Circuit Court for Prince George's County
Case No. CAL1718728

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2956

September Term, 2018

ERNEST MAXEY

v.

LOCKHEED MARTIN CORPORATION

Kehoe,
Shaw Geter,
Robinson, Jr., Dennis M.
(Specially Assigned),

JJ.

Opinion by Robinson, Jr., J.

Filed: May 21, 2020

This is an employment-related dispute. Appellant, Ernest Maxey, filed a complaint in the Circuit Court for Prince George's County alleging that his former employer, Lockheed Martin Corporation ("Lockheed Martin"), wrongfully discharged him from his employment. The circuit court granted summary judgment in favor of Lockheed Martin. Maxey filed this appeal and raises several arguments, which we have distilled into three questions[1]:

1) Did the circuit court err by granting Lockheed Martin's motion for summary judgment?

2) Did the circuit court abuse its discretion by denying Appellant's request to file an opposition to Lockheed Martin's motion for summary judgment after the deadline to respond to the motion already passed?

3) Did the circuit court abuse its discretion by not admitting into evidence portions of Appellant's deposition testimony from another proceeding?

For the reasons explained below, we find no error or abuse of discretion and affirm the judgment of the circuit court.

FACTUAL BACKGROUND

This case arises out of Maxey's employment with Lockheed Martin. Lockheed Martin is a multi-national defense contractor that employed Maxey to assist the United

[1] Although Maxey also raises several related issues, he presents three main questions for our review:

1) Did Appellant show that there were genuine issues of material fact that precluded summary judgment?
2) Was Appellee entitled to judgment as a matter of law?
3) Did the circuit court abuse its discretion in denying Appellant an opportunity to file his opposition to summary judgment?

States military in war zones in Afghanistan. He worked at Camp Dwyer in Hemland River Valley, Afghanistan. According to Maxey, the details regarding his work are "classified." United States military orders prohibit civilians serving with United States military personnel, like Maxey, from introducing, transferring, possessing or consuming alcohol or marijuana on military bases in Afghanistan. The laws of Afghanistan also prohibit consumption of alcohol and marijuana.

In or around July 2014, Maxey reported to Lockheed Martin and the United States military that some of Lockheed Martin's employees were using alcohol and marijuana on a military site in Afghanistan. The United States military investigated the drug-related activity that Maxey reported. Maxey admitted to consuming alcohol on a military site, but claims that he had stopped in March of 2014. He denied ever using marijuana on any military site. The United States military's investigation resulted in a determination that Maxey had trafficked in and consumed alcohol and marijuana on a military base in violation of United States military orders. At this point on the relevant timeline, the parties' respective versions of events diverge with respect to the circumstances under which Maxey's employment with Lockheed Martin ended.

According to Maxey, Lockheed Martin informed him on August 7, 2014 that it was transferring him from Afghanistan to the United States. Lockheed Martin claims that, on the same date, Maxey verbally resigned from his employment with Lockheed Martin. On August 8, 2014, the United States military issued a debarment letter, which prohibited Maxey from entering any United States military site in Afghanistan. Maxey claims he did

not receive the debarment letter until August 13, 2014. Maxey also claims that, on August 8, 2014, Lockheed Martin left him "stranded" in Dubai, U.A.E. with no means to return to the United States after cancelling his employer-issued credit card, disconnecting his employer-issued cell phone, terminating his employment-related e-mail account, removing him from Lockheed Martin's payroll, and cancelling his employer-provided health insurance. On August 19, 2014, Maxey submitted a written resignation to Lockheed Martin, which Maxey explained as an attempt to preserve his security clearance, although he contends that Lockheed Martin had already discharged him from his employment. What is clear is that Maxey is no longer employed by Lockheed Martin.

DISCUSSION

I. Did The Circuit Court Err By Granting Lockheed Martin's Motion For Summary Judgment?

A. Standard of Review

Motions for summary judgment are governed by Maryland Rule 2-501, which provides that "[a]ny party may file a written motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law." When reviewing "the trial court's grant of a motion for summary judgment, the standard of review is de novo." *Beka Indus., Inc. v. Worcester County Bd. of Educ.*, 419 Md. 194, 227 (2011) (quoting *Dashiell v. Meeks*, 396 Md. 149, 163 (2006)). "[W]e independently review the record to determine whether the parties properly generated a dispute of material fact, and, if not, whether the moving party is entitled to judgment as a matter of law. We review the record in the light

most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party." *Bank of N.Y. Mellon v. Georg*, 456 Md. 616, 651 (2017) (quoting *Chateau Foghorn LP v. Hosford*, 455 Md. 462, 482 (2017)). "So long as the record reveals no genuine dispute of material fact 'necessary to resolve the controversy as a matter of law . . . the entry of summary judgment is proper.'" *Appiah v. Hall*, 416 Md. 533, 547 (2010) (quoting *O'Connor v. Balt. County*, 382 Md. 102, 111 (2004)).

B. Discussion

Maxey's claim against Lockheed Martin is based on Maryland's common law cause of action for wrongful termination.[2] "The common law rule, applicable in Maryland, is that an employment contract of indefinite duration, that is, at will, can be legally terminated at the pleasure of either party at any time." *Yuan v. Johns Hopkins Univ.*, 452 Md. 436, 450 (2017) (quoting *Adler v. Am. Standard Corp.*, 291 Md. 31, 35 (1981)). "The doctrine was born during a laissez-faire period in our country's history, when personal freedom to contract or to engage in a business enterprise was considered to be of primary importance." *Id.* (quoting *Suburban Hosp., Inc. v. Dwiggins*, 324 Md.

[2] The terms wrongful termination, wrongful discharge and abusive discharge are often used interchangeably. Count I is a claim for wrongful termination. Count II is a claim for punitive damages based on the alleged wrongful termination. If summary judgment is entered on Count I, summary judgment must also be entered on Count II because a claim for punitive damages is "part of a prayer for relief" and "not a standalone cause of action." *Impac Mort. Holdings, Inc. v. Timm*, No. 2199, 2020 WL 1550710, at *20 (Md. Ct. Spec. App. April 1, 2020).

294, 303 (1991)). "However, there are limitations to the at-will employment doctrine." *Id.*

The Court of Appeals has recognized the competing interests in at-will employment, including the employer's interest in terminating an employee without reason and an employee's and society's interest in ensuring employees are not terminated in violation of public policies. *Id.* (citing *Adler*, 291 Md. at 42). Under Maryland law, there is a public policy exception to the at-will employment rule for wrongful termination "when the motivation for the discharge contravenes some clear mandate of public policy[.]" *Id*. (quoting *Adler*, 291 Md. at 47). For an at-will employee to establish wrongful termination "the employee must be discharged, the basis for the employee's discharge must violate some clear mandate of public policy, and there must be a nexus between the employee's conduct and the employer's decision to fire the employee." *Id.* at 451 (quoting *Wholey v. Sears Roebuck*, 370 Md. 38, 50–51 (2002)).

Lockheed Martin argues at the outset that Maxey cannot pursue a claim for wrongful termination because his employment was based in Afghanistan. Lockheed Martin quotes a portion of *Adler v. Am. Standard Corp.*, 538 F. Supp. 572 (D. Md. 1982) (the "Federal *Adler* Decision") for the proposition that the cause of action for wrongful termination does not have "extraterritorial effect." The parties' briefs talk past each other on this issue because the parties are relying on prior decisions involving the same parties, but decided by different courts. Lockheed Martin relies on the Federal *Adler* Decision to support its argument that Maryland's common law claim for wrongful termination does

not have "extraterritorial effect." Maxey refers to *Adler v. Am. Standard Corp.*, 291 Md. 31 (1981) (the "Maryland *Adler* Decision") to argue that the decision Lockheed Martin cites does not stand for the stated proposition. The Maryland *Adler* Decision was in response to the federal district court's certification of questions to the Court of Appeals. Regardless of this disconnect, Lockheed Martin's argument is not supported by the Federal *Adler* Decision.

At first glance and viewed in isolation, Lockheed Martin's statement that "[t]he civil law remedy in Maryland for an abusive discharge does not have extraterritorial effect" appears to support its argument that Maryland's common law claim for wrongful termination does not apply to activity in Afghanistan. Placing the partially quoted sentence in proper context demonstrates, however, that the Federal *Adler* Decision does not support Lockheed Martin's argument. This is the full paragraph that includes the partial quotation upon which Lockheed Martin relies:

> Next, there is no merit to defendant's arguments that plaintiff may not rely on federal law as the source of the public policy contravened by plaintiff's discharge. There is no preemption question in a case such as this one. The civil law remedy in Maryland for an abusive discharge does not seek to enforce federal law nor to regulate activities thereunder; it does seek to foster and promote the policy of that law. This does not offend federal sovereignty, nor the Federal Constitution, nor does it have extraterritorial effect. State courts are regularly presented with questions of federal law and federal policy, and state courts are fully capable of deciding questions of this sort.

Adler, 538 F. Supp. at 578. Considering the complete context reflects that the discussion regarding "extraterritorial effect" was included in an explanation that a plaintiff asserting

a claim based on the Maryland common law cause of action for wrongful termination may rely on federal law as the source of the violated public policy because it is not precluded by preemption principles, federal sovereignty or other similar principles. That Maxey was performing his job duties in Afghanistan does not preclude him from pursuing a claim for wrongful termination based on Maryland common law.

To prevail on a claim for wrongful discharge, Maxey must prove (1) that he was discharged, (2) that the basis for the discharge violated some clear mandate of public policy, and (3) that a nexus exists between his allegedly protected conduct and the decision to discharge him. *See Yuan*, 452 Md. at 451. For Lockheed Martin to be entitled to summary judgment, it must demonstrate that it is entitled to judgment as a matter of law based on the undisputed material facts with respect to at least one element of the cause of action of wrongful termination.

There are genuine disputes regarding material facts related to the first element, *i.e.*, whether Maxey was discharged. Considering the parties' respective versions of events, Maxey either voluntarily resigned orally or in writing, or Lockheed Martin, at a minimum, constructively discharged him by debarring him from military sites in Afghanistan, giving him a plane ticket to Dubai without a ticket for a connecting flight to the United States, cancelling his credit card, disconnecting his cell phone, terminating his e-mail account, and cancelling his health insurance. Maryland recognizes a cause of action for constructive discharge, under certain circumstances, when an employee's resignation was involuntary due to coercion. *See Beye v. Bureau of National Affairs*, 59

Md. App. 642, 653 (1984). A resignation will be found to be involuntary only if "the employer has deliberately caused or allowed the employee's working conditions to become so intolerable that a reasonable person in the employee's place would have felt compelled to resign." *Id.* There are genuine disputes regarding material facts that preclude granting summary judgment on the issue of whether Lockheed Martin discharged Maxey.

There are also genuine disputes regarding material facts related to the third element, *i.e.*, whether there was a nexus between Maxey's allegedly protected activity and Lockheed Martin's decision to discharge him. The determination that there are genuine disputes regarding material facts related to whether Lockheed Martin discharged Maxey also precludes summary judgment as to the nexus requirement because, without a discharge, there can be no nexus between an employee's activity and the reasons for the discharge. Even if there were not genuine disputes regarding whether Lockheed Martin discharged Maxey, there would still be genuine disputes regarding whether Lockheed Martin discharged Maxey because he admitted to consuming alcohol in violation of United States military orders or because he reported to Lockheed Martin and military personnel that his co-workers were consuming alcohol and marijuana in violation of United States military orders.

As we see it, there are genuine disputes regarding material facts that preclude the entry of summary judgment. Whether Lockheed Martin is entitled to summary judgment hinges on the public-policy element. The Court of Appeals has held:

> 'The truth is that the theory of public policy embodies a doctrine of vague and variable quality, and, unless deducible in the given circumstances from constitutional or statutory provisions, should be accepted as the basis of a judicial determination, if at all, only with the utmost circumspection. The public policy of one generation may not, under changed conditions, be the public policy of another.'

Adler, 291 Md. at 46 (quoting *Patton v. United States*, 281 U.S. 276 (1930)). Courts may rely on "prior judicial opinions, legislative enactments, or administrative regulations" as the chief sources of public policy and the "declaration of public policy is normally the function of the legislative branch." *Yuan*, 452 Md. at 451 (quoting *Adler*, 291 Md. at 45). The Court of Appeals has recognized that the tort of wrongful discharge is decided on a case-by-case basis. *Adler*, 291 Md. at 45 ("We have always been aware, however, that recognition of an otherwise undeclared public policy as a basis for a judicial decision involves the application of a very nebulous concept to the facts of a given case, and that declaration of public policy is normally the function of the legislative branch.").

Mandates of public policy are "confin[ed] . . . to clear and articulable principles of law," *Porterfield v. Mascari II, Inc.*, 374 Md. 402 (2003) (internal marks and citation omitted), and the source of the mandate must "be a preexisting, unambiguous, and particularized pronouncement" that "make[s] the Maryland public policy on the topic not a matter of conjecture or even interpretation." *King v. Marriott Int'l, Inc.*, 160 Md. App. 689, 702 (2005) (internal marks omitted) (quoting *Adler*, 291 Md. at 45). Maryland courts have cautioned explicitly that not all laws or statements of public policy give rise to wrongful discharge claims. *See Yuan v. Johns Hopkins Univ.*, 227 Md. App. 554, 568

(2016) ("There are many public policies implicated in the employer-employee relationship, but few of them can form the basis for a wrongful discharge tort."). Courts have not found that every state statute or regulation rises to the level of a clear mandate of public policy. Courts must "limit[ ] judicial forays into the wilderness of discerning public policy without clear direction from a legislature or regulatory source." *Szaller v. Am. Nat. Red Cross*, 293 F.3d 148, 151 (4th Cir. 2002) (quoting *Milton v. IIT Research Inst.*, 138 F.3d 519, 523 (4th Cir. 1998)). The Court of Appeals has cautioned that such claims should be allowed sparingly and must be narrowly circumscribed. *See Porterfield*, 374 Md. at 423.

The analysis of this case is best guided by the Court of Appeals' decision in *Yuan,* including the Court's analysis of relevant prior decisions. In *Yuan*, a researcher formerly employed by Johns Hopkins University filed suit against the university alleging wrongful discharge for reporting a violation by another researcher of a federal regulation prohibiting research misconduct. 452 Md. at 446. In its analysis, the Court determined that "[a]n employee fired for retaliation for reporting a violation of a state or federal law is alone insufficient to establish a valid wrongful discharge claim based on public policy." *Id.* at 451–52. The Court of Appeals relied on *Parks v. Alpharma, Inc.*, 421 Md. 59 (2011) and *Makovi v. Sherwin-Williams Co.*, 316 Md. 603 (1989) to support its analysis.

In *Parks*, the Court of Appeals explained the need for a narrow application of the public policy exception for at-will terminations:

> 'If a court were to announce that the FDA's regulations were all sources of Maryland public policy, an employee could immunize himself against adverse employment action simply by reporting an alleged violation of any regulation. And the narrow wrongful discharge exception, carefully carved out by the Maryland courts, would then supplant the general at will employment rule.'

Yuan, 452 Md. at 452 (emphasis omitted) (quoting *Parks*, 421 Md. at 86–87). The Court of Appeals explained that "[a] court must look to the 'accepted purpose behind recognizing the tort in the first place: to provide a remedy for an otherwise unremedied violation of policy.'" *Id.* (quoting *Parks*, 421 Md. at 79).

In its analysis, the Court of Appeals also relied on the principles it had previously established in *Makovi v. Sherwin-Williams Co.*, *supra*. In *Makovi*, the Court of Appeals recognized the purpose of the right to a wrongful discharge cause of action and the importance of understanding that purpose when determining if a violation has occurred. In its discussion of *Makovi*, the *Yuan* Court acknowledged that "the generally accepted reason for recognizing the tort" of wrongful discharge is "vindicating an otherwise civilly unremedied public policy violation" and explained that, where a statute already has its own remedy, "allowing full tort damages to be claimed in the name of vindicating the statutory public policy goals upsets the balance between right and remedy struck by the Legislature in establishing the very policy relied upon." *Yuan*, 452 Md. at 453 (quoting *Makovi*, 316 Md. at 626).

In *Yuan*, the Court of Appeals concluded that a clear public policy was lacking where the plaintiff, a researcher at a university, alleged research misconduct based on

regulations that contemplated the federally-funded institution addressing the issues raised. *Yuan*, 452 Md. at 455. In *Parks*, the Court of Appeals determined that a statute's grant of "broad authority in the Federal Trade Commission to bring enforcement actions . . . undermines its utility as a basis for a wrongful discharge claim, because a specific public policy mandate is not discernable." *Parks*, 421 Md. at 85. Regardless of whether the alleged clear mandate of public policy violated was the United States military orders or Afghan law prohibiting the consumption of alcohol or a general policy of encouraging individuals to report illegal activity, Maxey falls short of establishing the existence of a clear mandate of public policy that Lockheed Martin violated if it discharged him from his employment.

To the extent the alleged clear mandate of public policy implicated is based on United States military orders or Afghan law prohibiting the consumption of alcohol and marijuana, the United States military and Afghan law enforcement authorities are better situated to address those issues. To the extent the alleged public policy mandate is a generalized goal of encouraging individuals to report illegal activity, there is not a sufficiently clear public policy to support a tort claim for wrongful termination of employment, especially when Maxey admitted to being involved in the illegal activity he reported to authorities. The purported clear public policy mandate is not supported by prior judicial decisions, legislative enactments, administrative regulations or any other clear and articulate principles of law. Lockheed Martin is entitled to summary judgment

on the issue of whether there was a violation of any clear public policy mandate. We shall briefly address the remaining two questions presented for review.

II. Did The Circuit Court Abuse Its Discretion By Denying Appellant's Request To File An Opposition To Lockheed Martin's Motion For Summary Judgment After The Deadline To Respond To The Motion Already Passed?

Maxey argues that the circuit court abused its discretion by denying his motion to extend the deadline to file an opposition to Lockheed Martin's motion for summary judgment. According to Lockheed Martin, Maxey did not properly preserve this issue for appellate review because he did not include it in the notice of appeal he filed pursuant to Maryland Rule 8-201. The issue is properly preserved because a notice of appeal does not define the parameters of the issues an appellant may raise on appeal.

> As Judge Arthur explained in his book on finality, the notice of appeal from a final judgment 'need not specify the orders from which the party wishes to appeal; it operates as an appeal of any order that is appealable at the time.' Our general approach, as delineated by the Court of Appeals, is to construe notices of appeal liberally and to deem any limiting language to be surplusage. That is because 'the purpose of a notice or order of appeal is not to designate or limit the issues on appeal[,]' which is instead a 'function of the information report . . . the prehearing conference . . . and the briefs.'

Ruiz v. Kinoshita, 239 Md. App. 395, 421–22 (2018) (citations omitted). This Court has also explained:

> Notices of appeal filed pursuant to Rule 8–202 are not required to specify the points an appellant expects to argue on appeal, and, even if an appellant does set forth in a notice of appeal proposed points the appellant wishes to argue, we treat that language as surplusage and non–limiting. In *Edery v. Edery*, 213 Md. App. 369, 377 n.7 (2013), Judge Deborah

> Eyler observed for this Court: 'A notice of appeal, whether filed in the circuit court or the orphans' court, does not need to specify the orders appealed from, and operates as an appeal of any order that is appealable at that time.' *Accord Green v. Brooks*, 125 Md. App. 349, 363 (1999) ('It is clear that the language in appellant's notice of appeal does not determine what we may review.').

Harding v. State, 235 Md. App. 287, 294–95 (2017).

Maxey's argument does not warrant reversal of the circuit court's order granting summary judgment. Lockheed Martin filed its motion for summary judgment on September 7, 2018. Maxey's response to Lockheed Martin's motion for summary judgment was due on September 25, 2018. On October 3, 2018, Maxey filed a motion to extend the time to file a response to Lockheed Martin's motion for summary judgment. Maxey then filed an opposition to the motion for summary judgment on October 16, 2018. The circuit court denied Maxey's motion to extend the deadline to respond to Lockheed Martin's motion for summary judgment on October 18. 2022. Trial was scheduled to begin October 22, 2018. Although the circuit denied Maxey's motion to extend the deadline to respond to Lockheed Martin's motion for summary judgment, the circuit court permitted Maxey to present arguments raised in his opposition to Lockheed Martin's motion for summary judgment at the hearing regarding the motion, which lasted over three hours.

As a general rule, when a court order or the Maryland Rules "require or allow an act to be done at or within a specified time, the court, on motion of any party and for cause shown, may (1) shorten the period remaining, (2) extend the period if the motion is filed before the expiration of the period originally prescribed or extended by a previous

order, or (3) on motion filed after the expiration of the specified period, permit the act to be done if the failure to act was the result of excusable neglect." Md. Rule 1-204(a). The decision to grant such an extension rests within the circuit court's discretion. *See Maryland Green Party v. State Bd. of Elections*, 165 Md. App. 113, 142 (2005). Courts commonly exercise this power to extend a filing deadline *nunc pro tunc* after the deadline has passed. *Harrison-Solomon v. State*, 442 Md. 254, 268 (2015). Even if the circuit court would have been within the bounds of its discretion to grant Maxey's motion to extend the deadline to respond, it did not abuse its discretion by denying the motion, especially considering its consideration of Maxey's arguments during the hearing on the motion for summary judgment.

III. Did The Circuit Court Abuse Its Discretion By Not Admitting Into Evidence Portions Of Appellant's Deposition Testimony From Another Proceeding?

Maxey argues that the circuit court abused its discretion by not admitting into evidence at the hearing regarding Lockheed Martin's motion for summary judgment deposition testimony that Maxey provided in another proceeding related to an unemployment insurance claim. Lockheed Martin argues that the circuit court properly excluded the prior testimony because Lockheed Martin had different counsel for the proceeding related to Maxey's claim for unemployment insurance benefits, because Maxey failed to specify what false allegations were made against him, and because the context in which Maxey provided the deposition testimony is different than the context for which he offered it in this case. Maxey argues that he offered the deposition testimony

pursuant to Maryland Rule 5-616(c)(2) to rebut Lockheed Martin's contention that Maxey's allegations that other employees of Lockheed Martin falsely accused Maxey of criminal conduct were not credible. This Court has explained:

> The admissibility of evidence is left to the sound discretion of the trial court. We will not disturb a trial court's evidentiary ruling unless the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion. An abuse of discretion occurs when a decision is well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.

Mines v. State, 208 Md. App. 280, 291–92 (2012) (internal quotations and citations omitted). Maxey has not demonstrated that the circuit court abused its discretion by not admitting Maxey's deposition testimony from another proceeding. Regardless, the basis of this Court's decision affirming the circuit court's granting of summary judgment in favor of Lockheed Martin was the lack of any clear public policy mandate violated if Lockheed Martin discharged Maxey. The deposition testimony that Maxey attempted to introduce at the hearing regarding Lockheed Martin's motion for summary judgment was not related to whether there was a violation of any clear public policy mandate. The circuit court did not abuse discretion by not admitting into evidence Maxey's deposition testimony from another proceeding.

CONCLUSION

The circuit court did not err by granting summary judgment in favor of Lockheed Martin. Although there were genuine disputes regarding material facts related to whether Lockheed Martin discharged Maxey and, if it did discharge him, whether the discharge

was related to his allegedly protected conduct, no clear public policy mandate was implicated. The circuit did not abuse its discretion by denying Maxey's motion to extend the deadline to respond to Lockheed Martin's motion for summary judgment after the deadline had already passed. The circuit court also did not abuse its discretion by not admitting Maxey's deposition testimony from another proceeding. We affirm.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. APPELLANT TO PAY COSTS.