COURT OF APPEAL FOR ONTARIO

CITATION: Sweeting v. Mok, 2017 ONCA 203
DATE: 20170308
DOCKET: C60805

Juriansz, Brown and Miller JJ.A.

BETWEEN

Tanya Sweeting

Plaintiff (Respondent)

and

Dr. Lawrence Man-Suen Mok

Defendant (Appellant)

John R. Dunn, for the appellant

Jeffrey D. Ayotte and Michael W. Gunsolus, for the respondent

Heard and released orally: March 3, 2017

On appeal from the judgment of Justice Myrna L. Lack of the Superior Court of Justice, dated June 26, 2015, with reasons reported at 2015 ONSC 4154.

ENDORSEMENT

[1] The appellant appeals from the judgment of Lack J. granting the respondent damages for the wrongful termination of her employment by the appellant.

[2] The respondent had been employed as a nurse in the appellant's medical office for some 22 years. In her action, she claimed that the appellant terminated her employment at a meeting that took place on June 20, 2012. The appellant and respondent offered different versions of what was said and what happened at the meeting. The appellant's wife also testified about the meeting. The trial judge made findings of credibility and fact and accepted the respondent's description of what took place at the meeting. The appellant submitted the trial judge's findings of credibility and resulting findings of fact were unreasonable and made without considering the context of the respondent's resistance to converting the office records to electronic format.

[3] We disagree. The trial judge's credibility findings were clearly explained and the record supported all her findings of fact. The appellant's submissions were simply an attempt to reargue the case, urging us to take a different view of the evidence than did the trial judge. The character of his submissions was that of a closing address at trial.

[4] Based on the findings made, the trial judge concluded that the words the appellant uttered would objectively be understood as a termination by a 22-year employee in a close professional work environment. While the trial judge accepted the appellant's evidence that he did not intend to terminate the respondent's employment, she also concluded he did not expect that she would return to work, he did not try to rectify any misunderstanding, he never contacted

her afterwards, and he prepared to deal with the next day's work without her. She concluded that the appellant did, in fact, terminate the respondent.

[5] The appellant has not identified any overriding and palpable error in the findings of credibility and fact made by the trial judge. The trial judge's conclusion, based on those findings that the appellant terminated the respondent, is reasonable. We have not been persuaded there is any basis on which we should interfere.

[6] The appellant did not address in oral argument the period of reasonable notice determined by the trial judge. The trial judge expressly considered the factors in *Bardal v The Globe & Mail Ltd.,* [1960] O.J. No. 149. We see no reversible error in her analysis on the facts of this case.

[7] The respondent concedes that the trial judge, in her award, calculated pre-judgment interest at the incorrect rate of 3 percent. The correct rate is 1.3 percent. We leave it to the parties to do the recalculation.

[8] Otherwise, the appeal is dismissed. The respondent's costs are fixed in the amount of $15,000, all inclusive.

"R.G. Juriansz J.A."
"David Brown J.A."
"B.W Miller J.A."