1983 Claim

McLeay also brought a claim under 42 U.S.C. Section 1983 against all defendants, claiming violations of her due process, equal protection, and free speech rights.

### A. Hospital Authority

In order to sustain a § 1983 claim against the Hospital Authority, McLeay must prove that the Hospital Authority implemented or engaged in some unconstitutional policy, custom, or practice. *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690-91; 98 S. Ct. 2018 (1978). There is no evidence in the record that the Hospital Authority has any policy, custom, or practice which are in violation of McLeay's First Amendment rights. The Hospital had an established policy which provided a procedure for employees to freely express grievances by going to their immediate supervisors, department directors, the Human Resources Director, or the Chief Executive Officer of the Hospital.

Further, McLeay fails to establish that the Hospital Authority implemented any policy or practice which deprived her of her right to due process. For a public employee, due process requires that the employee receive oral or written notice of the charges against her, an explanation of the employer's evidence, and an opportunity to present her side of the story. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532; 105 S. Ct. 1487 (1985). Here, the Hospital Authority provided written notice to McLeay regarding the charges against her. The Hospital Authority then provided a hearing in which the Hospital Authority presented its evidence against McLeay and in which McLeay was allowed to provide her own evidence. Finally, McLeay was given an opportunity to be heard on appeal in a later hearing in which she was given another opportunity to present evidence.

Finally, McLeay fails to establish that the Hospital Authority had any policy, custom, or practice which denied her of her equal protection rights. In order to establish that her equal protection rights have been violated, McLeay must establish that she is a member of a protected class and that she has somehow been intentionally discriminated against because of her membership

in that class. *See Henry v. Metropolitan Sewer Dist.*, 922 F.2d 332, 341 (6<sup>th</sup> Cir. 1990). McLeay has failed to provide any evidence or cite any authorities in support of her contention that her equal protection rights were violated in any way. Therefore, the trial court was correct in granting summary judgment in favor of the Hospital Authority regarding McLeay's § 1983 claim.

B. Defendants Huddleston, Pennington, and Moore

In order to establish a claim under § 1983 against a private party, a plaintiff is required to identify a right secured by the United States Constitution or some federal law and then demonstrate a deprivation of that right by someone acting under "color of state law." *Russo v. City of Cincinnati*, 953 F.2d 1036, 1042 (6<sup>th</sup> Cir. 1992). In *Wolotsky v. Huhn*, 960 F.2d 1331 (6<sup>th</sup> Cir. 1992), the Sixth Circuit described three tests for determining whether a private person has acted under color of law under § 1983. The three tests are the public function test, the state compulsion test, and the symbiotic relationship or nexus test. *Id.* The public function test requires that the private party exercise some power which is traditionally exclusively reserved to the state. *Flagg Bros. v. Brooks*, 436 U.S. 149 (1978). The state compulsion test requires that the state exercises coercive power or significant encouragement so that the conduct of the private party is deemed to be conduct of the state. *See Blume v. Yaretsky*, 457 U.S. 991, 1004; 102 S. Ct. 2777 (1982). Under the symbiotic relationship or nexus test, the action of a private party constitutes state action "when there is a sufficiently close nexus between the state and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the state itself." *Wolotsky*, 960 F.2d at 1335.

Here, McLeay has failed to establish that Pennington, Huddleston, or Moore acted under color of state law to deprive her of a Constitutional right. Nothing in the record indicates that either of the three individual defendants took any action which exercised powers traditionally reserved to the state, nor did they take any action which would have been coerced or encouraged by the state. Finally, there is no close relationship such that the actions of the individual defendants would be deemed actions by the state. Because McLeay fails to establish that the individual defendants were acting under color of state law, motion for summary judgment on the § 1983 claim was properly granted to defendants Huddleston, Pennington, and Moore.

### III. Defamation

McLeay asserts claims of defamation, libel, and slander as to Defendants Huddleston, Pennington, and Moore. Libel and slander are both forms of defamation; libel being written defamation and slander being spoken defamation. *Quality Auto Parts Co., Inc. v. Bluff City Buick Co., Inc.*, 876 S.W.2d 818, 820 (Tenn. 1994). To establish a *prima facie* case of defamation, the plaintiff must prove that (1) a party published a statement (2) with knowledge that the statement was

false and defaming to the other or (3) with reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement. *Sullivan v. Baptist Mem'l Hosp.*, 995 S.W.2d 569, 571 (Tenn. 1999) (relying on Restatement (Second) of Torts § 580 B (1977)). The basis for an action for defamation, whether it be slander or libel, is that the defamation has resulted in an injury to the person. *Quality Auto Parts Co., Inc.*, 876 S.W.2d at 820.

In order to establish a prima facie case of defamation, the plaintiff must first establish that the defendants published a statement. Here, McLeay argues that the publication element is satisfied in this case by the negative remarks made in her personnel file. She asserts that the publication element is satisfied because McLeay was a public employee, and as such, her personnel file is public record and can be viewed by members of the general public under the Tennessee Public Records Act, T.C.A. § 10-7-503. However, McLeay cites no authorities in her argument holding that an employment record of a public employee is deemed published for purposes of a defamation claim.

In *Sullivan*, the Tennessee Supreme Court noted, “‘Publication’ is a term of art meaning the communication of defamatory matter to a third person.” *Sullivan*, 995 S.W.2d at 571. In this case, the alleged defamatory statements were placed in McLeay’s employment file. Any correspondence regarding McLeay’s termination was distributed to the Director of Nursing, the Director of Human Resources, the Director of Emergency Services, the hearing officer, the CEO of the Hospital Authority, the Hospital Authority attorneys, and McLeay. In *Freeman v. Dayton Scale Co.*, 19 S.W.2d 255, 257 (Tenn. 1929), the court noted that “communication between officers and agents of a corporation...is not publication of libelous matter.” *Id.* (citing 36 C.J. § 174). Therefore, the communication of the circumstances surrounding McLeay’s termination to other employees in the hospital through the use of correspondence and notations in McLeay’s employment file does not satisfy the publication requirement for a defamation claim.

Further, the record reflects that any defamatory information that was made public was done so by McLeay’s own actions. McLeay’s own publication of the defamatory reasons for her termination to prospective employers does not satisfy the publication requirement. The court in *Sullivan* held that a former hospital employee’s own publication of the defamatory reasons for her termination to prospective employers did not satisfy the publication element of a defamation claim, even if the hospital could reasonably foresee that she would have to communicate the defamatory reasons for her termination to prospective employers. *Sullivan*, 995 S.W.2d at 572-73.

Further, proof of injury is required in a defamation claim. *Quality Auto Parts Co., Inc.*, 876 S.W.2d at 820. Specifically, this Court has held that the plaintiff must show that her standing in the community and her public reputation for character has been injured by the alleged defamatory statement and that as a result she suffered real or actual damages due to that loss of standing or reputation. *Davis v. The Tennessean*, 83 S.W.3d 125, 130 (Tenn. Ct. App. 2001). In the present

case, McLeay claims that as a result of the alleged defamatory statements, she has been unable to secure outside employment and must remain self-employed. However, McLeay was granted a PRN position at Centennial Emergency Room but was not placed on the schedule due to the lack of open positions. Further, McLeay did not fully pursue applications with other facilities at her own election. There is no evidence that McLeay was denied employment based on the information in her employment file at the Hospital Authority.

Because McLeay failed to establish the publication element of her defamation claim and because McLeay failed to establish that she suffered any injury as a result of the defamatory statements, the trial court was correct in granting summary judgment for the defendants on the defamation claim.

#### **IV. Negligent supervision**

McLeay asserts a claim of negligence against the Hospital Authority. McLeay contends that the Hospital Authority was negligent in hiring and supervising its employees and in failing to investigate her complaints. In order to be successful in a negligence claim, a plaintiff must prove each of the following: (1) duty of care owed by the defendant to the plaintiff; (2) breach of duty; (3) injury or loss; (4) causation in fact; and (5) proximate or legal cause. *McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995).

The *Wilder* court defined duty as “the legal obligation owed by defendant to plaintiff to conform to a reasonable person standard of care for the protection against unreasonable risks of harm.” *Id.* The *Wilder* court continued, “A risk is unreasonable and gives rise to a duty to act with due care if the foreseeable probability and gravity of harm posed by defendant’s conduct outweigh the burden upon defendant to engage in alternative conduct that would have prevented the harm.” *Id.* (citing Restatement (Second) of Torts § 291 (1964)).

The parties agree that the Hospital Authority has a duty to hire competent employees and to appropriately supervise those employees. In its brief, the Hospital Authority states that it has an obligation to investigate reported grievances as outlined under the Hospital Authority’s Civil Service Rules. However, McLeay argues in her brief that the Hospital Authority’s obligation to investigate extends past formal grievances to also include complaints made by employees. However, Plaintiff cites no authorities which support the contention that an employer has a duty to investigate every complaint, verbal or written, made by an employee. The only evidence in the record that McLeay attempted to make any complaints to her supervisors is McLeay’s own testimony that she attempted to make the complaints. McLeay did not document her alleged attempts, nor were any formal grievances filed with any official in the hospital.

Further, nothing in the record gives any indication that the Hospital Authority breached its duty to hire competent employees and to appropriately supervise those employees. Therefore, the trial court was correct in granting summary judgment to the Hospital Authority regarding McLeay's claim of negligence.

Finally, McLeay is unable to establish the cause in fact element of a negligence claim. The Tennessee Supreme Court has stated, "If the defendant's acts did not actually cause the plaintiff's injury then there is no rational justification for requiring the defendant to bear the cost of the plaintiff's damages." *Kilpatrick v. Bryant*, 868 S.W.2d 594, 603 (Tenn. 1993). Here, McLeay fails to establish that the Hospital Authority's alleged negligence was the cause of her injuries. In fact, there is no evidence in the record that the alleged negligence on the part of the Hospital Authority resulted in either McLeay's termination or her other alleged injuries.

McLeay failed to establish a *prima facie* case for negligence in this matter. She failed to establish that the Hospital Authority breached any duty owed to her, and she failed to establish that the Hospital Authority's alleged negligence was the cause in fact of her injuries. Therefore, the trial court was correct in granting the motion for summary judgment in favor of the Hospital Authority regarding McLeay's negligence claim.

#### **V. Tortious interference with a business contract claim**

In her complaint, McLeay asserts the claim of tortious interference with an employment contract as to Defendants Huddleston, Pennington, and Moore. In her brief, however, McLeay argues that the trial court erred in dismissing McLeay's claim for tortious interference with a business contract. Regardless, there is no evidence in the record that McLeay had a contract of any type with the Hospital Authority. All parties agree that McLeay's relationship with the Hospital Authority was an employment at-will relationship, terminable at any time by either party.

A plaintiff may bring a claim for intentional interference with an at-will employment relationship. In such a claim, the plaintiff must provide specific proof that each defendant committed per se wrongful acts or committed lawful acts with malice and without justification. *Forrester v. Stockstill*, 869 S.W.2d 328, 335 (Tenn. 1994). The *Forrester* Court outlined three factors to be discussed in evaluating tortious interference claims: (1) Whether the person intended to interfere with the plaintiff's employment; (2) Whether the person interfered with the plaintiff's employment by such methods as intimidation, defamation, or violence; and (3) Whether the purpose or motive for interfering was based solely out of desire to harm the Plaintiff. *Id.* at 333-34. In the present case, there is no evidence which suggests that either Huddleston, Pennington, or Moore committed any wrongful acts toward McLeay. They simply appropriately participated in their designated roles in the proceedings which resulted in McLeay's termination. Therefore, the

defendants did not tortiously interfere with McLeay's employment with the Hospital Authority. The trial court correctly granted summary judgment in favor of the defendants regarding McLeay's tortious interference with an employment contract claim.

For the foregoing reasons, we affirm the orders of the trial court. Costs of this appeal are assessed against the appellant, Anne McLeay, and her surety.

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W. FRANK CRAWFORD, PRESIDING JUDGE, W.S.