

STANLEY LEVITAS, DMD	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
	:	TRIAL DIVISION
	:	
v.	:	DECEMBER TERM, 1998
	:	
	:	
TEMPLE UNIVERSITY AND	:	NO. 1560
DR. JEANNINE E. WYKE, ET AL	:	

OPINION

Richard B. Klein

DATE: January 24, 2001

Plaintiff, Stanley L. Levitas, D.M.D., filed this lawsuit against Temple University, Temple University School of Dentistry, and Dr. Daniel Boston ("University Defendants") for wrongful discharge from faculty employment. In connection with the alleged wrongful discharge, Plaintiff also brought suit against Defendant, Dr. Wyke, who was a senior student at the Dental School. The trial court dismissed defendants University Defendants and Dr. Wyke at the summary judgement stage. Plaintiff is now appealing that decision.

The following are the claims against University Defendants included in the underlying action:

1. violation of the Pennsylvania Wiretapping and Electronics Surveillance Control Act;
2. negligence;
3. intentional infliction of emotional distress;
4. defamation and/or slander;
5. wrongful discharge;

6. invasion of privacy; and
7. civil conspiracy.

The same claims except the claim for wrongful discharge were made against Dr. Wyke.

#### **I. SUMMARY**

Dr. Wyke was a dental student working under Dr. Levitas. She did not do a satisfactory job in casting a mold, which was a requisite for graduation. She was afraid she could not redo the mold in time to graduate if it went to the Temple lab for casting, and Dr. Levitas agreed to have it cast at an outside lab, which violates Temple policy. Dr. Wyke had guilt pangs, and set up Dr. Levitas by calling from a Dean's Office to confirm the referral to an outside lab. Temple refused to renew Dr. Levitas' contract, and in fact had him leave his office a few days before his contract ended, although they continued to pay him until the end of the term.

It may be have been ungrateful of Dr. Wyke to turn on a doctor who was trying to help her, and it may have been unreasonable for Temple to terminate Dr. Levitas just for doing this. However, being ungrateful or unreasonable are not actionable.

Dr. Levitas claims that a lot of underhanded things were done to him, but after the close of discovery, he has come far from establishing that. One of his major claims is that a phone

conversation with Dr. Wyke was illegally recorded. However, there is not a scintilla of evidence to support that. The only claim is that there was a tape recorder located in the office where the conversation took place. No evidence of any tapes or recording - just that there was a recorder on a shelf. This was a contract for a fixed term, and it was totally in the University Defendants' discretion not to renew the contract. There is no evidence of any communication of anything derogatory about Dr. Levitas to anyone to establish slander. Plaintiff certainly has made conjecture that improper things were done to him. However, conjecture is not evidence, and there is absolutely no evidence produced during discovery that establishes any of the claims.

Therefore, the trial court was correct in dismissing both the suit against University Defendants and Dr. Wyke. A detailed discussion follows.

## **II. FACTS**

Plaintiff, a general dentist, was a part-time instructor in the area of restorative dentistry, at the Dental Clinic of Temple University School of Dentistry. Initially working as a volunteer instructor, his status was changed to part-time Clinical Assistant Professor from March 1, 1998 to June 30, 1998, at a fiscal year salary of \$12,500. A letter dated October 7, 1997 indicated that unless the contract was extended by the University, the plaintiff's part-time position would

automatically terminate on June 30, 1998.

The incident at issue arose in June of 1998 while Defendant Dr. Jeannine E. Wyke, a student at the Dental School, was completing her last rotation before graduation that month. On June 5, 1998, as a pre-requisite to graduation, Dr. Wyke had to perform certain dental castings on a patient. The dental castings were performed under the supervision of the plaintiff who was substituting for the regular board certified prosthodontist.

The castings were done incorrectly and plaintiff informed Dr. Wyke that she would have to redo the work. Dr. Wyke was concerned that the school's lab would not have the castings back in time to complete her credits. She feared that she would not graduate and that she would lose her residency at Children's Hospital that was to begin immediately after graduation.

Plaintiff informed Dr. Wyke that after the castings were redone, he could send them to an outside lab in order to be completed in time for graduation. Plaintiff further informed Dr. Wyke that she would have to pay the cost for the lab fees. Plaintiff admitted in his deposition that sending Dr. Wyke's work to an outside lab was against school policy.

After initially declining, Dr. Wyke agreed to the plaintiff's offer. Uncomfortable about the agreement, Dr. Wyke consulted with her husband and then proceeded to speak with Dr.

Boston, the chairman of the Restorative Dentistry Department. After consulting with Dr. Gray, an Associate Dean at the University, Dr. Boston instructed Dr. Wyke to call from his office and ask the plaintiff to proceed with having the work done by an outside lab. Dr. Boston was present when Dr. Wyke phoned the plaintiff and reconfirmed the agreement for the castings.

On June 11, 1998, after returning the castings to Dr. Wyke, plaintiff met with Drs. Gray and Boston in Dr. Boston's office. Plaintiff was informed by Dr. Boston that he was being relieved of his teaching duties for violating the University's policies concerning use of outside labs. Dr. Gray was taking notes during the encounter. Plaintiff was paid the full salary for the remaining two weeks of his employment contract.

### **III. DISCUSSION**

Overall, the evidence presented does not support any of the plaintiff's claims against University Defendants or Dr. Wyke.

#### **1. THE WIRETAPPING CLAIM**

The wiretapping claim must be dismissed as the plaintiff offers no proof that any of the telephone conversations between himself and Dr. Wyke were recorded. Plaintiff did not offer any tapes or transcripts of tape recorded conversations. The only proof offered by the plaintiff is his own suspicions that there was a tape recorder in Dr. Boston's office.

#### **2. NEGLIGENCE**

Plaintiff's claim of negligence must also be dismissed. This claim is based on the contention that Dr. Wyke failed to preserve his privacy regarding his conversation with her; that she failed to prevent the recording of the conversation and/or its dissemination, and failed to act in a proper fashion with respect to plaintiff. However, plaintiff has failed to show any duty owed by Dr. Wyke to him regarding the privacy of their phone conversation. Dr. Wyke was merely a student and plaintiff was in a position of authority over her, not vice-versa. Moreover, Plaintiff had no right to expect that his communications with Dr. Wyke would be kept private, since he admitted to Drs. Boston and Gray that he knew he had violated school policy by improperly using an outside lab. Since there is no evidence of any taped recording of the phone conversation, the claim that Dr. Wyke was negligent in failing to prevent such a recording also fails. Lastly, failing to act in a proper fashion with respect to the plaintiff is not actionable under a negligence theory.

The negligence claim against the University Defendants must also be dismissed. This claim is based on the contention that the University Defendants failed to preserve his privacy regarding the conversation with Dr. Wyke. However, plaintiff's only support for his claim are allegations that the University Defendants illegally recorded and disseminated his telephone conversation with Dr. Wyke. Plaintiff's suspicion alone is

insufficient to support this claim.

### **3. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

The conduct of Dr. Wyke does not support a claim for intentional infliction of emotional distress. Her conduct toward the plaintiff was neither "extreme" nor "outrageous". The fact that Dr. Wyke reported plaintiff's actions to his superiors and cooperated with them by making the phone call to plaintiff in their presence is in no way extreme or outrageous, as plaintiff himself admitted in his deposition that he violated school policy and that he had admitted same to Doctors Boston and Gray.

The University Defendants conduct was also neither "extreme" nor "outrageous." The plaintiff's contract was not extended after June 30, 1998, an act totally within the discretion of the University Defendants since it was an express provision of the plaintiff's contract. He cannot claim he was not aware of the provision or that it was unacceptable. The time to have complained was before he agreed to the provision of the contract, not after the fact.

### **4. DEFAMATION AND/OR SLANDER**

Plaintiff cannot support his claim for defamation or slander as it is, again, mere speculation. Plaintiff does not proffer any evidence whatsoever that Dr. Wyke made any improper communication or publication of defamatory statements. Plaintiff has never identified the alleged colleagues, students or by-

standers who were supposed to have heard or who were made aware of his violation of school policy. Moreover, any communications regarding his failure to adhere to school policy, if they were made, are true and are, therefore, a defense to this claim .

Pelagatti v. Cohen, 370 Pa. Super. 422, 439; 536 A.2d 1337, 1345, 1346 (1987). Plaintiff himself admitted in his deposition that he violated school policy.

The claim also has to be dismissed against the University Defendants because again it is mere speculation. He contends that his forced eviction from the school in the presence of colleagues and students caused one or more of the unidentifiable bystanders to conclude that he had committed some crime or act of dishonesty. Plaintiff does not proffer any evidence whatsoever that the University Defendants made any communication or publication of defamatory statements. He has never identified the alleged colleagues, students, or bystanders who were supposed to have heard or been made aware of an alleged eviction from school property (which the University Defendants deny) or his claimed wrongful discharge. Moreover, any communications by the University Defendants regarding his failure to adhere to school policy, if they were made, are true and a defense to these claims since the plaintiff himself admitted in his deposition that he violated school policy by offering to send Dr. Wyke's castings/moldings to an outside lab.

## 5. INVASION OF PRIVACY

Plaintiff has failed to show that Dr. Wyke invaded his privacy. He has produced no evidence to support the claim that Dr. Wyke disclosed the information regarding his conduct in violating school policy to any persons other than Doctors Boston and Gray, and her husband, Dr. David Wyke.

Under Pennsylvania law, an essential element of a claim for invasion of privacy is "publication" of false information. Publicity for these purposes means that the matter is made public by communicating to the public at large, or to be regarded as substantially certain to become one of public knowledge. Kryeski v. Schott Glass Technologies, Pa. Super. 626 A.2d 595, 601 (1993). Again, plaintiff has never identified any person or persons who allegedly were told or became aware of his failure to adhere to school policy and, by his admissions at deposition, he has essentially waived this claim.

Plaintiff has also failed to show that the University Defendants in any way invaded his privacy. He has produced no evidence to support the claim that the University Defendants disclosed the information regarding his unethical conduct of violating school policy to any person other than himself. By admitting at deposition that he violated school policy he has, in essence waived this claim.

## 7. CIVIL CONSPIRACY

Plaintiff's claim for civil conspiracy must also fail because none of the predicates to establish such a claim have been proffered. Again, plaintiff offers only his suspicions, without more, that the University Defendants and Dr. Wyke conspired to defame or slander his name or invade his privacy.

#### **8. WRONGFUL DISCHARGE**

The wrongful discharge claim must be dismissed because there was no "discharge" by the University Defendants. Although plaintiff's status changed from volunteer to part-time Clinical Assistant Professor on March 1, 1998, all the other terms of his initial appointment remained the same. Thus, his position would automatically terminate on June 30, 1998. In addition, despite being relieved on June 11, 1998, plaintiff was compensated through June 30, 1998. Moreover, there is no proof whatsoever to support plaintiff's claim that the University Defendants committed a crime by illegally recording his telephone conversation with Dr. Wyke. Plaintiff only suspected the conversation was recorded since he saw a tape recorder in Dr. Boston's office. No tapes or transcripts of tapes were ever produced.

#### **III. CONCLUSION**

Therefore, for the reasons mentioned above, the Motion for Summary Judgment of the University Defendants and Dr. Wyke was granted. There was no error on behalf of the trial court for

dismissing the claims. The decision of the trial court should be upheld.

BY THE COURT:

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R.B. KLEIN. J

DATE: January 24, 2001