

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00032 COA**

SANDRA JOINER

APPELLANT

v.

RUSH FOUNDATION HOSPITAL

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	12/20/95
TRIAL JUDGE:	HON. JERRY G. MASON
COURT FROM WHICH APPEALED:	LAUDERDALE COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	E. GREGORY SNOWDEN
ATTORNEYS FOR APPELLEE:	THOMAS JONES W. THOMAS SILER, JR. A. MATT PESNELL
NATURE OF THE CASE:	CIVIL - OTHER
TRIAL COURT DISPOSITION: DISPOSITION:	DENIED REINSTATEMENT TO JOB DISPOSITION: DENIED MOTION FOR REHEARING - 12/16/97
MOTION FOR REHEARING FILED:	9/15/97
CERTIORARI FILED:	
MANDATE ISSUED:	4/15/98

ON MOTION FOR REHEARING

BEFORE McMILLIN, P.J., KING AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

The original opinion is reaffirmed and the issues raised in the motion for rehearing are addressed in an added section and this opinion substituted.

This is an appeal from the Chancery Court of Lauderdale County wherein Sandra Joiner filed suit against Rush Foundation Hospital seeking a preliminary injunction and mandatory permanent injunction seeking reinstatement to her job, back pay, and restoration of benefits, or in the alternative, money damages against Rush. The chancellor denied all relief requested by Joiner. Feeling aggrieved, Sandra Joiner appeals arguing she was involuntarily discharged and her discharge amounted to a breach of her employment contract which arose from Rush's employee manual. Finding no error, we affirm.

STATEMENT OF THE FACTS

Joiner was employed by Rush Hospital as a transcriptionist in the Radiology Department for sixteen years. Joiner's personnel file revealed good performance evaluations and no notation of prior discipline. Joiner's supervisor was Donna Kay Burks, Director of the Radiology Department.

On May 1, 1995, Joiner was involved in a verbal altercation with Dianna Willoughby, a temporary employee on assignment from a temporary agency. Willoughby was also working as a transcriptionist. The two disagreed over the necessity of a form that Willoughby had taken off of Joiner's desk. An argument ensued during which Joiner told Willoughby "F--- you." Willoughby left the room and returned with Burks. Burks contacted Purvis, Assistant Administrator of the Hospital, to inform him of the situation and seek his advice. While Burks was on the telephone, Willoughby and Joiner again started arguing after which Joiner stated either: "you can call me when you want me to come back to work, otherwise, yes, I quit" (Joiner's version) or "when I got her some competent help I could give her a call, otherwise, she quit" (Burks' version). Willoughby testified:

She [Joiner] said I have had it, except she was yelling and crying at this point. She said that I have had it. I'm going home and I'm not coming back till you get rid of this stupid piece of sh[---] and get me some competent help in here or else I quit and then she said something I couldn't quite catch, either said you give me a call or call me or something to that effect, then she slammed the door.

Joiner then walked out, slammed the door, and left the hospital. Burks next called Tim Moore, Rush's Human Resource Director, and Purvis.

Joiner returned to the hospital about 3:00 p.m. and met with Burks. Burks testified that Joiner recognized that she had "messed up" and wanted to instead submit her two weeks notice. According to Burks, Joiner was sent home for three days during which time Burks would talk with the administration and determine what needed to be done. Joiner testified that when she met with Burks that afternoon: "I said, well, if y'all are going to fire me I would prefer to work out a two-week notice so I can get my vacation." Moore testified as the representative of Rush. According to Moore, when Joiner returned to the hospital on the same day as the incident, Joiner wanted to return to work. By all accounts, the significance of notice was important in that an employee who quits without notice would not receive termination benefits, including accrued leave.

Rush's employee manual provides for employee termination for a "major offense" which specifically includes "[w]illful abuse of a patient, visitor, or fellow employee." A "minor offense" would subject an employee to discipline. Three "minor offenses" may also subject an employee to termination. A

specific "minor offense" is "[d]iscourteous treatment of the public, physicians, or fellow employees." Neither offenses are further defined within the manual.

According to Moore, Rush used the three day period to determine how to address the matter. Moore testified that the hospital had to decide whether to accept Joiner's resignation or to proceed with disciplinary action against Joiner. Rush determined that Joiner's acts amounted to "willful abuse," a "major offense," because she exceeded discourteous treatment of a fellow employee. Rush, however, decided that Joiner's exit statement to Burks equaled her resignation. It is clear from the testimony of both Moore and Purvis that it is Rush's position that the hospital did not fire or otherwise discharge Joiner, but that Rush determined it would be best to accept Joiner's resignation. When Joiner returned to work on Friday, May 5th (after the three day period), Burks informed Joiner that the hospital was accepting her resignation.

On Friday, May 5th, Joiner met Strickland, the hospital administrator, and discussed the possibility of obtaining additional outside work (Joiner already had some outside transcription work). Joiner also discussed her concern for maintaining her benefits. Strickland arranged for Joiner to meet with Moore and Purvis on Monday.

On Monday, May 8th, Joiner met with Moore and Purvis. According to Joiner, she requested to have her job back. Again Joiner was informed that the hospital was accepting her resignation. She also discussed outside work and her maintaining her benefits.

Joiner next returned to Strickland who arranged for her to meet with Moore and Dan Harrison, the director of Rush's satellite clinic. Joiner testified that at this meeting on May 16th, Moore and Harrison informed her that there was outside work, but that she would not be offered benefits with the outside work. Joiner's concern was that she get enough work to make a living.

Finally, Joiner testified that she spoke with Moore by telephone on Friday, May 19th and again the following Tuesday. During the second of these conversations, Joiner told Moore that she would bring him a letter of resignation that day. Joiner never tendered such a letter.

ANALYSIS

Mississippi is an employment at will state which "means either the employer or the employee may have a good reason, a wrong reason, or no reason for terminating the employment contract." *Bobbitt v. The Orchard. Ltd*, 603 So. 2d 356, 360-61 (Miss. 1992). However, in *Bobbitt*, the Mississippi Supreme Court held that where there is an employee handbook, the employer must follow the handbook in employee matters. Joiner's primary assertion is that the chancellor misread and misunderstood the requirements of employers imposed under *Bobbitt* and thereby failed to apply the correct legal standard. Rush responds by arguing that Joiner attempts to couch her arguments as error of law, when she is actually attacking the chancellor's factual determinations. Rush argues that Joiner was an employee at will, and the chancellor correctly applied *Bobbitt*. Neither party is correct. The *Bobbitt* court held:

[W]hen an employer publishes and disseminates to its employees a manual setting forth the proceedings which will be followed in event of an employee's infraction of rules, and there is nothing

in the employment contract to the contrary, then the employer will be required to follow its own manual in disciplining or discharging employees for infractions or misconduct specifically covered by the manual.

Bobbitt*, 603 So. 2d at 357.** The court also recognized its prior holding "that a personnel manual 'can create contractual obligations, even in the absence of a written agreement.'" ***Id.* at 361** (quoting *Perry v. Sears, Roebuck & Co.*, 508 So. 2d 1086, 1088 (Miss. 1987)). The *Bobbitt* court held that the manual did not give tenure, nor create a right to employment for a definite period of time, but that the employer had an obligation to follow the provisions of the manual. ***Bobbitt*, 603 So. 2d at 361.** The court summed it up in stating, "We hold the employer to its word." ***Id. Thus, the publication of the employee manual took Joiner out of the employee at will status, as Rush was obligated to follow the policies and procedures outlined in the manual.

Clearly, *Bobbitt* applies, and the chancellor was correct in so determining. The question involved in this case, pursuant to *Bobbitt*, is whether Rush followed the procedures set forth in its own employee handbook in the discontinuation of the employment relationship. To evaluate this, we must look to whether the chancellor correctly applied the law and whether the record supports the chancellor's findings. Our standard of review is quite clear: "On appeal, this Court will overturn the chancery court only when its findings were manifestly wrong and there is no substantial evidence to support those findings." ***Hassett v. Hassett*, 690 So. 2d 1140, 1146 (Miss. 1997)** (citations omitted). We now turn to the chancellor's opinion which includes the following findings:

This Court finds that Rush Hospital considered all of the circumstances that developed on May 1, 1995, and that they considered the past record of the plaintiff as a competent employee and decided that she should be discharged because she willfully abused a fellow employee -- Dianna Willoughby. Rush decided to provide the plaintiff with the option to resign so that she would receive those benefits due to her through her resignation and so that she would not lose the benefits because of a major offense discharge.

After considering the applicable principles of law and the evidence, this Court finds that Rush Foundation Hospital followed its published policy and practice in considering the conduct of the plaintiff on May 1, 1995, and in accepting plaintiff's offer to resign her position with Rush Foundation Hospital. This Court further finds that Rush Foundation Hospital followed its published policy and practice in considering the conduct of the plaintiff on May 1, 1995, and in deciding that the plaintiff had committed the major offense of willful abuse of a fellow employee. Rush Foundation Hospital had Kay Burks report about the conduct of the plaintiff on May 1, 1995, and the plaintiff's statements to Dianna Willoughby. This Court further finds that the actions of Rush Foundation Hospital are not capricious or arbitrary.

We must determine whether the chancellor was correct in his findings.

The chancellor recognized, and we agree, that this case does not fit into neat categories as the parties

contend. Upon an initial reading of the chancellor's findings, it would appear that he made inconsistent findings in determining that Rush followed its published policy and practice in accepting Joiner's resignation and also in considering that Joiner had committed the dischargeable offense of willful abuse. It is clear from the testimony at trial that Rush has consistently held the position that Joiner resigned and that she was not discharged. Confusing the issue is the testimony of Moore that Rush had also determined that Joiner had committed the dischargeable offense of willful abuse. Joiner, of course, maintains that she was wrongfully discharged.

Both parties agree that when Joiner returned to work after the three day period, Burks informed her that she was accepting her resignation. Over the next few days, Joiner met with various hospital administrators including Strickland, Moore, and Purvis. A careful review of Joiner's testimony regarding these meetings reveals that while she was willing to return to her job, the focus of the various meetings was to help her obtain additional outside work and to also determine if and how Joiner could keep her benefits. The hospital continued to maintain its position that it was accepting Joiner's resignation.

Seemingly, Joiner's actions on the morning of May 1st were complicated by the fact that she returned to work later that afternoon, for had she not returned to work she would have been dismissed for failure to report to work, and she would have foregone her termination benefits. In fact, Moore admitted as much in his testimony. Moore testified that Joiner's return that afternoon required the hospital to determine whether to accept Joiner's resignation or to proceed with disciplinary action against Joiner. It was Rush's position that Joiner resigned. This position was asserted repeatedly by Burks, Purvis, and most importantly, Moore, who was Rush's representative at trial. Rush judged that Joiner's exit statement and subsequent action of leaving the hospital amounted to an oral resignation. However, complicating Rush's position was Moore's testimony that Rush had also determined (at some point during the three day period of suspension) that Joiner was guilty of "willful abuse," a major infraction which subjects her to discharge. Regardless, Moore clearly testified that Rush decided not to pursue disciplinary action against Joiner and to instead accept her resignation.

The chancellor, however, insightfully noted Joiner's testimony that when she returned to work on the afternoon of the incident: "I said, well, if y'all are going to fire me I would prefer to work out a two-week notice so I can get my vacation." Joiner's offer of resignation in lieu of being fired is corroborated by Burks who testified that Joiner wanted to submit her notice and was concerned about keeping her termination benefits.

Joiner's statement to hospital officials that she would prefer to resign sheds a different light on the entire situation in that Rush was not presented with a situation in which it had to proceed with discipline and/or discharge of Joiner. Instead, Rush considered and decided in lieu of firing her to accept Joiner's offer to resign. While Moore testified that Joiner's oral statement upon her exit on the morning of the incident constituted her resignation, the record reveals that upon her return that same afternoon Joiner sought to protect herself from discharge by offering to resign so that she could keep her termination benefits. If Joiner had wanted to take her chances with the grievance procedure instead of offering to resign (the sure course to protect her termination benefits), the outcome might have been different. However, the result could have been the worse case scenario that her dismissal was upheld and her benefits lost.

The chancellor was given the difficult task of sorting through the evidence of this complicated case. He found that Rush followed its policies and procedures in determining that she had committed the dischargeable offense of willful abuse. Then, in line with her request, Rush granted Joiner's request to resign if firing was inevitable. We cannot say that the chancellor committed manifest error in denying Joiner her requests for relief as the record substantiates his findings. Accordingly, we affirm.

ON MOTION FOR REHEARING

While Joiner's motion for rehearing is both passionate and persuasive, upon further review and analysis of the record in this case, we still find our decision to be correct. Joiner argues that this Court has not applied *Bobbitt* despite our contention that *Bobbitt* clearly applies. This is just not so. Yes, *Bobbitt* applies in that if an employer has an employee's manual then that employer is bound by the terms set forth in that manual. ***Bobbitt*, 603 So. 2d at 357.** Here, there is no question that Rush had an employee's manual containing personnel policies and practices, and that Rush was bound by the terms therein. Within Rush's manual of personnel policies and practices is a section entitled RULES OF CONDUCT which states in pertinent part as follows:

Although the hospital may impose a lesser penalty, a violation of any one of the following rules may be just cause for immediate discharge. The hospital and clinic reserve the right to suspend any employee charged with a major offense of misconduct. This suspension is without pay and may not exceed three working days. During this time an investigation will be performed and a decision as to the appropriate disciplinary [sic] action will be made. The employee will be informed of that decision upon completion of their suspension. The major offenses listed are:

...

9. Willful abuse of a patient, visitor, or fellow employee.

In the present case, Joiner was charged with the major offense of willful abuse of a fellow employee. In accordance with its personnel policies, Rush suspended Joiner for three days and at the end of that three days informed her of Rush's decision to terminate her employment. In response to this decision, Joiner had the option of appealing this decision in accordance with Rush's grievance procedures which are also contained in Rush's manual of personnel policies and practices. The introductory paragraph under the section entitled GRIEVANCE PROCEDURE is as follows:

From time to time, misunderstandings or problems arise regarding the administration of personnel policies. Rush Hospital is committed to the quick resolution of these problems before they are expanded out of proportion. Any time *you* feel that *you* have such a problem, *you* may discuss it with any one concerned with the management of the hospital, including your supervisor, your department head, assistant administrator, or the administrator. Your supervisor will be happy to set up an appointment with any of these individuals at *your request*. (emphasis added).

The section goes on to describe a hierarchy of steps beginning with the immediate supervisor and

continuing to the department head, the Human Resources Director, the Personnel Advisory Committee, and finally ending with the administrator. The grievance procedure is available to all employees who are unhappy with a rule, policy, or decision of the hospital. However, the grievance procedure is not self-executing when there is a dispute. It is clear to this Court that the grievance procedure only comes into play at the request of the employee involved in the dispute. This is where Joiner's argument fails. Instead of accepting the hospital's decision to terminate her and then invoking the grievance procedure to which she was entitled, Joiner offered to resign if Rush's decision was to fire her. Rush accepted Joiner's offer and thus did not have to follow through with its decision to terminate Joiner. While Joiner's decision, at that particular moment, to resign instead of losing her benefits because of a termination is understandable, by so doing, Joiner gave up any opportunity to contest the hospital's decision. Perhaps Joiner would have come out better if she had requested a review of the hospital's decision to terminate her by way of the grievance procedure provided in Rush's manual and then, if the decision were still unfavorable, offered to resign. Unfortunately for Joiner, hindsight is always 20-20 and this Court is without any means to rectify Joiner's situation because Rush did, in fact, follow its personnel policies as set out in its manual.

For the reasons stated above, the motion for rehearing is denied.

THE JUDGMENT OF THE CHANCERY COURT OF LAUDERDALE COUNTY IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO APPELLANT.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, AND SOUTHWICK, JJ., CONCUR.