BEFORE THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CRYSTAL A. HATFIELD,

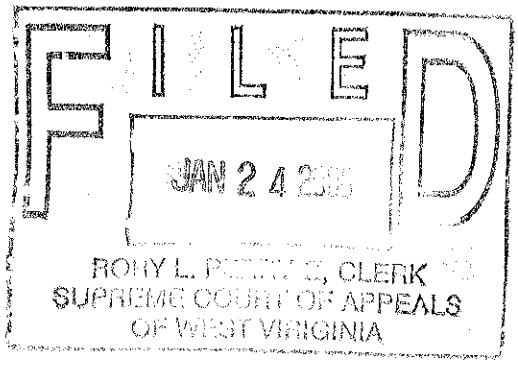
Appellant, Plaintiff below,

v.

No. 33702

HEALTH MANAGEMENT ASSOCIATES OF WEST VIRGINIA, INC. d/b/a WILLIAMSON MEMORIAL HOSPITAL, and JACQUELINE ATKINS, individually, and CASSIE BALL, individually,

Appellees, Defendants below.



REPLY BRIEF OF APPELLANT CRYSTAL A. HATFIELD

Jeffrey V. Mehalic (WV State Bar No. 2519)
Law Offices of Jeffrey V. Mehalic
2011 Quarrier Street
P. O. Box 11133
Charleston, WV 25339-1133
(304) 346-3462

Counsel for Appellant Crystal A. Hatfield

Robinson & McElwee PLLC
400 Fifth Third Center
700 Virginia Street, East
P. O. Box 1791
Charleston, WV 25326
(304) 344-5800

Of counsel for Appellant Crystal A. Hatfield

TABLE OF CONTENTS

PAGE

INDEX OF AUTHORITIES ii

ARGUMENT 1

I. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT AS TO THE PLAINTIFF'S BREACH OF CONTRACT CLAIM BECAUSE THE CIRCUIT COURT ACKNOWLEDGED THAT THE EXISTENCE OF A CONTRACT IS AN ISSUE OF FACT FOR THE JURY 1

II. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT AS TO THE PLAINTIFF'S CLAIM FOR BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING BECAUSE THE CIRCUIT COURT HAD ALREADY ACKNOWLEDGED THAT THE EXISTENCE OF A CONTRACT IS A QUESTION OF FACT FOR THE JURY 3

III. THE CIRCUIT COURT ERRED IN FINDING THAT THE PLAINTIFF HAD NO DETRIMENTAL RELIANCE CLAIM BECAUSE THERE WAS NO EXPRESS PROMISE AS TO THE DURATION OF HER EMPLOYMENT 3

IV. THE CIRCUIT COURT ERRED IN FINDING THAT THE PLAINTIFF COULD NOT MAINTAIN A CLAIM FOR TORTIOUS INTERFERENCE BECAUSE WHETHER MS. ATKINS AND MS. BALL ACTED AS INDIVIDUALS, RATHER THAN AS EMPLOYEES, IS AN ISSUE OF FACT 6

V. THE CIRCUIT COURT ERRED IN FINDING THAT THE PLAINTIFF COULD NOT MAINTAIN A CLAIM FOR THE INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BECAUSE WHETHER THE DEFENDANTS' CONDUCT TOWARD THE PLAINTIFF CONSTITUTED THE INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IS AN ISSUE OF FACT 7

PRAYER FOR RELIEF 9

INDEX OF AUTHORITIES

RULES

W. Va. R. Civ. P. 56 1

CASES

Barnett v. Wolfolk,
140 S.E.2d 466 (W.Va. 1965) 4, 5

Bridges v. Winn-Dixie Atlanta, Inc.,
176 Ga.App. 227, 335 S.E.2d 445 (1985) 8

Conley v. Johnson,
580 S.E.2d 865 (W.Va. 2003) 3

Conrad v. ARA Szabo,
480 S.E.2d 801(W. Va. 1996) 7

Hanlon v. Chambers,
464 S.E.2d 741 (W.Va. 1995) 7

Henkel v. Educational Research Council of America,
45 Ohio St. 2d 249, 344 N.E.2d 118 (1976) 5

Tiernan v. Charleston Area Medical Center, Inc.,
575 S.E.2d 618 (W.Va. 2002) 4, 5, 6

Torbett v. Wheeling Dollar Sav. & Trust Co.,
314 S.E.2d 166 (W.Va. 1983) 6

Travis v. Alcon Laboratories, Inc.,
504 S.E.2d 419 (W.Va. 1998) 7, 8

Williams v. Precision Coil, Inc.,
459 S.E.2d 329 (W.Va. 1995) 2, 7

ARGUMENT

I. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT AS TO THE PLAINTIFF'S BREACH OF CONTRACT CLAIM BECAUSE THE CIRCUIT COURT ACKNOWLEDGED THAT THE EXISTENCE OF A CONTRACT IS AN ISSUE OF FACT FOR THE JURY.

This Court has been abundantly clear in delineating a circuit court's role when considering a motion for summary judgment. The circuit court's function is limited to determining whether any genuine issue of material fact exists that precludes summary judgment for the moving party, and does not extend to resolving or trying the issue.

In this case, the circuit court went beyond its prescribed role of determining whether any genuine issues of material fact existed, and proceeded to resolve the issues. The Plaintiff argued below that the March 29, 2005 letter from WMH was a contract of employment, which the Defendants breached by terminating her after only three days of employment. The Defendants responded that the Plaintiff was an at-will employee whose employment could be terminated at any time, with or without cause.

The circuit court properly found that "[t]his [whether the letter was a contract] is not a determination for the Court to make at this stage, but is, rather, a jury issue." July 28, 2006 Order at 6. "Therefore, the Court does not make a determination whether the letter constitutes an employment contract." *Id.* Upon finding that whether the letter was a contract was an issue for the jury, the circuit court had fulfilled its role under W. Va. R. Civ. P. 56, and should have denied the Defendants' motion for summary judgment at least as to the Plaintiff's claim for breach of contract, if not for all of the Plaintiff's claims.

Instead, the circuit court went on to find that "this [not determining whether the letter constitutes an employment contract] does not preclude disposition of the other issues before the Court." *Id.* The circuit court then made several findings of fact, *id.* at 7, which represented an impermissible expansion of its role in adjudicating a motion for summary judgment.

The circuit court found no genuine issue of material fact as to the Plaintiff's employment status and concluded that she was an at-will employee. The circuit court found that "even in the event the Letter is found to be an employment contract, its terms were not breached by the Hospital[,]" and granted the Defendants' motion for summary judgment. *Id.* at 9.

The Defendants have argued that the Plaintiff "fails to recognize that the circuit court proceeded with its analysis on the assumption that the letter <u>was</u> a contract, to determine whether there was any ambiguity to interpretation of the alleged contract." Brief of Appellees at 12. The Defendants' argument misses the point, however. The circuit court's ruling is erroneous, not because the court made an assumption one way or the other in evaluating the motion for summary judgment, but because the circuit court should have denied the Defendants' motion as soon as it concluded that whether WMH's letter to the Plaintiff was a contract was an issue of fact for the jury's determination.

This Court has held that "the determination of whether particular circumstances fit within the legal definition of a contract under our cases is a question of fact." *Williams v. Precision Coil, Inc.*, 459 S.E.2d 329, 340, footnote 18 (W.Va. 1995). Further, whether a

contract was breached is an issue of fact to be determined by a jury. *Conley v. Johnson*, 580 S.E.2d 865 (W.Va. 2003). In light of these holdings and based on the circuit court's own determination that an issue of fact existed regarding whether the letter was a contract, this Court should reverse the summary judgment in the Defendants' favor.

II. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT AS TO THE PLAINTIFF'S CLAIM FOR BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING BECAUSE THE CIRCUIT COURT HAD ALREADY ACKNOWLEDGED THAT THE EXISTENCE OF A CONTRACT IS A QUESTION OF FACT FOR THE JURY.

The Plaintiff agrees that she cannot maintain a claim for breach of the duty of good faith and fair dealing in the absence of a contract. That is not the issue here, however. As discussed above, the circuit court found that whether WMH's letter to the Plaintiff was a contract was a question of fact for the jury to determine. Accordingly, the circuit court should not have granted summary judgment on the Plaintiff's claim for breach of the duty of good faith and fair dealing, as the claim depends on whether the jury finds that the letter was a contract. If the jury finds that WMH's letter to the Plaintiff was a contract, then the jury may consider whether the Defendants breached their duty of good faith and fair dealing toward the Plaintiff.

III. THE CIRCUIT COURT ERRED IN FINDING THAT THE PLAINTIFF HAD NO DETRIMENTAL RELIANCE CLAIM BECAUSE THERE WAS NO EXPRESS PROMISE AS TO THE DURATION OF HER EMPLOYMENT.

This Court has addressed the elements of a claim for detrimental reliance (or equitable estoppel) in *Tiernan v. Charleston Area Medical Center, Inc.*, 575 S.E2d 618 (W.Va. 2002). In *Tiernan*, the Court quoted Syllabus Point 4 from *Barnett v. Wolfolk*, 140 S.E.2d 466 (W. Va. 1965), which held that:

> Equitable estoppel cannot arise merely because of action taken by one on a misleading statement made by another. In addition thereto, it must appear that the one who made the statement intended or reasonably should have expected that the statement would be acted upon by the one claiming the benefit of estoppel, and that he, without fault himself, did act upon it to his prejudice.

Barnett and *Tiernan* make clear that West Virginia law imposes only two requirements on a party seeking to assert a claim for detrimental reliance: (1) that the one who made the statement intended or reasonably should have expected that the statement would be acted upon by the one claiming detrimental reliance; and (2) that the one claiming detrimental reliance, without fault himself, acted upon the statement to his prejudice.

The Defendants have continued to argue that the circuit court correctly granted summary judgment as to the Plaintiff's detrimental reliance claim because the Defendants' offer of employment to the Plaintiff was not for any specific duration. The Defendants claim that because there was no period of employment specified, then the Plaintiff's "subjective belief ... that her employment ... would be permanent [] was unfounded ...." Brief of Appellees at 15.

In reasonable reliance on WMH's offer of employment, which she accepted, and

through no fault on her own part, the Plaintiff resigned from her employment in Charleston in order to begin her employment with WMH. The Defendants did not offer any testimony or evidence that the Plaintiff did not rely on that offer of employment or was not harmed by her termination. Consequently, the Plaintiff satisfied the elements of a detrimental reliance claim, as set forth by *Barnett* and *Tiernan*.

The Defendants simply cannot accept that any liability should attach to them for extending an offer of employment to the Plaintiff, which she accepted, then terminating her employment after only three days, for a reason unrelated to the Plaintiff or her job performance (and which the Defendants cannot credibly identify or explain). The Defendants cannot defeat the Plaintiff's detrimental reliance claim based on the two elements discussed in *Barnett* and *Tiernan*, so they persist in injecting an additional element into the analysis, which purports to require the Plaintiff to prove that her employment was for a specific duration. That element exists nowhere except in the Defendants' brief. It is not part of this Court's jurisprudence regarding detrimental reliance claims.

The Defendants assert that *Henkel v. Educational Research Council of America*, 45 Ohio St. 2d 249, 344 N.E.2d 118 (1976), is similar to this case, but *Henkel* does not address a claim for detrimental reliance. *Henkel* appears to stand for the proposition that a contract that provides for an annual rate of compensation, but no duration of employment, simply establishes an at-will employment relationship. That issue is not present in the Plaintiff's claim for detrimental reliance.

IV. THE CIRCUIT COURT ERRED IN FINDING THAT THE PLAINTIFF COULD NOT MAINTAIN A CLAIM FOR TORTIOUS INTERFERENCE BECAUSE WHETHER MS. ATKINS AND MS. BALL ACTED AS INDIVIDUALS, RATHER THAN AS EMPLOYEES, IS AN ISSUE OF FACT.

This Court set forth the elements for a claim of tortious interference with a contract or business relationship in *Tiernan v. Charleston Area Medical Center, Inc., supra.* In *Tiernan,* the Court relied upon its prior holding in *Torbett v. Wheeling Dollar Sav. & Trust Co.,* 314 S.E.2d 166 (W.Va. 1983), that in order to establish a *prima facie* case of tortious interference in an employment relationship, a plaintiff must show: (1) existence of a contractual or business relationship or expectancy; (2) an intentional act of interference by a party outside that relationship or expectancy; (3) proof that the interference caused the harm sustained; and (4) damages. *Tiernan,* 506 S.E.2d at 591-92.

The Defendants have focused on the second factor in *Tiernan* in their opposition to the Plaintiff's claim. The issue as to this assignment of error is whether the circuit court erred in finding that WMH cannot be liable for interfering with its own contract or business relationship with the Plaintiff.

The Plaintiff demonstrated that Ms. Atkins and Ms. Ball, whom the Plaintiff sued as individuals, took action against her when they were neither required nor asked to do so. They may have had ostensible authority to manage WMH's daily operations, but that ostensible authority does not mean that Ms. Atkins and Ms. Ball, as individuals and not as corporate officers, did not choose to act against the Plaintiff and terminate her employment.

The Defendants attempt to minimize the significance of *Williams v. Precision Coil, Inc.*, 459 S.E.2d 329 (W.Va. 1995), *Conrad v. ARA Szabo*, 480 S.E.2d 801 (W.Va. 1996), and *Hanlon v. Chambers*, 464 S.E.2d 741 (W.Va. 1995), on the grounds that this case does not involve allegations of discrimination. The Defendants' approach ignores that their decision to terminate the Plaintiff involved questions of "state of mind, intent, and motives," which the Court in *Williams* noted should cause circuit courts "to take special care when considering summary judgment in employment and discrimination cases ...." 459 S.E.2d at 338. That is not to say that "summary judgment is never appropriate" in such a case, *id.*, simply that those questions should cause a circuit court to be "particularly careful in granting summary judgment ...." *Conrad*, 480 S.E.2d at 809.

V. THE CIRCUIT COURT ERRED IN FINDING THAT THE PLAINTIFF COULD NOT MAINTAIN A CLAIM FOR THE INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BECAUSE WHETHER THE DEFENDANTS' CONDUCT TOWARD THE PLAINTIFF CONSTITUTED THE INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IS AN ISSUE OF FACT.

The Plaintiff recognizes that her situation may not present circumstances as extreme as in other cases in which a claim for the intentional infliction of emotional distress has been advanced. Notwithstanding the severity or outrageousness of what happened to the Plaintiff, the relationship between the Plaintiff and the Defendants is proper for the jury's consideration, as the Court noted in *Travis v. Alcon Laboratories, Inc.*, 504 S.E.2d 419 (W.Va. 1998): "[T]he existence of a special relationship in which one person has control over

another, as in the employer-employee relationship, may produce a character of outrageousness that otherwise might not exist." *Id.* at 426 (quoting *Bridges v. Winn-Dixie Atlanta, Inc.*, 176 Ga.App. 227, 230, 335 S.E.2d 445, 448 (1985)). Thus, the Defendants' control over the Plaintiff in her employment added a dimension to the Defendants' conduct that the circuit court failed to recognize.

The Defendants seem to find it incomprehensible that the Plaintiff could have suffered emotional distress as a result of their conduct. In an effort to establish that the Plaintiff sustained no such harm, the Defendants point out that, "[f]ollowing her termination, Appellant continued to live in the same household in which she lived, [*sic*] prior to her employment with Appellee WMH. Appellant has presented no evidence that her relationship with her fiancé , or daughter, or any other individual was affected by the conduct Appellant alleges was intentional or reckless. Furthermore, Appellant was able to apply for other employment, and, in fact, returned to the work force within a few months after her employment with Appellee WMH was terminated." Brief of Appellees at 30.

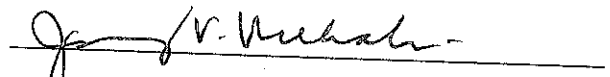
The Defendants' emphasis on the post-termination status of the Plaintiff's life, such as where she lived, her personal relationships, and her subsequent employment, is part of the theme throughout the Defendants' brief that even though the Plaintiff was terminated for no reason after only three days of employment at WMH, after having left a stable, secure position in Charleston, she was not harmed or damaged by her termination. The Defendants do not go so far as to suggest that the Plaintiff benefitted from her termination,

but their absolute unwillingness to acknowledge any harm to the Plaintiff (even if they insist that they had the right to terminate her) makes that implication inescapable.

RELIEF PRAYED FOR

Appellant Crystal A. Hatfield prays that this Honorable Court reverse the July 28, 2006 and February 7, 2007 Orders of the Circuit Court of Mingo County, West Virginia, and remand this action to the Circuit Court of Mingo County for further proceedings.

CRYSTAL A. HATFIELD
By Counsel



Jeffrey V. Mehalic (WV State Bar No. 2519)
Law Offices of Jeffrey V. Mehalic
2011 Quarrier Street
P. O. Box 11133
Charleston, WV 25339-1133
(304) 346-3462
Counsel for Petitioner Crystal A. Hatfield

Robinson & McElwee PLLC
400 Fifth Third Center
700 Virginia Street, East
P. O. Box 1791
Charleston, WV 25326
(304) 344-5800
Of counsel for Petitioner Crystal A. Hatfield

BEFORE THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CRYSTAL A. HATFIELD,

Appellant, Plaintiff below,

v.

No. 33702

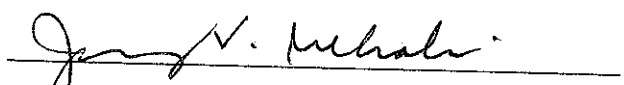
HEALTH MANAGEMENT ASSOCIATES OF WEST VIRGINIA, INC. d/b/a WILLIAMSON MEMORIAL HOSPITAL, and JACQUELINE ATKINS, individually, and CASSIE BALL, individually,

Appellees, Defendants below.

CERTIFICATE OF SERVICE

I, Jeffrey V. Mehalic, hereby certify that on this 24th day of January, 2008, I served the foregoing **REPLY BRIEF OF APPELLANT CRYSTAL A. HATFIELD** upon the following counsel of record by depositing a true copy thereof in the United States mail, postage prepaid, addressed to her at her last known office address as listed below:

Debra A. Nelson, Esquire
Mundy & Nelson
P. O. Box 2986
Huntington, WV 25728
Counsel for Appellees Health Management Associates of West Virginia, Inc. d/b/a Williamson Memorial Hospital, Jacqueline Atkins, individually, and Cassie Ball, individually



Jeffrey V. Mehalic (WV State Bar No. 2519)