TERRY L. KNARR,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 99-00,127
	:	
SUSQUEHANNA HEALTH SYSTEM,	:	
	:	
Defendant	:	PRELIMINARY OBJECTIONS

OPINION and ORDER

The issue presently before the Court concerns the Preliminary Objections in the Nature of a Demurrer filed by Defendant Susquehanna Health System (hereinafter "Defendant") March 9, 1999.[1]

Plaintiff Terry L. Knarr (hereinafter "Plaintiff") filed his Complaint January 27, 1999. The Complaint, in paragraphs 4 through 9, asserts the operative facts are as follows:

> 4. In September 1997 Plaintiff was employed in the Engineering and Maintenance Department of the Defendant as a Building and Preventative Maintenance Mechanic at Williamsport Hospital. A copy of Plaintiff's job description is attached hereto as Exhibit "A."
>
> 5. On or about September 24, 1997 at approximately 11:50 p.m., Plaintiff received a maintenance call and was told to report to the maternity ward.
>
> 6. Plaintiff immediately gathered his tools and proceeded to the maternity ward.
>
> 7. Upon arriving at the maternity ward, Plaintiff observed two Susquehanna Health System security guards holding an individual face down on the carpet. Although the individual being held on the carpet was struggling, the two security guards appeared to have the situation under control.

[1] Both parties filed briefs; argument was held June 4, 1999.

> 8. Immediately after Plaintiff arrived at the maternity ward, Officers of the Williamsport Bureau of Police arrived at the scene.
>
> 9. On September 26, 1997, Plaintiff's employment was terminated due to his failure to physically engage the individual being held face down on the carpet by Susquehanna Health Systems security guards. A copy of correspondence terminating the Claimant's employment is attached hereto as Exhibit "B."

The termination letter attached as Exhibit "B" to the Complaint states: "We consider it to have been inexcusable and irresponsible for you to have stood by as a disinterested spectator Wednesday night while your fellow employees were being assaulted, endangered, and injured." *See* Exhibit B of the Complaint.

Plaintiff's Complaint contains a single count for Wrongful Discharge, asserting he was fired as a result of "his failure to physically engage in the altercation between the two security guards and the individual." Complaint, paragraph 11. Plaintiff states he would have been subject to criminal charges had he intervened in the altercation. Further, he was a maintenance mechanic, not a trained security officer and was not required to subject himself to the physical risk of harm, which was well beyond his job description. Plaintiff asserts it is a violation of public policy to (1) terminate an employee for failing to engage in conduct which is a violation of the law and (2) terminate an employee for failing to engage in conduct which presents great physical risks and/or harm well beyond that contemplated by the position the employee holds.

Defendant responded with Preliminary Objections, averring Plaintiff does not have a contract of employment and is an at-will employee as a matter of law. Also, Plaintiff's situation does not fall within any of the limited public policy exceptions to a discharge at will.

Therefore, Defendant asserts Plaintiff's Complaint fails to state a claim upon which relief may be granted as a matter of law.

In reviewing preliminary objections in the nature of a demurrer, the averments of the complaint must be taken as true, except to the extent that they constitute conclusions of law. ***Shick v. Shirey***, 716 A.2d 1231, 1233 (Pa. 1998).

> [A] demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief may be granted… If the facts as pleaded state a claim for which relief may be granted under any theory of law then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected.

Ibid., citing ***County of Allegheny v. Commonwealth of Pennsylvania***, 490 A.2d 402, 408 (Pa. 1985).

In the instant case, there is no dispute Plaintiff was an at-will employee. In Pennsylvania, an employer may generally "discharge an employee with or without cause, at pleasure, unless restrained by some contract." ***Henry v. Pittsburgh & Lake Erie Railroad Company***, 139 Pa. 289, 297, 21 A. 157 (1891). "Absent a statutory or contractual provision to the contrary, the law has taken for granted the power of either party to terminate an employment relationship for any or no reason." ***Geary v. U.S. Steel Corporation***, 456 Pa. 171, 319 A.2d 174, 176 (1974). These cases were relied upon in ***Shick***, *supra*, wherein that Court noted, however, that an employer's privilege to dismiss with or without cause is not absolute; it may be qualified by the dictates of public policy. ***Shick*** at 1233.

The question, then, is whether Plaintiff may claim a public policy exception, which entitles him to bring the instant Complaint against Defendant. We conclude he may not.

In ***Shick***, *supra*, the Pennsylvania Supreme Court looked to the case of ***Mamlin v. Genoe***, 17 A.2d 407 (Pa. 1941), which the ***Shick*** Court found instructive as to the respective roles the legislature and the judiciary play in formulating pronouncements of public policy:

> It is only when a given policy is so obviously for or against the public health, safety, morals or welfare that there is a virtual unanimity of opinion in regard to it, that a court may constitute itself the voice of the community in so declaring. There must be a positive, well-defined, universal public sentiment, deeply integrated in the customs and beliefs of the people and in their conviction of what is just and right and in the interests of the public weal.

Shick at 1235-1236, *citing* ***Mamlin***, *supra*, at 409.

In his brief, Plaintiff provides a list of cases where termination of an at-will employee was found to constitute a public policy violation. Plaintiff's Brief pp. 3-4. However, most are factually distinguishable from the instant case. At argument, in response to an inquiry by the Court as to which case or cases best supported his position, Plaintiff's counsel indicated the cases of ***Spriegal v. Kensey Nash Corp***., 28 D.&C. 4th 326 (C. P. Chester County 1995) and ***Perry v. Tioga County***, 649 A.2d 186, 189 (Pa.Cmwlth. 1994), specifically footnote number 8.

In ***Spriegal***, the issue before the Chester County Court of Common Pleas was whether a person who is admittedly an at-will employee may nevertheless pursue an action for wrongful discharge when the employee refused to follow the direction of his employer and perform certain job activities "when those activities *are* illegal." *Id.* at 327 (emphasis added). As the matter was before the court on a summary judgment motion, under the appropriate standard the Court accepted as true the averment of plaintiff that the activities he refused to do (certain animal studies) were in fact violative of state and federal law. Defendant's summary judgment motion was denied.

The ***Perry*** case concerned the wrongful discharge claim of a former county agency at-will employee who claimed (in relevant part) his discharge was against public policy because there is a clear public policy against discharging an employee for reporting wrongdoing. The Commonwealth Court pointed out that the Whistleblower Law was the sole and exclusive remedy by which such a claim can be brought against a governmental employer and in the case before it, the claim was time-barred. The Commonwealth Court continued in footnote number 8 (upon which Plaintiff in the instant case relies):

> There is no general public policy protecting whistleblowers in the private sector. In Pennsylvania, the public policy exception to employment at-will recognizes a cause of action for wrongful discharge if the employee has been retaliated against for conduct actually required by law or refusing to participate in conduct *actually* prohibited by law; *the employee's reasonable belief of illegality is not enough.*

Id. at 189, fn. 8 (citation omitted) (emphasis added).

In the instant case, counsel argues there are many criminal statutes, which indicate the legislature does not desire a private citizen to engage in a physical altercation with others: 18 Pa.C.S. §2701 (simple assault); 18 Pa.C.S. §2702 (aggravated assault); 18 Pa.C.S. §2705 (recklessly endangering another person); 18 Pa.C.S. §2902 (unlawful restraint); 18 Pa.C.S. §2903 (false imprisonment); 18 Pa.C.S. §5503 (disorderly conduct). However, we find it notable that a search of case law has failed to reveal one case wherein a private citizen, who did involve himself or herself in a physical altercation to help police or security guards subdue a person, was subsequently charged with any offense. Nor has Plaintiff produced such a case. We believe it defies common sense to anticipate that, after coming to the aid of a police officer

struggling with an individual, the police officer would in turn arrest the person for providing that aid.

Plaintiff further submits there is a public policy against violence and in favor of people doing what their jobs are, rather than engaging in conduct physically harmful to others, particularly when, as in Plaintiff's situation, the person is unsure of the circumstances. At argument, Plaintiff's counsel concluded there is a specific policy to prevent individuals from "jumping on the pile" when they observe security officers or police attempting to subdue a person. Counsel urged that to sustain Defendant's Preliminary Objections would be to encourage citizens to "jump on the pile," which would be contrary to public policy.

Initially, we must note that Plaintiff not only refrained from "jumping on the pile." The Complaint contains no indication Plaintiff did anything at all. He did not ask if the security guards in fact had the situation under control; he did not ask if they needed assistance. He did not inquire whether anyone had called for the police. The Complaint indicates that "[i]mmediately" after Plaintiff arrived, the police arrived on the scene (Paragraph 8). Yet Plaintiff apparently had time to observe the individual "struggling" as the two security guards held him down on the carpet (Paragraph 7). Plaintiff's counsel argues Plaintiff was "unsure" of what was happening. Accordingly, Plaintiff had time to be "unsure." Did he not then have time to inquire what was going on?

Most significantly, Plaintiff's argument that he has stated a cause of action because his termination was in violation of public policy must fail because the truth of the matter is that Plaintiff's termination did not occur because he refused to physically engage in an altercation, nor because he failed to commit a criminal assault, nor because of his failure to

subject himself to unreasonable risk of personal harm above and beyond the duties of his job. The Complaint states that he was directed to report to the maternity ward. The Complaint states that he gathered his tools to proceed there, implying that he understood the call to be for a regular maintenance job. When he arrived there, the Complaint states that he saw two individuals he recognized as his employer's security guards holding an individual down on the carpet with the individual struggling and the security officers appearing to have the situation in control. The employer's reason for termination stated in the Plaintiff's Complaint was that the employer considered it inexcusable and irresponsible for the Plaintiff to "have stood by as an interested spectator Wednesday night while your fellow employees were being assaulted, endangered and injured." Exhibit "B" to Plaintiff's Complaint.

It is clear that the employer formed the opinion that Plaintiff stood by as a disinterested spectator, essentially doing nothing, when his fellow employees were being endangered. The letter clearly implies that the employer expected Plaintiff to do *something* to assist those security guards. This could have been such as to call out to them to ask if they needed assistance; it could have been to take action to call the police or to call other security guards or employees. It could have been, if reasonable under the circumstances, to physically engage in the situation. The employer was certainly not *requiring* a physical engagement and the employer was certainly not requiring that Plaintiff engage in any criminal behavior. Plaintiff comes to the conclusion that he was expected by his employer to engage in criminal behavior or to subject himself to a great risk of physical harm. This conclusion is not supported by the facts that Plaintiff alleges to exist in his Complaint. The notice of termination did not

say Plaintiff was terminated for failing to engage in the physical altercation. Rather, the letter indicates Plaintiff stood by as a disinterested spectator.

Further, we do not wish to advance the proposition that citizens should *not* come to the aid of police or security personnel when their help is needed. We doubt our decision today will result in an epidemic of "pile-jumpers," self-appointed superheroes rushing to the aid of police officers and security guards everywhere.

Again, as the ***Shick*** Court noted in citing the ***Mamlin*** case, *supra*, the Court may only formulate a pronouncement of public policy when there is a positive, well-defined, universal public sentiment, deeply integrated into the customs and beliefs of the people and in their conviction of what is just and right. The given policy must be so obviously for or against the public health, safety or morals or welfare that there is a virtual unanimity of opinion in regard to it. We cannot say there is a virtual unanimity of opinion that citizens should not come to the aid of police officers or security officers in time of need.

The Court finds there is no existing public policy exception such as that advanced by Plaintiff. We must agree with Defendant that the facts of this case do not rise to a level, which warrants the creation of a new public policy exception to the at-will employment rule. Accordingly, Defendant's Preliminary Objection must be sustained.

ORDER

AND NOW, this 1st day of September 1999, Defendant's Preliminary Objections in the Nature of a Demurrer are sustained. Plaintiff's Complaint is dismissed with prejudice.

BY THE COURT,

William S. Kieser, Judge

cc: Court Administrator
Michael J. Zicolello, Esquire
J. David Smith, Esquire
Judges
Nancy M. Snyder, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)

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