Reed Kegel – Assignment 4

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|  | Statutory Elements | Relevant Facts (for other cases) | Relevant Facts (for this case) |
| Wrongful Discharge | **Garner**: N.C.G.S. § 95-230 is an expression of the public policy of North Carolina.  Violating N.C.G.S. § 95-232 is not enough.  Need something more than a mere statutory violation to sustain a claim of wrongful discharge under the public-policy exception. (Rationale of Sides, Coman, and Amos)  -Intent/willfulness  An employer wrongfully discharges an at-will employee if the termination is done for "an unlawful reason or purpose that contravenes public policy."  **Coman:**  N.C.G.S. § 20-397  Plaintiff allegedly was faced with the dilemma of violating that public policy and risking imprisonment, N.C.G.S. § 20-397, or complying with the public policy and being fired from his employment. | **Garner:**  Exception wasn’t met therefore no wrongful discharge here.  [DELETED BY EMF FOR PRINTING]  Issue- is whether the termination of plaintiff's employment based on a positive reading of a drug test constitutes a wrongful discharge because the drug test was not performed consistently with a state statute.  Conclusion- that, on the facts of this case, it does not.  Need more than just mistaken assurance a company can legally drug test(no intention was met here).  **Coman:** Public policy of good faith exception used.  Issue- determine whether we should adopt a public policy exception to the employee-at-will doctrine.  [DELETED BY EMF FOR PRINTING] | **Smart Tek IPO:**  Issues- Whether whistles blower statute applies.  -Worry Bosworth reaction (retaliation) to Kingsley’s claim may lead Kingsley to quit and create liability risk.  Facts- Prestige Capital Management (PCM) is a finical advisory firm specialized in initial public offerings (IPOs).  55 sales professionals (SP) who can perform sales/trades/ other financial services. 550 employees.  Junior SP= Taylor Kingsley  Manager= Brett Bosworth  VP of PCM = Adrain Montgonery  Claim- Kingsley alleged retaliation by Bowsworth  -Montgonery is confident Bosworth did nothing illegal.  The alleged retaliation was Bosworth’s reaction to Kingsley criticizing Bosworth’s handling of an IPO as being deceptive and unethical. |
| Exceptions | In violation of public policy: "designed to vindicate the rights of employees fired for reasons offensive to the public policy of this State." Amos, 331 N.C. at 356, 416 S.E.2d at 171. This language contemplates a degree of intent or willfulness on the part of the employer.  Sides and Coman used the public policy exception. Garner did not fit the public policy exception for wrongful discharge. | This Court has never held that an employee at will could be discharged in bad faith. To the contrary, in Haskins v. Royster, 70 N.C. 601 (1874), this Court recognized the principle that a master could not discharge his servant in bad faith |  |
| Retaliation | **North Carolina Retaliatory Employment Discrimination Act:**  95-240. Definitions.  (1) "Person" means any individual, partnership, association, corporation, business trust, legal representative, the State, a city, town, county, municipality, local agency, or other entity of government.  (2) "Retaliatory action" means the discharge, suspension, demotion, retaliatory relocation of an employee, or other adverse employment action taken against an employee in the terms, conditions, privileges, and benefits of employment.  § 95-241. Discrimination prohibited.  (a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following:  (1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:  [DELETED BY EMF FOR PRINTING]  **Pierce:**  [DELETED BY EMF FOR PRINTING]  "In order to state a claim under REDA, a plaintiff must show (1) that he exercised his rights as listed under N.C. Gen.Stat. § 95-241(a), (2) that he suffered an adverse employment action, and (3) that the alleged retaliatory action was taken because the employee exercised his rights under N.C. Gen.Stat. § 95-241(a)."  [DELETED BY EMF FOR PRINTING]  "If plaintiff presents a prima facie case of retaliatory discrimination, then the burden shifts to the defendant to show that he `would have taken the same unfavorable action in the absence of the protected activity of the employee.'" "Although evidence of retaliation in a case such as this one may often be completely circumstantial, the causal nexus between protected activity and retaliatory discharge must be something more than speculation."  Standard: Dismissal under Rule 12(b)(6) is proper when one of the following three conditions is satisfied: "(1) the complaint on its face reveals that no law supports the plaintiff's claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff's claim." | **Pierce:** No retaliation or wrongful discharge claim  Claims (not all)- In terminating Plaintiff's employment, Defendants violated the Retaliatory Employment Discrimination Act; Plaintiff was wrongfully discharged in violation of public policy and N.C. Gen.Stat. § 95-126 et seq.,  Issue- whether the trial court erred by dismissing Plaintiff's complaint pursuant to Defendants' Rule 12(b)(6) motion.  Conclusion- Affirm trial court.  [DELETED BY EMF FOR PRINTING]  Facts- [DELETED BY EMF FOR PRINTING]  Employees were told new regulations, 13 N.C. Admin. Code 7F.0901 et seq., would affect crane operators and riggers, requiring them to be certified. Plaintiff told employers of a way to certify employees. Defendants declined. Plaintiff continued to raise the issue of certification on a weekly basis, but Plaintiff's proposal and concerns were not addressed.  Overtime Plaintiff was told to take a twenty-eight-day vacation break. Plaintiff was told he would get same pay as before but his pay dropped and he was moved to the night shift. Until ultimately, he was terminated. The basis of his termination was "falsification of a timecard[.]" Plaintiff "feared that Defendants' explanations for his demotion in pay were a pretext in order to remove him from a supervisor position." Plaintiff was told that since he was no longer a supervisor, "the issue of the certification was not his to address,”  August 2009, Plaintiff called Defendant Duke Energy's "ethics hotline" and reported the alleged "retaliatory treatment" he had received. Then workplace conditions became increasingly adverse. Plaintiff left the plant to go to the hospital and called Mr. Leroy Price ("Price") to explain his absence. Price advised Defendant to "see to his wife, and ... the time card issues would be resolved the following week." |  |
| Securities Law | Federal securities law prohibits employees from retaliating against employees for reporting (either internally to supervisors or externally to the SEC) information about securities law violations. Disregarding potential liability for whistleblower retaliation under federal law itself. |  |  |
| At Will | With the industrial revolution and the development of freedom of contract, our courts moved towards the at-will doctrine.  Ordinarily, an employee without a definite term of employment is an employee at will and may be discharged without reason. |  |  |

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|  | Examples | Elements Satisfied | Elements Not Satisfied |
| Wrongful Discharge | **Sides:** Facts-plaintiff was a nurse who alleged that she was discharged in retaliation for her refusal to commit perjury in a medical malpractice case against her employer.  Conclusion- compelling public interest at stake. [DELETED BY EMF FOR PRINTING]  **Coman:** Facts**-** plaintiff, a long-distance truck driver, alleged that his employer required him to drive in excess of the hours allowed by federal Department of Transportation regulations and ordered him to falsify his logs. The plaintiff refused to do so, and his pay was reduced then constructive discharge.  Conclusion- Made claim for wrongful discharge. The defendant's conduct violated not only the federal regulations, but also the public policy of North Carolina. [DELETED BY EMF FOR PRINTING] | This is NC just like the other cases.  An employer wrongfully discharges an at-will employee if the termination is done for "an unlawful reason or purpose that contravenes public policy."  North Carolina Retaliatory Employment Discrimination Act: 95-240. Definitions of Person was met by Kingsley, Bowsworth and Montgonery. | Guessed the jurisdiction bc fact pattern didn’t give it.  There was no firing. No termination. Even if we assume Kingsley quits and what are the steps from there, it still is not a termination by the employer.  If there was a termination of Kingsley, he wasn’t asked to lie/falsify gov regulations, or commit perjury, for the company on behalf of Bowsworth’s handling incident (like in Sides or Coman).  -“no rights violated that were offensive to public policy of that state.” |
| Exceptions |  |  | No issue of needing an exception, public policy exception, to meet a wrongful discharge claim.  Similar to Gardner in that nothing intentional or willful occurred to satisfy wrongful discharge. |
| Retaliation |  | 95-241. Discrimination prohibited(An employee did in good faith, File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, etc, when Kingsley made an internal complaint to Montgomery.  He exercised his rights as listed under N.C. Gen.Stat. § 95-241(a), | The actual retaliation itself was not presented in the facts. There didn’t seem to be any adverse employment actions on either Bowsworth or Kingsley.  The retaliation by Bowsworth didn’t come because Kingsley was going to report. It came from being criticized on work deemed unethical and deceptive. There are no facts given either way to state they were deceptive or unethical or that Bowsworth eve knew Kingsley would complain. (Peirce)  Whether Kingsley’s criticism, which ignited the retaliation, was in good faith is assumed because not enough facts given.  He did not suffer an adverse employment action, and the alleged retaliatory action was not taken because the employee exercised his rights under N.C. Gen.Stat. § 95-241(a)." Seems to stem from personal aggrievance of being criticized with lack of facts. |
| Securities Law | Federal regulations had been adopted in the state administrative code |  |  |
| At Will |  |  |  |

Overall the lack of facts on the specific retaliation reasoning and there being no adverse employment action does not give rise to the claim for Wrongful Discharge. There is no public policy issue presented in the facts. A stretch for the alleged deceptive and unethical IPO handlings is not enough to prove willful or intentional abuse of public policy concerns. So no tort claim for wrongful discharge will occur based on these facts; nor is there a claim from the North Carolina Retaliatory Employment Discrimination Act.