

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

ALTON F. DIXON,

Plaintiff-Appellant,

Vs.

Shelby Equity No. 106551-1
C.A. No. 02A01-9702-CH-00049

NIKE, INC.,

Defendant-Appellee.

FROM THE SHELBY COUNTY CHANCERY COURT
THE HONORABLE NEAL SMALL, CHANCELLOR

Alton F. Dixon, Pro Se

Herbert E. Gerson, Michelle S. Harkavy;
McKnight Hudson Lewis Ford & Harrison of Memphis

AFFIRMED

Opinion filed:

FILED

September 5, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

W. FRANK CRAWFORD,
PRESIDING JUDGE, W.S.

CONCUR:

ALAN E. HIGHERS, JUDGE

HOLLY KIRBY LILLARD, JUDGE

Plaintiff, Alton F. Dixon, appeals the order of the trial court granting summary judgment to defendant, Nike, Inc. Nike is a manufacturer of sporting goods, footwear, and apparel, and Dixon was an at-will employee of Nike. Nike encourages its employees to actively participate in improving their work environment and in implementing ideas for new products on the market

through a program called “I Got It.” The program invites Nike’s employees to submit ideas that “eliminate waste, improve the way we work, increase productivity, prevent accidents, save time, money, or energy.” Employees can also submit ideas for new products or inventions. In a weekly bulletin for employees, Nike stated, “If what you are suggesting is an idea for a new product or invention, to protect you and NIKE, a letter of understanding will be sent for your signature stating, in essence, that NIKE will not use your product idea until a written contract is negotiated and signed.”

According to the program’s guidelines, Nike will quickly respond to an employee’s idea: “Upon receipt of your idea, *I Got It!* will fire off a note of acknowledgment. From there your idea is routed to the appropriate area for analysis. Within four to six weeks, you will receive a status report outlining the initial response and/or feasibility of your suggestion.” Nike can accept or reject any idea submitted and has no obligation to reward its employees for their suggestions. In addition, the pre-printed “I Got It!” idea submission form requires a signature of the employee and states, “I hereby assign to Nike all rights, title and interest in and to my suggestion/idea.”

Dixon submitted numerous ideas to the “I Got It!” program. In December 1993, he suggested an idea for a sneaker with a mileage counter device to track the distance traveled in the shoes. Nike did not immediately respond to Dixon’s idea, so in March 1994, he submitted it a second time. Once again, Nike did not respond with a letter of acknowledgment. In August or September 1994, Dixon attended a meeting where he gave Mike Caster, the Memphis Apparel General Manager for Nike, a copy of the idea for a mileage counter. Finally, on April 24, 1995, Dixon received a form declining his suggestion because it was not a new idea and because Nike already owned a 1986 patent on the idea. Nike did not want to reconsider mileage counters in shoes because it had problems implementing the idea in the past.

On April 26, 1995, Dixon received a written reminder concerning unacceptable attendance that showed thirteen unplanned absences, and on May 31, 1995, Nike terminated Dixon’s employment for poor performance and the long pattern of unexcused absences. On the same day of his termination, Dixon received a letter from Nike, dated May 16, 1995, explaining that Nike already owned a patent on the idea for mileage counters and outlining the problems with such devices. After his termination, Dixon continued to write and call Nike for an explanation of why his idea was rejected.

On October 12, 1995, Nike sent Dixon a final letter trying to put “this matter to rest.” The letter explained that “at the time you submitted your idea, there was a change in personnel of the ‘I Got It!’ program and many submissions more or less ‘fell through the cracks’ and did not receive an acknowledgment. For that, we would like to apologize.” Nike further explained its position about Dixon’s idea: “However, at no time has NIKE attempted to ‘take your idea’ and as Mr. Potter’s letter states, although your idea is a good idea in the abstract, problems have arisen when attempts have been made to make such a device.” Finally, the letter states that the submission of Dixon’s idea was not connected with his termination.

On November 3, 1995, Dixon filed a complaint against Nike alleging that he has experienced retaliation and harassment since the submission of his idea and that Nike intentionally and unlawfully terminated his employment. Dixon further alleges that Nike is liable for fraud and misrepresentation and that Nike exercised bad faith in the series of communications between the parties. Finally, Dixon alleges that Nike is willfully, maliciously, and intentionally attempting to steal his idea. The complaint requests damages for loss of the status of his employment, loss of wages, and loss of employment benefits. Dixon amended the complaint twice and added allegations of outrageous conduct, intentional infliction of emotional distress, acquiring an interest in an invention, and unlawful misappropriation.¹ On December 20, 1995, Nike filed an answer to the original complaint that denied the material allegations, and on May 6, 1996, Nike filed an answer to the amended complaints denying the additional material allegations.

On May 22, 1996, Nike filed a motion for summary judgment, and on June 28, 1996, the trial court granted Nike’s motion. Dixon appeals the trial court’s order granting summary judgment to Nike and presents one issue for review: whether the trial court properly granted summary judgment to Nike on all of his issues.

A trial court should grant a motion for summary judgment only if the movant demonstrates that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Tenn. R. Civ. P. 56.03; *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993); *Dunn v. Hackett*, 833 S.W.2d 78, 80 (Tenn. App. 1992). The party moving for summary judgment bears the burden of demonstrating that no genuine issue of material fact

¹ Dixon filed two separate motions to amend the complaint, but the record does not contain any orders on these motions. However, Nike answered the amendments so we assume the complaint was properly amended.

exists. *Byrd*, 847 S.W.2d at 210. On a motion for summary judgment, the court must consider the motion in the same manner as a motion for directed verdict made at the close of the plaintiff's proof; that is, "the court must take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence." *Id.* at 210-11. In *Byrd*, the Tennessee Supreme Court stated:

Once it is shown by the moving party that there is no genuine issue of material fact, the nonmoving party must then demonstrate, by affidavits or discovery materials, that there is a genuine, material fact dispute to warrant a trial. In this regard, Rule 56.05 provides that the nonmoving party cannot simply rely upon his pleadings but must set forth *specific facts* showing that there is a genuine issue of material fact for trial.

Id. at 211 (citations omitted) (emphasis in original). Where a genuine dispute exists as to any material fact or as to the conclusions to be drawn from those facts, a court must deny a motion for summary judgment. *Id.* (citing *Dunn*, 833 S.W.2d at 80).

Dixon, acting *pro se*, filed a complaint that in essence alleges fraud, wrongful termination and retaliatory discharge, acquiring an interest in an invention under T.C.A. § 47-25-1209 (1996), unlawful misappropriation, intentional infliction of emotional distress, and outrageous conduct. Parties who choose to represent themselves are entitled to fair and equal treatment. *Irvin v. City of Clarksville*, 767 S.W.2d 649, 652 (Tenn. App. 1988). However, they are not excused from complying with applicable substantive and procedural law, and they must follow the same substantive and procedural law as the represented party. *Id.* (citations omitted).

All of Dixon's issues concern his idea for mileage counters that he submitted to the "I Got It!" program. Dixon's argument that his idea is different from Nike's existing patent is central to these issues. Dixon filed two affidavits in opposition to Nike's motion for summary judgment.² In his first affidavit, Dixon admits that "Defendant's Patent No. 4,578,769 does determine the speed, distance traversed, elapsed time, and calories expended by a person while running." However, Dixon argues that Nike's patent is different because it does not mention an "electronic mileage counter" and because the counter is not located in the shoe.

Dixon has presented no proof that Nike's patent is different from his idea. The record contains only Nike's patent, dated March 25, 1986, which shows a radio transmitter in a shoe

² We note that Nike filed a motion to strike Dixon's affidavits from the record and that the trial court granted the motion. However, because Nike's motion came over three months after Dixon filed his notice of appeal, the trial court no longer had jurisdiction to enter the order striking Dixon's affidavits. Therefore, we will consider Dixon's affidavits as they appear in the record.

that sends a signal to a device worn on the runner's wrist. The wrist display shows speed, distance traversed, total distance, and calories burned in the "running mode" and shows the time of day, date and has an alarm and stop watch in the "watch mode." There is no genuine issue of material fact concerning the difference between Dixon's idea and Nike's patent. Even if the patent is different, the letters that Dixon submitted as exhibits to his first affidavit show that the idea for mileage counters in shoes was not new to the footwear industry and that Nike had investigated a similar idea in the past.³

Dixon's complaint alleges fraud and misrepresentation against Nike. Dixon asserts that Nike misled him concerning the status of his idea and that Nike fraudulently procured an interest in his idea. Nike argues that it could not fraudulently procure an interest in an idea that it already owned. In addition, Nike argues that Dixon assigned any interest in his idea to Nike when he signed the pre-printed idea submission form. We agree with Nike that Dixon cannot maintain a claim for fraudulent procurement of his idea because Nike already owned a patent on the idea and had already attempted to implement the idea before Dixon submitted his version.

Dixon also argues that Nike fraudulently concealed the existence of its patent. However, he has presented no proof to substantiate this allegation. Each of the letters from Nike explains the patent and the problems with his idea. As a general rule, summary judgment is not an appropriate procedure for the disposition of a fraud claim; however, it is incumbent upon the party asserting fraud, when confronted by a motion for summary judgment, to produce some competent and material evidence legally sufficient to support such a claim. *Fowler v. Happy Goodman Family*, 575 S.W.2d 496, 499 (Tenn. 1978). Dixon has presented no sworn proof or specific facts that give rise to a cause of action for fraud.

Dixon's complaint also allege that Nike wrongfully terminated his employment in order to get the rights to his idea and in retaliation because he inquired about the status of his idea. In his first affidavit, Dixon admits that he was an at-will employee of Nike. However, he argues that the at-will policy became a part of the conspiracy to terminate his employment, which gave Nike the chance to appropriate his idea. He asserts that Nike caused him "hardship" and that Nike fired him in retaliation for inquiring about the status of his idea and for commenting on the "hardship" he was suffering.

³ The record indicates that Puma, a rival company, has a patent on an idea similar to Dixon's idea for mileage counters directly in the shoe.

With significant exceptions, an employee or an employer may terminate an employment-at-will relationship at any time with or without cause. *Conatser v. Clarksville Coca-Cola*, 920 S.W.2d 646, 647 (Tenn. 1995). To prevail in a relationship discharge case, the plaintiff must prove a clear violation of some well defined established public policy. *Chism v. Mid-South Milling Company, Inc.*, 762 S.W.2d 552, 556 (Tenn. 1988). Dixon has failed to present any proof of the required elements. He cannot rest upon the mere allegations in his pleadings that Nike fired him in retaliation for pursuing his idea. *Byrd*, 847 S.W.2d at 211.

In his third claim, Dixon alleges that Nike acquired an interest in his invention in violation of T.C.A. § 47-25-1209 (1996). After Nike argued in its memorandum in support of summary judgment that the statute did not apply, Dixon stated in his second affidavit, “I sincerely, respectfully apologize unto this Honorable Court with respect to my claim under T.C.A. § 47-25-1209.” It appears that this claim has been withdrawn, and notwithstanding the withdrawal, we agree with Nike that the statute does not apply to the facts of this case.⁴

Dixon next asserts that Nike unlawfully misappropriated his idea. Dixon argues that he has a claim of right to the property involved and that Nike is appropriating his idea for its own use without his authorization. In his brief, Dixon stated that he is trying to prove that he submitted his idea under the “I Got It!” program’s guidelines and that Nike has acquired an interest in his idea. Nike argues that his idea for a mileage counter was not for a new product and that it already owned a patent for such a device. The record establishes that Dixon’s idea was not a new idea and that Nike could not have misappropriated an idea that it already owned.

Finally, Dixon asserts a claim of intentional infliction of emotional distress and outrageous conduct. In Tennessee, there are three essential elements to a cause of action for intentional infliction of emotional distress: 1) the conduct complained of must be intentional or reckless; 2) the conduct must be so outrageous that it is not tolerated by civilized society; and 3) the conduct complained of must result in serious mental injury. *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997). Dixon has not alleged a serious mental injury and has not come forth with any specific facts of outrageous conduct.

In his opposition to the motion for summary judgment, Dixon relied solely upon his own two affidavits and their accompanying exhibits. Dixon’s affidavits were obviously drafted in

⁴ We note that it is common for this Court to see citations to statutes that do not apply, but it is rare that we see an apology for citing them.

response to Nike's memorandum of law in support of summary judgment. The affidavits argue Dixon's case, but do not set forth specific facts that could overcome summary judgment. In order to create disputed issues of material fact, supporting affidavits must be made on personal knowledge and set forth facts that are admissible in evidence. Tenn. R. Civ. P. 56.05; *Price v. Becker*, 812 S.W.2d 597, 598 (Tenn. App. 1991).

Accordingly, the order of the trial court granting summary judgment to Nike is affirmed. Costs of appeal are assessed against the appellant.

**W. FRANK CRAWFORD,
PRESIDING JUDGE, W.S.**

CONCUR:

ALAN E. HIGHERS, JUDGE

HOLLY KIRBY LILLARD, JUDGE