STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0700

Amber Brown,
Relator,

vs.

Hennepin Healthcare Systems, Inc.,
Respondent.

Filed January 9, 2023
Affirmed
Bjorkman, Judge

Hennepin Healthcare Systems, Inc.

Marshall H. Tanick, Teresa J. Ayling, Meyer Njus Tanick, PA, Minneapolis, Minnesota (for relator)

Mary F. Moriarty, Hennepin County Attorney, Martin D. Munic, Katlyn J. Lynch, Senior Assistant County Attorneys, Minneapolis, Minnesota (for respondent)

Considered and decided by Gaïtas, Presiding Judge; Bjorkman, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

In this certiorari appeal, relator Amber Brown challenges a decision by respondent Hennepin Healthcare Systems, Inc. (HHS) to discharge her from her job as a paramedic. Because Brown was an at-will employee who could be discharged for any reason, we affirm.

FACTS

In 2002, Brown began working for Hennepin County Medical Center (HCMC) as a paramedic. At that time, HCMC was run by Hennepin County. In 2007, HCMC employees were transferred to HHS employment. As part of the transition, employees received an employee handbook that provided: "Employees may resign their employment with HCMC at any time for any reason, and HCMC reserves the same right regarding the discontinuation of an individual's employment." The handbook also stated that it was "not intended to create an employment contract between HCMC and its employees." Brown acknowledged in writing that she received a copy of the handbook.

Eventually, HHS promoted Brown to Deputy Chief of Emergency Medical Services, managing the Community Paramedic Program. In a letter to HHS, Brown stated that the program "focus[ed] on HHS patients that [had fallen] through the gaps of traditional healthcare services. [Its] patients involved people from different socioeconomic backgrounds and multiple ethnicities."

On February 15, 2022, HHS received an unsigned email with an attached photo depicting Brown in blackface. Brown admitted that she was in the photo and said that it had been taken 15-17 years earlier at a private Halloween party. The photo was of Brown and two others dressed up as the musical group, The Supremes. The photo had been posted on someone else's Facebook page.

Following an internal investigation, HHS decided to discharge Brown. But before HHS could inform Brown of its decision, the Star Tribune published an article about the

photo titled "Hennepin Healthcare promised to address 'systemic racism.' Then came the blackface photos."

On March 3, HHS discharged Brown. Brown timely appealed her discharge to HHS's Employee and Labor Relations Director. HHS considered and denied her appeal, stating that management "did not find relevant information that would amend the decision." In May, Brown requested a name-clearing hearing.[1] HSS offered her the opportunity to appear in front of its board; Brown declined the offer.

During this same time frame, Brown appealed her discharge to the Office of Administrative Hearings (OAH).[2] Brown initiated this certiorari appeal while her OAH case was pending.

DECISION

I. HHS's decision to discharge Brown was not arbitrary, capricious, unreasonable, or unsupported by substantial evidence because Brown was an at-will employee.

"Termination of a public employee is a quasi-judicial decision." *Mowry v. Young*, 565 N.W.2d 717, 719 (Minn. App. 1997). As such, it is subject to certiorari review. *Shaw*

[1] HHS's addendum contains documents Brown submitted in support of her name-clearing request. Although HHS did not consider these documents when deciding to discharge Brown, they are conclusive of Brown's arguments in this appeal. Generally, this court "may not base its decision on matters outside the record on appeal." *Plowman v. Copeland, Buhl & Co.*, 261 N.W.2d 581, 583 (Minn. 1977). But appellate courts may consider "documentary evidence of a conclusive nature" to sustain verdicts and judgments. *State v. Anderson*, 733 N.W.2d 128, 139 n.4 (Minn. 2007) (quoting *Plowman*, 261 N.W.2d at 583).

[2] Brown contended that she was entitled to a "just cause" hearing under Minn. Stat. § 383B.38, subds. 1, 1a (2022). On August 24, 2022, OAH dismissed Brown's appeal for lack of jurisdiction. Brown did not appeal OAH's dismissal to this court.

v. Bd. of Regents of Univ. of Minn., 594 N.W.2d 187, 190 (Minn. App. 1999), *rev. denied* (Minn. July 28, 1999). Under this standard, our review is confined to a determination of whether the proceedings and discharge were "arbitrary, oppressive, unreasonable, fraudulent, or unsupported by evidence or applicable law." *Reierson v. City of Hibbing*, 628 N.W.2d 201, 204 (Minn. App. 2001).

An at-will employee can be discharged for any reason or for no reason at all. *Randall v. N. Milk Prods., Inc.*, 519 N.W.2d 456, 459 (Minn. App. 1994).[3] Accordingly, an at-will employee's discharge cannot be procedurally improper, arbitrary, oppressive, unreasonable, or unsupported by the evidence. *Reierson*, 628 N.W.2d at 204. Whether an employee is at will is a question of law that we review de novo. *Dietz v. Dodge County*, 487 N.W.2d 237, 240 (Minn. 1992).

An employee who is hired for an indefinite term is generally considered to be "at-will." *Pine River State Bank v. Mettille*, 333 N.W.2d 622, 627 (Minn. 1983). This gives the parties reciprocal rights: "the employer can summarily dismiss the employee for any reason or no reason" and the employee "is under no obligation to remain on the job." *Id.* (citing *Cederstrand v. Lutheran Brotherhood*, 117 N.W.2d 213, 221 (Minn. 1962)). In *Reierson*, we concluded that an employee was at will where the employment contract provided that the employer could discharge the employee "at any time, for any reason." 628 N.W.2d at 204.

[3] There are statutory exceptions to the at-will doctrine that preclude an employer from discharging an employee for improper reasons, including discrimination. *Hanson v. State, Dep't of Nat. Res.*, 972 N.W.2d 362, 372 (Minn. 2022). None of the exceptions apply here.

It is undisputed that Brown was hired for an indefinite term. And, like the contract in *Reierson*, the employee handbook states that "Employees may resign their employment with HCMC *at any time for any reason*, and HCMC reserves the same right regarding the discontinuation of an individual's employment." (Emphasis added.) This record supports the determination that Brown was an at-will employee, and HHS's decision to end her employment could not be arbitrary, unreasonable, or unsupported by the evidence.

Brown urges us to conclude otherwise because Minnesota law requires HHS to "provide an appeals process for an individual who is discharged." Minn. Stat. 383B.914, subd. 1(3) (2022). We are not persuaded for two reasons. First, the statute only requires HHS to create a procedure for employees to appeal discharge decisions, and HHS did so. The statute does not require HHS to provide what Brown advocates—a just-cause hearing before discharge.

Second, the existence of a grievance procedure does not, in and of itself, create a property interest in employment. *See Peisch v. City of Pequot Lakes*, No. A04-133, 2004 WL 1834152, at *3 (Minn. App. Aug. 17, 2004) (stating that grievance procedures "that do not establish any grounds upon which termination must be based do not in themselves create a property interest in employment" (quoting *Hogue v. Clinton*, 791 F.2d 1318, 1324 (8th Cir. 1986)). In *Peisch*, a city ordinance provided for progressive discipline before discharge. *Id.* at *2. Peisch argued that the ordinance created a constitutionally protected property interest in continued employment that entitled her to due process. *Id*. We rejected this argument, noting that "[a] protected property interest in public employment must be created by an independent source, such as a contract or statute," and concluded that the

ordinance did not create a property interest—it created "merely an expectation of a warning before termination." *Id.* at *3. Although not binding authority,[4] we find the circumstances in *Peisch* analogous and its reasoning persuasive.

Brown also contends that even at-will employees have the right to be free from "arbitrary government interference," citing *Helvey v. City of Maplewood*, 154 F.3d 841, 844 (8th Cir. 1998). We do not disagree, but this case does not involve such interference. In *Helvey*, a privately owned bar fired a bartender after the city manager threatened to shut down the bar or revoke its liquor license if it did not do so. 154 F.3d at 843. The Eighth Circuit concluded that the bartender had stated a due-process claim, explaining that the right to be free from arbitrary government interference "arises when government officials, through exercise of their regulatory authority over an employer, demand the discharge of an employee." *Id.* at 844. In contrast, HHS decided to discharge its own employee. Because HHS did not interfere with a private employer's discharge decision, *Helvey* does not support Brown's claims.

In short, the record establishes that Brown was an at-will employee. As such, we conclude that HHS's decision to discharge her was not procedurally improper, unreasonable, arbitrary, or unsupported by the evidence. *Reierson*, 628 N.W.2d at 204.

[4] Nonprecedential decisions are not binding, but they may be persuasive. Minn. R. Civ. App. P. 136.01, subd. 1(c); *City of St. Paul v. Eldredge*, 788 N.W.2d 522, 526-27 (Minn. App. 2010), *aff'd*, 800 N.W.2d 643 (Minn. 2011).

II. HHS did not violate Brown's liberty interest because she declined the offered name-clearing hearing.

Brown next asserts that HHS violated her due-process right to liberty because it caused the reasons for her discharge to be published in the Star Tribune. A public employee's liberty interest "may be implicated when his good name, reputation, honor, or integrity is at stake because of government action that impose[s] on him a stigma or other disability that foreclose[s] his freedom to take advantage of other employment opportunities." *Phillips v. Stat*e, 725 N.W.2d 778, 784 (Minn. App. 2007) (alterations in original) (quotation omitted), *rev. denied* (Minn. Mar. 28, 2007). Accordingly, a public employee is entitled "to a name-clearing hearing at a meaningful time if his [discharge] is accompanied by publication of stigmatizing reasons for his [discharge] that might impair future employment opportunities." *Schleck v. Ramsey County*, 939 F.2d 638, 642 (8th Cir. 1991). All that is required for a name-clearing hearing "is that the aggrieved party be offered a chance to refute the charges against him or her." *Hammer v. City of Osage Beach*, 318 F.3d 832, 840 (8th Cir. 2003).

To obtain relief based on deprivation of their liberty interest, an employee must show that they asked for and were denied a name-clearing hearing. *Crooks v. Lynch*, 557 F.3d 846, 849 (8th Cir. 2009). In *Schleck*, Ramsey County discharged two employees after an investigation revealed that they had sexually harassed employees under their supervision. 939 F.2d at 640. The county offered the employees the opportunity to be heard both before and after their discharge. *Id.* at 643. Both declined. *Id.* In rejecting the employees' claims that the county violated their liberty interests, the Eighth Circuit

determined "[t]hat such a hearing never was conducted because [the employees] declined to avail themselves of it does not give rise to a due process violation." *Id.*

Brown requested a name-clearing hearing approximately one month after she was discharged. HHS offered Brown the opportunity to attend the public portion of its next board meeting with her attorney to explain her position. HHS informed Brown that it was willing to extend the amount of time to ten minutes even though the board generally limits public addresses to three minutes. And it indicated it would consider a request for additional time. Brown declined to attend the meeting, asserting that it was inadequate.

Brown argues that an "adequate name-clearing hearing requires at a minimum that a government employee facing discharge and her attorney be given an unlimited opportunity to speak at a public hearing," citing *Greer v. City of Warren*, No. 1:10-CV-01065, 2012 WL 1014658, at *14 (W.D. Ark. Mar. 23, 2012). This argument is unavailing. In *Greer*, the court cited *Hammer* for the proposition that public employees "should be given 'unrestricted time to speak at the hearing.'" *Greer*, 2012 WL 1014658, at *14 (quoting *Hammer*, 318 F.3d at 841). But in *Hammer*, the Eighth Circuit considered the fact that the employee was given unrestricted time to speak as evidence the employee had an adequate opportunity to refute the charges against him, stating that "[a]ll that is required is that the aggrieved party be offered a chance to refute the charges against him or her." 318 F.3d at 840-41. *Hammer* does not support Brown's contention that the aggrieved employee *must* be given unrestricted time.

On this record, we conclude that the name-clearing hearing HHS offered provided Brown an adequate opportunity to refute the newspaper report and protect her name. HHS

invited Brown to attend a public board meeting along with her lawyer to refute the charges against her. *See id.* at 840. While HHS stated she would have ten minutes to speak, it left the door open for her to request more time. *See Hemmah v. City of Red Wing*, 592 F. Supp. 2d 1134, 1143 (D. Minn. 2008) (concluding offered hearing was legally adequate given employer was open to discussing additional time). Brown declined the offered hearing, and the fact that it was never conducted does not give rise to a due-process violation. *See Schleck*, 939 F.2d at 643.

In sum, because Brown was an at-will employee, HHS could discharge her for any reason without a pre-discharge hearing. And because Brown declined the name-clearing hearing that HHS offered, her liberty interests were not violated.

Affirmed.