

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Simbarashe Madziva, :
Appellant :
v. : No. 1215 C.D. 2013
The Philadelphia Housing Authority : Argued: February 10, 2014

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE P. KEVIN BROBSON, Judge (P.)

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: May 12, 2014

Simbarashe Madziva (Appellant) appeals from the order of the Court of Common Pleas of Philadelphia County¹ (trial court) sustaining the preliminary objections of the Philadelphia Housing Authority (PHA) in the nature of a demurrer and dismissing his complaint. Appellant contends he presented a clear right to relief on the grounds that his employer, PHA, violated his state constitutional right to defend himself, and denied him substantive and procedural due process when it discharged him. For the reasons that follow, we reverse and remand.

I. Background

Appellant worked for PHA as an asset property manager from January 2009 until his last day of work on December 5, 2011. According to the complaint, in August 2011, a PHA resident entered a PHA office and loudly demanded a

¹ The Honorable Arnold L. New presided.

housing transfer. Appellant was in the back office when the resident arrived, but after hearing her loud demands, he entered the front office. Appellant attempted to calm down the resident and assist her with a transfer. Unsatisfied with Appellant's response, the resident grabbed Appellant and dug her nails into his waist. The resident's young son also began hitting Appellant. Appellant responded by breaking the resident's grip and freeing himself from her grasp. The resident then left the office returning shortly with PHA police officers. The police officers interviewed those present, and they asked Appellant if he wished to press charges, which he declined to do because his injuries were minor. The police investigation concluded Appellant did not commit any wrongdoing.

Five weeks after the incident, PHA suspended Appellant without pay for 10 days and recommended termination for fighting in violation of PHA's human resource manual. The manual strictly prohibits any form of fighting including in self-defense and provides for termination for a violation.

Appellant requested a hearing to challenge his termination. In November 2011, PHA held a short hearing at which Appellant and his supervisor, who was not present for the incident, testified. Appellant testified he acted non-violently to free himself from his attacker. He also requested a copy of the PHA police investigation report, which PHA denied.

In December 2011, the PHA hearing officer issued a decision upholding the termination of Appellant's employment. The hearing officer concluded fighting was an infraction warranting termination and the PHA human

resource manual provides whether the employee was the aggressor or acting in self-defense makes no difference in the determination. Because the PHA police investigation report stated there was punching and shoving between Appellant and the resident, the hearing officer concluded the suspension and termination must be upheld. PHA then issued a final notice of termination from employment.

Thereafter, Appellant filed a four-count complaint against PHA in the trial court alleging violations of Article I, Section 1 of the Pennsylvania Constitution.² In Count I of the complaint, Appellant alleged PHA's rationale for his suspension and discharge violated his fundamental right of self-defense. In Count II, he asserted PHA's policy and its discharge of Appellant for engaging in self-defense in the face of a violent workplace assault created an irrebuttable presumption that acts of self-defense can never be justified, an unconstitutional

² In paragraph 6 of his complaint, Appellant averred as follows:

To vindicate the violation of his Pennsylvania constitutional rights, plaintiff Madziva brings this action against PHA under Article I, §1 of the Pennsylvania Constitution which protects his inherent right to self-defense against unlawful violence and his right to both substantive and procedural due process. He also grounds his claim for relief upon Pennsylvania state law principles of equitable estoppel, based on PHA's unfulfilled guarantee that he, and all employees, were to be provided with a fair hearing before any suspension and/or termination of their employment could be effectuated.

Reproduced Record (R.R.) at 13a-14a. Thus, Appellant did not assert a common law claim for the tort of wrongful discharge. See also, Appellant's Br. at 9-10 ("In this case Appellant has raised three well-founded Pennsylvania constitutional claims against PHA None of these claims is dependent on Plaintiff's at-will employment status. Neither are they dependent on whether he had a 'property interest' in his job.").

condition on his right to work, and a violation of his right to substantive due process. In Count III, he alleged PHA's termination deprived him of his liberty interest without a pre- or post-termination fair hearing in violation his right to procedural due process. In Count IV, he asserted a claim for equitable estoppel.³

As damages, Appellant averred loss of earnings and earning capacity and harm to his reputation.⁴

Appellant demanded a declaration that PHA's policy permitting disciplinary action against employees who exercise their inherent right to self-defense is unconstitutional. Additionally, he requested compensatory damages including back pay and non-economic compensatory damages, as well as reinstatement of employment, reasonable counsel fees and costs, and such other legal and equitable relief as may be just and proper under the circumstances.⁵

³ The trial court dismissed this count. Appellant does not challenge this dismissal on appeal.

⁴ In paragraph 38 of his complaint, Appellant averred as follows:

As a direct and proximate result of PHA's violation of his rights, plaintiff Madziva has suffered a loss of earnings and earning capacity, including but not limited to, a loss of wages, medical benefits, life insurance, disability benefits, deferred compensation benefits and harm to his reputation.

R.R. at 19a (emphasis added).

⁵ In his claims for relief in Counts I, II and III, Appellant demanded as follows:

WHEREFORE, plaintiff Simbarashe Madziva demands that this Court determine and declare that PHA's policy permitting
(Footnote continued on next page...)

In response, PHA filed preliminary objections in the nature of a demurrer. PHA alleged Appellant, as an at-will employee, does not enjoy a property right to his employment; thus, he is not entitled to due process prior to disciplinary action being levied against him.

The trial court determined Appellant's constitutional claims lacked merit. The trial court noted self-defense is a central component of the Second Amendment to the United States Constitution. The trial court explained, although self-defense is a right in-and-of itself, it is not discussed independent of the Second Amendment's right to bear arms in self-defense, and Appellant's claim failed because the claim did not involve a violation of Appellant's right to bear arms for self-defense.

Additionally, the trial court held Appellant's claim would fail under the public policy exception to the at-will employment doctrine. The trial court,

(continued...)

disciplinary action against employees who exercise their inherent right to self-defense is unconstitutional. Plaintiff further demands compensatory damages against the Philadelphia Housing Authority in an amount in excess of the jurisdictional amount requiring arbitration referral. Such damages should include, but not be limited to, an award of back pay, together with prejudgment interest; reinstatement; an award of front pay to the extent reinstatement is not feasible; an award of non-economic compensatory damages; an award of reasonable counsel fees and costs; and such as other legal and equitable relief as may be just and proper under the circumstances.

R.R. at 20a, 21a-22a, 23a.

relying upon Scott v. Extracorporeal, Inc., 545 A.2d 334 (Pa. Super. 1988), concluded self-defense was not a public policy exception to the at-will employment doctrine.

Further, the trial court determined PHA did not violate Appellant's substantive or procedural due process rights. The trial court explained Appellant was an at-will employee, who did not have a protected property interest in his employment, which is a prerequisite to the maintenance of a claim for either substantive or procedural due process. The trial court rejected Appellant's claim that the PHA human resource manual established an entitlement to pre- and post-termination processes, stating an employee handbook is only enforceable against an employer if the handbook contains a clear indication the employer intended the handbook to overcome the at-will presumption. Scott, 545 A.2d at 337.

Additionally, the trial court rejected Appellant's argument that PHA's policy creates an irrebuttable presumption that acts of self-defense are always cause for suspension. The trial court concluded PHA held him partially responsible for the disturbance. Thus, the trial court sustained PHA's preliminary objections and dismissed the complaint. From this decision, Appellant appealed to this Court.

II. Issues

On appeal,⁶ Appellant contends the trial court erred in sustaining PHA's preliminary objections in the nature of a demurrer. Appellant asserts he presented a clear right to relief where PHA violated his right to self-defense under the Pennsylvania Constitution. Additionally, he contends PHA violated his rights to substantive and procedural due process.

III. Discussion

A. Rights to Self-Defense, Substantive Due Process

1. Contentions

First, Appellant contends the trial court mischaracterized his lawsuit as one asserting a public policy tort claim as in Geary v. United States Steel Corp., 319 A.2d 174 (Pa. 1974). Rather, Appellant claims, he asserted a constitutional claim for violation of his inherent right to self-defense as in Hunter v. Port Authority of Allegheny County, 419 A.2d 631 (Pa. Super. 1980) (holding a cause of action for injunctive relief may arise under Article I, Section 1 if a person is denied public employment because of a prior criminal conviction).

Additionally, Appellant argues the trial court erred by analyzing his claim as if it were based only on the Second Amendment of the U.S. Constitution.

⁶ On an appeal from a trial court's order sustaining preliminary objections and dismissing the complaint, we review whether the trial court committed an error of law or an abuse of discretion. R.H.S. v. Allegheny Cnty. Dep't of Human Servs., 936 A.2d 1218 (Pa. Cmwlth. 2007). We accept all well-pled facts in the complaint as true, as well as any reasonable inferences deducible from those facts. Id. Preliminary objections in the nature of a demurrer should be sustained only where the pleadings are clearly insufficient to establish a right to relief; any doubt must be resolved in favor of overruling the demurrer. Id.

Appellant relies on the right to self-defense protected by Article I, Section 1 of the Pennsylvania Constitution, which provides that defending life and liberty is an inherent and inalienable right. Moreover, the right to self-defense is much broader than the right to bear arms, which is separately enumerated in Article I, Section 21 of the Pennsylvania Constitution.⁷

Further, Appellant contends the trial court erred by relying on Scott, in concluding the discharge for self-defense did not implicate a substantial public policy. He asserts Scott is distinguishable because it did not involve a public employer or constitutional rights. According to Appellant, Mitchell v. University of Kentucky, 266 S.W.3d 895 (Ky. 2012), Feliciano v. 7-Eleven, Inc., 559 S.E.2d 713 (W.Va. 2001), and, Cocchi v. Circuit City Stores, 2006 WL 870736 (N.D. Cal., No. C-05-1347 JCS, filed Apr. 3, 2006) (unreported), which recognize the right to engage in self-defense in the workplace as an important public policy, are more on point.

Additionally, Appellant maintains an alleged violation of Article I, Section 1 is subject to strict scrutiny because the right to self-defense is an inherent fundamental constitutional right. Further, under any level of scrutiny PHA's total ban on the use of self-defense is unconstitutional. The record is devoid of an explanation or justification for imposition of the policy.

⁷ This section provides: "The right of the citizens to bear arms in defense of themselves and the State shall not be questioned." PA. CONST. art. I, §21.

PHA responds the trial court correctly concluded that neither Appellant's constitutional rights nor public policy were violated. Relying on Scott, PHA argues self-defense is not a public policy preventing the termination of an at-will employee where the employee claims a right to self-defense in the workplace. PHA asserts there is no prior case law, statute, or constitutional provision that articulates a public policy applicable to the circumstances of Appellant's termination from employment. Further, PHA asserts, even if the complaint established a violation of public policy, PHA had a separate, plausible and legitimate reason to discharge Appellant, thus defeating his claim.

In addition, PHA argues Appellant cannot convert his claim for wrongful discharge into a constitutional claim to skirt Pennsylvania's at-will employment doctrine and a proper public policy analysis. PHA contends Appellant was not deprived of his right to self-defense in the workplace; rather, he was deprived only of his at-will employment. PHA asserts the trial court's analysis of Appellant's claim was not flawed because Scott is directly on point, and the trial court's discussion of the Second Amendment was proper because Appellant did not provide any law that discusses a right to self-defense separate or distinct from the right to keep and bear arms. According to PHA, the trial court properly rejected any reliance on jurisprudence from other states because Scott is on point.

2. Analysis

The first question we address is whether Appellant alleged a valid state law claim against PHA under Article I, Section 1 of the Pennsylvania Constitution, examining each type of relief demanded.

Appellant asserts the right of self-defense and the right of substantive due process, which is necessary here to protect his self-defense interest, are constitutionally protected liberty interests. He claims these rights emanate from Article 1, Section 1 of the Pennsylvania Constitution, which provides:

All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

PA. CONST. art. I, §1 (emphasis added). Also, Appellant relies on language in Commonwealth v. Brown, 8 Pa. Super. 339, 1898 WL 4447 (Pa. Super. 1898), especially the following quotation (referencing the right to acquire, possess and protect property, including the right to make reasonable contracts):

The word 'liberty' as used in these constitutional declarations means more than freedom of locomotion. It includes and comprehends among other things freedom of speech, the right of self defense against unlawful violence, the right to live and work where he will, to earn his livelihood in any lawful calling, to pursue any lawful trade or avocation, and to freely buy and sell as others may

Id. at *8 (emphasis added).

The rights afforded under Article I, Section 1 of the Pennsylvania Constitution are generally coextensive with the federal due process clause of the 14th Amendment of the United States Constitution, which provides no state shall deprive any person of life, liberty, or property, without due process of law. Pa. Game Comm'n v. Marich, 666 A.2d 253 (Pa. 1995). As our Supreme Court held, “[t]he requirements of Article I, Section 1 of the Pennsylvania Constitution are not distinguishable from those of the 14th Amendment ... [and courts] may apply the same analysis to both claims.” Id. at 255 n.6 (citation omitted); accord Robbins v. Cumberland Cnty. Children & Youth Servs., 802 A.2d 1239 (Pa. Cmwlth. 2002).

The 14th Amendment to the United States Constitution forbids a State to deprive any person of life, liberty or property without due process of law. “Substantive due process is the esoteric concept interwoven within our judicial framework to guarantee fundamental fairness and substantial justice, and its precepts protect fundamental liberty interests against infringement by the government.” Khan v. State Bd. of Auctioneer Exam'rs, 842 A.2d 936, 946 (Pa. 2004) (internal citation and quotation omitted). “[F]or substantive due process rights to attach there must first be the deprivation of a property right or other interest that is constitutionally protected.” Id.

In terms of procedural due process, the government is prohibited from depriving individuals of life, liberty, or property, unless it provides the process that is due. Commonwealth v. Turner, 80 A.3d 754 (Pa. 2013). The basic elements of procedural due process are adequate notice, the opportunity to be heard, and the chance to defend oneself before a fair and impartial tribunal having jurisdiction

over the case. Id. Application of procedural due process involves two questions: (1) whether there is a life, liberty, or property interest that the state has interfered with; and (2) whether the procedures attendant to that deprivation were constitutionally sufficient. Id.

In order for the requirements of procedural and substantive due process to apply, there must be a deprivation of a property or liberty interest protected by the 14th Amendment. Davenport v. Reed, 785 A.2d 1058, 1062 (Pa. Cmwlth. 2001) (citing Bd. of Regents of St. Colleges v. Roth, 408 U.S. 564 (1972)). To have an interest protected by procedural due process, one must have a legitimate claim of entitlement to it. Id.

The Declaratory Judgments Act⁸ is properly invoked in situations where challenges, particularly constitutional challenges, are set forth questioning the validity of a statute or questioning the scope of a governmental body's action pursuant to some authority, regardless of whether an alternative remedy exists. Se. Pa. Transp. Auth. v. City of Phila., 20 A.3d 558 (Pa. Cmwlth. 2011). To sustain a declaratory judgment action, the plaintiff must demonstrate an actual controversy indicating imminent and inevitable litigation and a direct, substantial, and present interest. Buehl v. Beard, 54 A.3d 412 (Pa. Cmwlth. 2012).

No one questions Appellant's standing to seek declaratory relief. Further, in Count I, Appellant avers an actual controversy regarding the application of a PHA policy to him in such manner that he was denied the ability to defend

⁸ 42 Pa. C.S. §§7531-7541.

himself, and as a result he lost his employment. He seeks a declaration that the policy is unconstitutional. Moreover, in Count II, he avers that because the PHA policy precluded any type of self-defense, regardless of the circumstances, he lost his employment, and the application of the policy is unconstitutional.

We agree with Appellant that he enjoyed a constitutional liberty interest in defending himself from unlawful violence, regardless of whether he had a property interest in his at-will employment. PA. CONST. art. I, §1; Brown. Moreover, this liberty interest is reflected in a public policy permitting use of force in self-defense in various circumstances, both criminal and civil. E.g., Section 505 of the Crimes Code, 18 Pa. C.S. §505 (Crimes Code: use of force in self-protection as justification defense); Commonwealth v. Witherspoon, 730 A.2d 496 (Pa. Super. 1999) (justification defense in criminal case: meeting threat of force with use of similar level of force); Kitay v. Halpern, 158 A. 309 (Pa. Super. 1932) (civil case: use of reasonable force); Restatement (Second) of Torts §§63-75 (discussing privilege of self-defense by force in tort cases). According to these authorities, the liberty interest in self-defense against unlawful violence has limitations.

We also agree that the liberty interest of self-defense against unlawful violence is broader than, and not dependent on, a right to bear arms. See PA. CONST. art. I, §1; Brown; see also District of Columbia v. Heller, 554 U.S. 570, 599 (2008) (“[s]elf-defense is a basic right, recognized by many legal systems from ancient times to the present, and ... individual self-defense is ‘the central component’ of the Second Amendment right.”). We note, however, that the Second Amendment right to bear arms is not absolute and may be restricted in the

exercise of police power for the good order of society and protection of citizens. Heller (supporting longstanding prohibitions on possession of firearms by felons and the mentally ill, and laws forbidding the carrying of firearms in sensitive places); Perry v. State Civil Service Comm'n (Dep't of Labor & Industry), 38 A.3d 942 (Pa. Cmwlth. 2012)(termination of public employee who brought firearm to work in government building, contrary to existing policy, did not violate Second Amendment protection).

Additionally, we agree with Appellant that the trial court's reliance on Scott, which involved a common law tort claim for wrongful discharge, was error. In Scott, a verbal dispute at work escalated, and the plaintiff was struck from behind and knocked unconscious by a coworker. When the plaintiff regained consciousness, the coworker was pulling her hair, and it took eight employees to remove the coworker. After employer terminated the plaintiff's employment for fighting, she filed suit for wrongful discharge in violation of public policy.

The plaintiff asserted a statutory right to self-defense. Specifically, she relied on Section 505 of the Crimes Code, 18 Pa. C.S. §505, which provides:

The use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.

She argued Section 505 allowed her to exercise the right of self-defense without a resulting termination of her employment.

However, the Superior Court disagreed, concluding the plaintiff's discharge for acting in self-defense during a fight on employer's property did not implicate any public policy. Scott. Additionally, the Superior Court held the plaintiff's right to self-defense struck too close to an "employer's legitimate interest in discharging employees it perceives to be disruptive." Id. at 343. Thus, the Court upheld the dismissal of the plaintiff's wrongful discharge claim.

Unlike the present case, however, Scott involved a common law claim for wrongful discharge against a private employer. However, Appellant contends that he did not plead a cause of action for wrongful discharge or any other action that may involve his at-will employment status or the lack of a property interest in ongoing employment. Appellant's Br. at 9-10 ("In this case Appellant has raised three well-founded Pennsylvania constitutional claims against PHA None of these claims is dependent on Plaintiff's at-will employment status. Neither are they dependent on whether he had a 'property interest' in his job."). We accept Appellant's assertion, and we expressly rely upon it in our disposition. In this context, because Appellant did not plead a cause of action for wrongful discharge, the decision in Scott does not control.

Further, unlike the present case, the plaintiff in Scott did not assert deprivation of a constitutional liberty interest by a public actor. This distinction is key because the provisions of the Pennsylvania Constitution limit state action. Com. by Shapp v. Nat'l Gettysburg Battlefield Tower, Inc., 311 A.2d 588 (Pa. 1973) (Article I of the Pennsylvania Constitution must be read as limiting the powers of government to interfere with the rights provided therein); Maylie v.

Nat'l R.R. Passenger Corp., 601 A.2d 308, 313 (Pa. Super. 1991) (“provisions of the Constitution do not reach the acts of purely private actors”) (citation omitted). Thus, state action is generally required for a cause of action arising under the Pennsylvania Constitution. See id.

While we agree with Appellant that the trial court’s reliance on Scott was error, we disagree that the out-of-state cases upon which he relies are useful in resolving this controversy. This is because the out-of-state cases Appellant cites, Cocchi, Feliciano and Mitchell, involve common law claims for wrongful discharge.⁹ This case does not.

⁹ In Cocchi, the plaintiff asserted his termination for fighting in self-defense was a violation of Article I, Section 1 of the California Constitution, which provides “defending life and liberty” are inalienable rights. CALIF. CONST. art. I, §1. On summary judgment, the California district court concluded:

[A]t a minimum, [an employee] has a fundamental right to defend himself from physical injury where it is not possible to avoid the altercation, either by retreating or summoning help. Any other reading of the California Constitution would amount to holding that employers may deprive their employees of their right to self-defense altogether. Such a holding cannot be squared with the fact that the right to self-defense is enshrined in the California Constitution as a fundamental right.

Cocchi, 2006 WL 870736 at *6.

Likewise, in Feliciano, the West Virginia Supreme Court held the state recognizes a substantial public policy exception to the at-will employment doctrine whereby the employee may defend himself against “lethal imminent danger.” 559 S.E.2d at 723. The West Virginia Supreme Court relied upon its jurisprudential history in affirming the right to act in self-defense and common law to reach its conclusion. Nevertheless, the Court held an aggrieved employer may rebut the presumption of a wrongful discharge by demonstrating that it had a plausible and legitimate business reason for terminating its employee. Id.

Similarly, in Mitchell, the Kentucky Supreme Court held, without addressing the constitutional issue, it was violative of the state’s statutory self-defense policy for a public or
(Footnote continued on next page...)

Considering the foregoing, Appellant satisfied the necessary foundation for pleading a cause of action for declaratory relief in Counts I and II. To the extent that the respected trial court decided otherwise, it fell into error. Accordingly, we must reverse and remand.

Appellant also seeks reinstatement, which he concedes is injunctive in nature. See Appellant's Br. at 22 n.7. Further, he seeks compensatory damages. Neither the parties nor the trial court examine the sufficiency of Appellant's averments supporting these claims or Appellant's ability to obtain these remedies.

Our independent research raises many questions about equity jurisdiction, the sufficiency of Appellant's claims for injunctive relief, immunity, and the ability of Appellant to recover compensatory damages. While we may affirm on grounds other than those embraced by a trial court, we decline to do so here where no party addressed the issues above.

Further, while some possible issues might be cured by amendment, Appellant did not amend his complaint as of course after preliminary objections were filed, see Pa. R.C.P. No. 1028(c)(1), and he does not seek leave to amend now. Also, it is unclear whether Appellant can amend to state a new cause of action with the passage of time after the December 2011 employment action.

(continued...)

private employer to fire an at-will employee who had a concealed-weapons license and kept his weapon safely locked in the glove compartment of his vehicle.

Thus, we leave to the discretion of the respected trial court how to proceed if Appellant seeks to amend after remand.

B. Right to Procedural Due Process

In Count III, Appellant asserts that he was denied a fair hearing, thereby denying procedural due process in his attempts to vindicate his underlying right to defend himself. He seeks a declaration that the PHA policy is unconstitutional, reinstatement, and compensatory damages. Of import, he does not seek a new hearing with PHA.

This claim is different, because Appellant is not challenging the policy, which allegedly provides for a hearing; rather, he challenges the manner in which the hearing officer conducted the hearing.

We agree with Appellant that he had a right to procedural due process in a proceeding where a liberty interest in defending oneself against unlawful violence is raised. Thus, Appellant states a claim for declaratory relief. However, the usual remedy for defective process is to require new process, not to order relief on the underlying merits. Because some of the remedies Appellant seeks in Count III lack an obvious causal relationship with the breached duty, it is unclear whether Appellant pleads a claim for injunctive relief or compensatory damages in Count III. See Unified Sportsmen of Pa. By Their Members v. Pa. Game Comm'n, 903 A.2d 117 (Pa. Cmwlth. 2006). Because neither the parties nor the trial court address this aspect of the pleading of Count III, we reserve it for consideration on remand.

In sum, we reverse the order and remand the matter to the trial court for further proceedings.

ROBERT SIMPSON, Judge

