

IN THE COURT OF APPEALS OF TENNESSEE  
EASTERN SECTION

**FILED**

September 19, 1997

Cecil Crowson, Jr.  
Appellate Court Clerk

VIDEO CATALOG CHANNEL, INC., ) C/A NO. 03A01-9705-CH-00155  
)  
Plaintiff-Counter defendant/ ) KNOX CHANCERY  
Appellant, )  
v. ) HON. FREDERICK D. McDONALD,  
) CHANCELLOR  
)  
WILLIAM KENT BLACKWELDER, )  
) AFFIRMED  
Defendant-Counter Plaintiff/ ) AND  
Appellee. ) REMANDED

PERRY H. WINDLE, III, and DAVID A. BURKHALTER, II, Knoxville, for Appellee.

ROBERT S. STONE, McCampbell & Young, P.C., Knoxville, for Appellant.

**OPINION**

Franks. J.

The Chancellor entered judgment for Blackwelder on his counter-claim against his former employer, Video Catalog Channel, Inc., (VCC), and the employer has appealed.

This action was brought by VCC against its former employee, Blackwelder. VCC is a company which sells collectable merchandise over television. Its programming is aired nationwide through satellite and non-satellite affiliates. The company is controlled by its three owner-directors, with its headquarters in Knoxville. One of the owner-directors, John Pirkle, serves as President of VCC. Blackwelder

was hired in 1992 as general manager. The parties entered into a written employment agreement on June 30, 1993 for two years. On August 9, 1994, an addendum to the employment agreement gave Blackwelder a salary raise and extended his contract to the end of June, 1997. Blackwelder was terminated by an act of the board on June 19, 1995.

VCC sued Blackwelder after this termination, alleging that he had breached the employment contract, violated a non-competition covenant in the contract, converted certain VCC property and tortiously interfered with VCC contracts with third parties. Blackwelder counterclaimed against VCC, alleging his employment contract had been breached because he was discharged without just cause.

After a trial, the Chancellor found that VCC had discharged Blackwelder without cause. The trial court awarded damages to Blackwelder based upon lost salary through the expiration of his employment contract, offset by his income from other sources and the lease value of an automobile retained by Blackwelder for two months after his discharge. Interest was awarded on the income due during the time he was unemployed. The total judgment is \$126,390.70.

It is well established that a contract for a definite term can only be terminated prior to its expiration for cause, by mutual agreement, or per terms reserved within the contract. *Nelson Trabue, Inc. v. Professional Management Co.*, 589 S.W.2d 661, 663 (Tenn. 1979). The principal issue on this appeal is whether Blackwelder was dismissed without good cause.

Our review of the record reveals that substantial differences exist in the parties' versions of the circumstances surrounding the dismissal. Blackwelder testified that he was under pressure from two members of the board of directors, who were questioning him regarding certain expenditures made by their fellow board member

and President of the company Pirkle. Blackwelder testified that the other two board members wanted to know why Pirkle, who had been withdrawing money from the company's account for the purpose of purchasing products to sell on the air, had not provided substantial documentation or receipts regarding the purchases. Blackwelder testified that he wanted the board to deal with this issue, instead of requiring him to act as go-between for the parties and have both sides upset with him.

Blackwelder also testified that he faxed letters to the President and the board members informing them that he had decided to take an unpaid leave of absence. He cited health concerns and expressed the hope that the board would hold a meeting to "discuss the configuration of operational authority and responsibilities," which he had asked to attend. He stated that he could be reached by telephone. Previous vacations and leave of absences had been dealt with on an informal, take what you need basis.

President Pirkle testified that he became very upset upon learning of the proposed leave of absence, feeling that the company was facing a critical time due to the recent loss of a cable affiliate and an upcoming meeting with a potential new affiliate. He also testified that Blackwelder had been repeatedly and expressly told that he was to report only to the President and not to the board of directors. After receiving the fax, he had a telephone conversation with Blackwelder in which he voiced his objections to the leave of absence. He recalled that he had made those objections by essentially telling Blackwelder that "this was a very poor time to take a vacation." He testified that Blackwelder responded by stating "you know I'm not taking a vacation." Pirkle had concluded from that conversation that Blackwelder would report to work the following day.

Blackwelder concluded from the conversation that Pirkle had acquiesced to his leave of absence. He did not return to work the next day, although he called the

company offices but his calls were not taken. He did not attend the meeting with the potential new affiliate, although he testified that he had planned to attend and was waiting to hear confirmation of the meeting.

The other members of the board testified that Blackwelder had been attempting a “power play,” and had wanted to wrest control of the company from Pirkle and take his job. Within a few days of Blackwelder’s leave of absence, a board of directors meeting was held and the decision was made to terminate Blackwelder. VCC’s reasons for terminating Blackwelder primarily dealt with his alleged insubordination to the President, by taking an unpaid leave of absence at a critical point in time when he was told not to, and by bypassing the President by directly faxing letters to the members of the board requesting a board meeting. He also was accused of erasing a dry magic marker board which held important information regarding VCC cable affiliates.

The Trial Court heard the testimony of the parties and determined that “good cause” had not existed to justify terminating Blackwelder’s employment contract. He determined that the directors had indeed been asking Blackwelder questions about the company finances and had Blackwelder failed to discuss the withdrawals by Pirkle with them, he could have violated his responsibilities as the manager. The Court determined that Blackwelder’s raising the issue of the lack of documentation put Pirkle and Blackwelder in conflict and provided a motive for Pirkle to decide to terminate Blackwelder. The Court found that Blackwelder had not been insubordinate in taking the leave of absence because Pirkle had communicated at least his acquiescence to the leave. It was further found that Blackwelder would not have been fired had he returned to work following the telephone conversation with Pirkle and that Blackwelder would have returned for the affiliate meeting if one of the director-owners had taken his telephone calls. This led the Chancellor to conclude

that Blackwelder's job performance had not created good cause sufficient to terminate the employment contract.

Whether good cause exists to terminate an employment contract is a determination made on a case-by-case basis, and exists where the discharge is "objectively reasonable." 30 C.J.S. Employer-Employee Relationship §60 (1992). Clearly the Chancellor's determination that good cause did not exist is fact intensive and turns on his assessments of witness credibility. Findings of fact are reviewed *de novo* with a presumption of correctness. T.R.A.P. 13(d); *Tennessee Farmers Mut. Ins. Co. v. American Mut. Liab. Ins. Co.*, 840 S.W.2d 933 (Tenn.App. 1992). We also note that the trial court is in the best position to assess the credibility of witnesses, and such determinations are entitled to great weight on appeal. *Bowman v. Bowman*, 836 S.W.2d 563, 566 (Tenn.App. 1991). The evidence does not preponderate against the Chancellor's findings.

An award of prejudgment interest is within in the sound discretion of the trial court and will not be disturbed on appeal unless the record discloses an abuse of discretion. *Otis v. Cambridge Mut.Fire.Ins.Co.*, 850 S.W.2d 439, 446 (Tenn. 1992).

VCC concedes this standard but argues that the Chancellor erred in awarding interest because the amount of the debt was disputed on reasonable grounds, citing *Howard G. Lewis Construction Co., Inc. v. Lee*, 830 S.W.2d 60 (Tenn.App. 1991). In *Lewis Construction*, the court determined that the trial court had abused its discretion in awarding prejudgment interest. The court held that prejudgment interest was not appropriate because there was "substantial controversy" over the amount due, since the plaintiff had sued for \$25,000 and recovered a judgment for \$11,000. *Id.* at 66. VCC compares that situation to this case, where Blackwelder sued for \$250,000 and received approximately \$126,000.

We find this situation more comparable to *Mitchell v. Mitchell*, where

the Court stated that prejudgment interest was allowed where “the amount of the obligation is certain, or can be ascertained by a proper accounting, and the obligation is not disputed on reasonable grounds.” 876 S.W.2d 830, 832 (Tenn.1994). Given the availability of a written contract with clear salary figures with which to measure Blackwelder’s damages, and given the trial court’s decision to limit damages by awarding interest on only a portion of the lost earnings award, we do not find that the trial court abused its discretion in assessing prejudgment interest.

VCC’s brief also appears to raise the issue that prejudgment interest should not have been awarded because it was “never sought.” We note that prejudgment interest need not be pled as special damages and is impliedly included in the prayer for general relief, which was made. *Mitchell* at 832.

For the foregoing reasons, we affirm the judgment of the Trial Court and remand with costs of appeal assessed to the appellant.

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Herschel P. Franks, J.

CONCUR:

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Don T. McMurray, J.

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William H. Inman, Sr.J.