Filed 2/27/12 Hoppe v. Compton Unified School Dist. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

RONALD HOPPE, Plaintiff and Respondent, v. COMPTON UNIFIED SCHOOL DISTRICT, Defendant and Appellant.	B231282 (Los Angeles County Super. Ct. No. BS130051)

APPEAL from an order of the Superior Court of Los Angeles County. Rolf M. Treu, Judge. Affirmed.

Littler Mendelson, Barrett K. Green, Brady J. Mitchell, Courtney S. Hobson and Michelle Holmes, for Appellant.

Schwartz, Steinsapir, Dohrmann & Sommers, Henry M. Willis and Amy M. Cu, for Respondent.

The Compton Unified School District appeals from the trial court's order quashing its subpoena of district schoolteacher Ronald Hoppe's employee records from another school district where Hoppe once worked. The trial court quashed the subpoena because it was overbroad in relation to the district's administrative proceeding to terminate Hoppe for improper sexual conduct with students. We agree and affirm the order.

FACTS AND PROCEDURAL HISTORY

This appeal arises from the Compton Unified School District's attempt to fire teacher Ronald Hoppe based on allegations that he sexually molested several schoolchildren. Hoppe was first tried on criminal charges of two counts of lewd conduct on minors under 14 (Pen. Code, § 288(a)) and one count of annoying or molesting a minor (Pen. Code, § 647.6, subd. (a)(1)), but the jury was unable to reach a verdict and a mistrial was declared in June 2010.[1] Hoppe had been placed on compulsory leave during that period, but once the mistrial was declared, and before the criminal charges were refiled, the district decided to fire Hoppe under the administrative procedures provided by Education Code section 44932, et seq.[2]

In December 2010, the district issued a subpoena to the Fontana Unified School District, where Hoppe used to work, seeking a wide variety of documents. These included: his employment application, resume, and notes from his job interview; anything related to the job offer that was made to Hoppe, along with anything Hoppe wrote in reply; documents that reflected his job titles and duties, and compensation; benefits for which he is eligible; reports, performance reviews, evaluations, warnings, disciplinary notices, commendations, charts, data, calendar entries, and/or diary entries that refer to Hoppe; all investigations that refer to Hoppe; the complete contents of his

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[1] The jury was split evenly on two of the counts, and voted 7 to 5 in favor of conviction on the other count.

[2] The district has asked us to take judicial notice of the trial court docket and felony complaint, which show that the criminal case was later refiled and is still pending. (*People v Hoppe*, LASC case No. TA116984.) We hereby grant that request.

personnel file; all releases, including waivers of rights or claims, that refer to Hoppe or were signed by him; any documents that reference Hoppe's attendance records, including vacation and sick days, and approved and unapproved absences; any payments to Hoppe for any reason, including salary, compensation, commission, or bonuses; any documents related to reasons for Hoppe's termination or resignation; any civil, administrative, or internal complaints that refer to Hoppe; and any settlement terms, agreements, or memos of understanding that refer to Hoppe.

The termination proceedings against Hoppe were subject to the administrative procedures established by Education Code section 44932, et seq. The parties to such proceedings have the same discovery rights as those allowed in ordinary civil actions pursuant to the Code of Civil Procedure. (Educ. Code, § 44944, subd. (a)(1).) Jurisdiction to hear discovery disputes in such proceedings is vested in the superior court. (Educ. Code, § 44944, subd. (a)(2).) Hoppe therefore brought a verified petition in superior court to quash the subpoena on the ground that it was so overbroad that it unnecessarily violated his privacy rights.

The trial court agreed, and quashed the subpoena. The district appealed, contending that the trial court erred.

DISCUSSION

1. *The Subpoena Was Overbroad*

Even in the face of the serious charges against him, Hoppe has a constitutionally protected privacy right in his employment records. (*Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250 [136 Cal.Rptr.3d 395] (*Marken*).) However, if items in those records are directly relevant to, and essential to the fair resolution of, the district's dismissal, then those privacy rights give way if there is a compelling and countervailing state interest. (*Lantz v. Superior Court* (1994) 28 Cal.App.4th 1839, 1853-1854.)

Evidence of similar past conduct by Hoppe certainly appears probative on the issues of intent, design, or plan in regard to the current allegations of lewd conduct. (Evid. Code, § 1101, subd. (b).) A factor that may also support the district's decision to dismiss Hoppe is whether he is unfit to teach, not just because he might have committed lewd conduct on other students in the past, but because he is also likely to do so again. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230.) Given the egregious nature of the charges brought against Hoppe, we conclude that the district clearly has a right to discover items from the files of his previous employer that bear on this issue.[3] (See *Marken, supra,* 136 Cal.Rptr.3d at pp. 416-417 [disclosure of school district's investigation of allegations that teacher sexually harassed student was warranted under California public records act because public interest in knowing how school district handled such matters outweighed teacher's privacy rights]; *In re The Clergy Cases I* (2010) 188 Cal.App.4th 1224, 1235-1236 [where sex abuse case settlement called for public disclosure of offending priests' employment files showing treatment they received for pedophilia, the priests' privacy rights were outweighed by public's right to know what that treatment was and whether it had been effective].)

However, even when a compelling interest permits discovery of records otherwise protected by the right of privacy, the scope of disclosure must be narrowly circumscribed. (*Britt v. Superior Court of San Diego County* (1978) 20 Cal.3d 844, 855-864 [even plaintiffs could not be compelled to provide information about all their political activities, or their entire medical histories, in action against airport authority for harm allegedly caused by aircraft noise and air pollution]; *Life Technologies Corp. v. Superior Court* (2011) 197 Cal.App.4th 640, 652-653.)

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[3] Hoppe conceded as much below, when he offered to authorize the Fontana School District to produce any records related to allegations of misconduct against him, if the district agreed to seek no other records from the Fontana district or any others.

As Hoppe suggested below, records relating to allegations of misconduct by him, and their resolution, appear to be within the proper scope of a subpoena in this case.[4] However, we agree with the trial court that the district's subpoena was overbroad. For instance, items such as charts, calendars, data entries or diary entries that "refer" to Hoppe, documents that "refer" to his attendance records, including vacation and sick days, or documents that "refer" to any payments made to Hoppe for any reason, appear to have little or no relevance, and the district has offered no explanation why it believes such records are discoverable. We therefore hold that the trial court did not abuse its discretion in quashing the subpoena. (*Life Technologies Corp. v. Superior Court*, *supra*, 197 Cal.App.4th at p. 649 [abuse of discretion standard governs our review].)

To sum up, certainly some of the items sought by the district's subpoena were proper. However, others appear outside the scope of proper discovery in this case, and the district has offered no item-by-item analytical breakdown in support of the numerous documents included within the reach of the subpoena. Nor did the district do so in the trial court. Because the subpoena was overbroad, we need not define for the parties or the trial court those documents that are properly discoverable and those that are not. Instead, we offer our comments concerning the documents that appear to fall into either category solely for the guidance of the parties and the trial court should the district issue another subpoena more closely tailored to fit the issues raised by its dismissal proceeding. We also note that in such cases, an in camera review of the documents by the trial court may be proper before it determines whether disclosure is proper. (*El Dorado Savings & Loan Assn. v. Superior Court* (1987) 190 Cal.App.3d 342, 346.)

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4 The district also contends that its subpoena was proper in order to show that Hoppe lied on his employment application when he said he had never been fired before. Hoppe contends that the issue was not raised as part of the district's dismissal action. Although the district's accusation against Hoppe contains a prefatory list of grounds that includes dishonesty, the specific factual grounds alleged in the accusation relate solely to sexual misconduct. We need not address the issue because many of the documents sought by the district appear to have no bearing on the dishonesty issue either.

2. *Hoppe's Employment Application Did Not Waive His Privacy Rights In the Dismissal Proceeding*

When Hoppe applied for his job with the district in July 2003, he signed an application form that included a statement that the application "authorizes the [district] to conduct a background investigation and authorizes release of information" from various sources, including his previous employers. A "VERIFICATION OF PREVIOUS EMPLOYMENT" form that he submitted around the time of his August 2003 hiring by the district included a statement that he gave permission for the district "to seek any and all information from my previous employers and references." The district contends these releases continued to apply even when it began dismissal proceedings seven years later.[5] We disagree.

First, it appears that the ordinary rules of contract interpretation apply when construing provisions such as these (See *Crab Addison, Inc. v. Superior Court* (2008) 169 Cal.App.4th 958, 972-973 [analyzing contract language of employees' release forms concerning disclosure of their contact information for class action lawsuit]; *Luck v. Southern Pacific Transportation Co.* (1990) 218 Cal.App.3d 1, 25 [applying contract principles to jury's implied finding that employee did not consent to continued random drug testing as part of job application]), but the district has cited no relevant authorities on that issue and has made no effort to analyze the release terms under the principles of contract law. We therefore deem the issue waived. (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700.)

We alternatively hold that the release authorizations do not apply here. Both were made in the context of Hoppe's initial employment application, and the language of the application itself states that the release was made in connection with that application. It is unreasonable to construe that language to give an employer the open-ended right to obtain an employee's background information throughout the term of his employment, sometimes years later.

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5 The trial court did not address this issue in its ruling.

DISPOSITION

The order quashing the subpoena is affirmed. Respondent shall recover his appellate costs.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.