IN THE COURT OF APPEALS 09/17/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00403 COA

RACHELL E. HELBERT, BY AND THROUGH HER MOTHER AND NEXT FRIEND, LOIS HELBERT

APPELLANT

v.

BIG B, INC.

APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JERRY OWEN TERRY, SR.

COURT FROM WHICH APPEALED: HARRISON COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT:

JOE SAM OWEN

ROBERT P. MEYERS, JR.

ATTORNEYS FOR APPELLEE:

JAMES O. DUKES

KAREN K. SAWYER

NATURE OF THE CASE: TORTS

TRIAL COURT DISPOSITION: SUMMARY JUDGMENT IN FAVOR OF BIG B, INC.

BEFORE FRAISER, C.J., BARBER, AND SOUTHWICK, JJ.

PER CURIAM:

Rachell Helbert (Helbert), a high school student, was hired as a part-time cashier at the Big B drugstore in Pass Christian, Mississippi. During a sting operation set by the Pass Christian Police Department, Helbert failed to request identification from an undercover minor working for the police and was caught selling beer to a minor. Helbert was arrested and subsequently terminated for failing to follow company policy. She filed suit against Big B, Inc. claiming: 1) wrongful termination; 2) breach of duty to train; and 3) compensatory and punitive damages in the amount of $1,500,000.00 for public embarrassment, humiliation, emotional distress, adversely affected physical health, future medical expenses, and undermined dignity and confidence. The trial court granted summary judgment in favor of Big B, and Helbert appeals presenting the following issues: 1) the trial court incorrectly applied the standard for granting summary judgment; 2) Big B failed to properly train and supervise Helbert; and 3) Big B failed to establish rules regarding the sale of alcoholic beverages by its minor employees.

On appeal, Helbert does not contest the grant of summary judgment on the issue of wrongful termination. Both parties concede that Mississippi is an employee-at-will state, and an employer can terminate an employee for a good reason, a wrong reason, or no reason. *Empiregas, Inc. v. Bain*, 599 So. 2d 971, 974 (Miss. 1992).

Our de novo standard of review requires review of the complete record from the proceedings. *See Downs v. Choo*, 656 So. 2d 84, 85 (Miss. 1995). The evidence garnered in numerous depositions and affidavits shows that Helbert was trained by various methods before she began running the cash register alone. She was given packets of information and booklets containing company policy to read. She knew of the serious ramifications of selling beer to a minor. Experienced cashiers worked alongside her until they felt confident in her abilities to do it herself. Helbert was specifically instructed in writing and by an experienced cashier on the policy of selling beer to customers. Helbert admitted that she knew not to sell beer to any customer under twenty-one (21) years of age. She admitted being told that she was to ask for identification from anyone seeking to purchase beer who looked as if they were under the age of thirty (30). Moreover, Helbert signed a company document that read, "I am aware that if I sell alcoholic beverages to an underage or intoxicated customer that I am personally liable and my action will result in disciplinary action which may include termination and/or prosecution." Helbert admitted that she did not ask for any identification from the minor to whom she sold the beer.

"The burden of demonstrating that no genuine issue of material fact exists is on the moving party." *Seymour v. Brunswick Corp.*, 655 So. 2d 892, 894 (Miss. 1995) (citations omitted). In this case, Big B has that burden. The burden is one of persuasion and production, not proof. *Id.* "A motion for summary judgment lies only when there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. This Court does not try issues on a rule 56 motion, it only determines whether there are issues to be tried." *Id.*

Big B has met their burden and shown that Helbert failed to create a record of evidence of significant and probative value. Helbert did not submit any supportive case law of her claim, but relied on pre-workers' compensation cases that maintained a duty to train inexperienced juveniles on ultra-hazardous machines such as shearers and rip saws. We quote the trial judge, who in his order stated, "[T]his Court is not inclined to create a "cause of action" by an employee against the employer not covered by workers' compensation where the employee negligently carried out known duties."

Summary judgment was proper in this case. There were no issues to be tried. Attached is a copy of the trial judge's order which we affirm.

THE JUDGMENT OF THE HARRISON COUNTY CIRCUIT COURT GRANTING SUMMARY JUDGMENT TO BIG B IS AFFIRMED. COSTS ARE TAXED TO APPELLANT.

FRAISER, C.J., BRIDGES, P.J., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.

THOMAS, P.J., NOT PARTICIPATING.