

CIRCUIT COURT OF PEARL RIVER COUNTY

STATE OF MISSISSIPPI

FILED

DOCKET NO. 2006-0110P

AUG 15, 2006

VICKIE F. HARRIS, CIRCUIT CLERK
By [Signature] D.C.

GLORIA ELFER

VERSUS

MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY AND
HIDE-A-WAY LAKE CLUB, INC.

FILED: _____

DEPUTY CLERK

ORIGINAL BRIEF OF APPELLANT, GLORIA ELFER

NOW INTO COURT, comes Appellant, Gloria Elfer who submits the following Assignment of Error and Brief and Desire in the above matter.

STATEMENT OF THE CASE

This case arises out of a dispute between Appellant, Gloria Elfer, and her former employer, Hide-A-Way Lake Club, Inc. Ms. Elfer was employed at Hide-A-Way Lake Club, Inc. since April 15, 2003 and in the capacity as Restaurant Manager since November 1, 2004. Throughout and preceding the month of August 2005, Ms. Elfer was exposed to excessive stress due to lack of employees and harassment in connection with her employment and at the hands of her employer, Hide-A-Way Lake Club, Inc. Ms. Elfer's direct supervisor, Bruce Devillier, was informed of such stress and harassment in an effort by Ms. Elfer to remedy the situation and continue her employment with Hide-A-Way Lake Club, Inc.

On August 26, 2005, Ms. Elfer informed Mr. Bruce Devillier that the continued stress and harassment had become unbearable and that she wished to resign her employment as restaurant

manager for a less stressful position within the Hide-A-Way Lake Club office. Mr. Devillier urged Ms. Elfer to reconsider her resignation, and insisted that she take one week's paid vacation. He suggested that upon her return after the week of vacation, the issue of her resignation would be readdressed and a final decision would be made by both parties with regard to hiring a new restaurant manager. During this vacation time Mr. Devillier and Ms. Elfer agreed that an ad should be placed in the paper with regard to a possible new hire for the restaurant manager so as to be prepared if Ms. Elfer decided that she did want to continue with her decision to resign.

This conversation constituted a *verbal agreement* between Ms. Elfer and Mr. Devillier regarding her continued employment as restaurant manager. Mr. Devillier did *not* accept Ms. Elfer's resignation on August 26, 2005. In fact, when Ms. Elfer left work on August 26, 2005 she was to begin one week's paid vacation and was still employed as restaurant manager and continued her job duties during the immediate time in which she was supposed to be on her paid vacation. This is evidenced by payroll payments made to Ms. Elfer from Hide-A-Way Lake Club between the dates of September 5 and September 18, 2006. (See Exhibit "A"). Such payroll payments clearly indicate that Ms. Elfer had not walked out on her employment, even though she was technically supposed to be on vacation.

The main issue before this court is the question of whether or not Ms. Elfer walked out on her employment with Hide-A-Way Lake Club in 2005, thus disqualifying her for paid unemployment benefits made by the Mississippi Department of Employment Security (hereinafter "MDES"). A determination was made by MDES that Ms. Elfer had "voluntarily left this employment when she walked off the job without notice." This error in determination was made by MDES after interviewing several parties as evidenced in the transcript filed into the

court's record on May 31, 2006. It will be shown that at no time did Mr. Devillier accept Ms. Elfer's resignation and that, in fact, a verbal agreement had been made to keep Ms. Elfer on with Hide-A-Way Lake Club despite her resignation as restaurant manager. It will be shown through transcript testimony that Mr. Devillier did make a verbal agreement with Ms. Elfer indicating that he would place her in another position within the restaurant but that after hiring a new cook/manager, the restaurant budget did not allow for him to keep such verbal agreement with Ms. Elfer.

As evidenced in transcript testimony of Mr. Devillier, he had been informed by the Hide-A-Way Lake Club board members that it was not in the budget to continue Ms. Elfer's employment. However, there is overwhelming evidence contained within the transcript indicating that Ms. Elfer was an exemplary employee, who went over and above the call of duty on many occasions, including throughout the ordeal of Hurricane Katrina. Despite the issue that Hurricane Katrina had struck the Mississippi area during the time in question and had damaged Ms. Elfer's home forcing her to another state to reside, it will be shown that at no time did Ms. Elfer abandon her employment with Hide-A-Way Lake Club and that she, in fact, reported to work on several occasions during the midst of the storm. It was only after the final, long-awaited conversation with Mr. Devillier where she was informed that he could not keep her employed with Hide-A-Way Lake Club due to budget issues. It was at this point that Ms. Elfer finally discontinued any further appearance at Hide-A-Way Lake Club Restaurant.

ISSUES AND QUESTIONS OF LAW

1. Did Ms. Elfer's Actions Constitute "Misconduct" as Defined in the Unemployment Compensation Statute?

ASSIGNMENTS OF ERROR

The ruling made by MDES in this matter would indicate that Ms. Elfer should be disqualified for benefits due to the fact that she left work voluntarily or without good cause. However, it will be shown below that Ms. Elfer did not voluntarily leave her position as Restaurant Manager. In fact, her resignation was never accepted and a verbal agreement was entered into with Mr. Bruce Devillier, her immediate supervisor, to instead take a vacation. MDES erred in its decision to rescind unemployment benefits to Ms. Elfer based upon an apparent disregard for all of the pertinent issues contained within the transcript of the hearing. The MDES decision suggests that because Ms. Elfer resigned, that this was the end of the issue; however, it will be shown below through transcript testimony that Mr. Devillier did not accept her resignation, but entered into a verbal agreement with Ms. Elfer and led her to believe that she would have another position within Hide-A-Way Lake Club.

Should it be accepted that Mr. Devillier, as representative of Hide-A-Way Lake Club, begged Ms. Elfer to continue her employment, begged her not to resign and thereby kept her from focusing her attention on subsequent employment opportunities? This is what happened to Ms. Elfer. She was led to believe that her employment would continue with Hide-A-Way Lake Club despite her resignation of the position of restaurant manager. She was led to believe by Mr. Bruce Devillier that she would have another position within Hide-A-Way Lake Club.

A. The Verbal Agreement

According to transcript testimony taken by MDES of Mr. Bruce Devillier it is apparent that Mr. Devillier made a verbal agreement with Ms. Elfer promising to hold her position as restaurant manager until further decisions had been made regarding her resignation.

* * *

Q. And what transpired on that date?

A. . . . she came to me and wanted to, wanted me to find someone else to replace her. And I stated, I insisted that, you know, I didn't want her to leave. It was due to, you know, stress from customers and employees. She insisted to look for someone; I ran a classified ad in four newspapers. The first ad ran on August 21, 2005, for a replacement manager/chef. She had stated she would stay on and help out and hopefully we would find a different position for her is the agreement we had.

(Transcript, p. 66).

According to above testimony of Mr. Devillier it is apparent that there was an "agreement" between he and Ms. Elfer that she stay on in a "different position." However, it is also apparent that there was a lack of communication between Mr. Devillier and Ms. Elfer with regard to this issue. The residual effects of Hurricane Katrina were present, Ms. Elfer was unable to get to the restaurant and meet with Mr. Devillier immediately, the telephones were not working properly and communication was very limited. All of these issues were beyond the control of either party, however, the verbal agreement still stood and a decision should not have been made with regard to the new hire until both parties were able to meet as per the verbal agreement.

Ms. Elfer was on vacation from August 26 through September 4. On September 4 Ms. Elfer went to Hide-A-Way to speak with Mr. Devillier, wherein she was told by him that the restaurant was his last priority, in effect refusing to discuss any issues with Ms. Elfer regarding employment or anything else. Ms. Elfer was present to talk about employment issues and was turned away by Mr. Devillier on September 4, 2005. In his testimony Mr. Devillier complains

that he was never able to contact Ms. Elfer and had to make a business decision regarding a new hire, but it is clear that Mr. Devillier allowed the September 4 meeting to slip by because it was his last priority. However, upon the following days when Ms. Elfer was not physically capable of reaching Mr. Devillier because of lack of gasoline and downed telephone lines Mr. Devillier decided to make his "business decision" at his convenience despite the verbal agreement made between both parties and despite the fact that Ms. Elfer had put aside any future employment opportunities based on the agreement they both would take part in the ultimate decision.

Ms. Elfer contends that on Tuesday, September 6 she spoke with Mr. Devillier and explained that her phone was not always working and that she was headed back to Louisiana to stay with her daughter because of the deplorable condition of her own home due to the effects of Hurricane Katrina, Mr. Devillier asked Ms. Elfer what her plans were and according to Ms. Elfer's transcript testimony:

* * *

A: . . .I told him at that time, that he could depend on me, I was going to take care of it and that I would be back down there regardless, next week

(Transcript, p. 22)

Ms. Elfer indicated on Tuesday, September 6 that she would be in "next week." Ms. Elfer reported to work on Wednesday, September 14, 2005. It should be noted that the restaurant was never opened on a Monday or a Tuesday and that Ms. Elfer was never required to work on a Monday or a Tuesday. (See attached Exhibit "B"). The fact that Ms. Elfer reported to work on Wednesday was within her normal scope of employment. Had Mr. Devillier expected her to appear on that Monday, he should have specified this fact because Ms. Elfer had never in the full

length of her employment been required to work on a Monday or Tuesday. She would never imagine that Mr. Devillier would expect her to come to work on a date that she had never previously been scheduled in the entire length of her employment with Hide-A-Way Lake Club, not to mention that the restaurant was not in operational condition.

According to transcript testimony of Mr. Devillier, he was aware that Ms. Elfer had full intention of coming in to work on the week of September 12. Mr. Devillier had no reason to believe that Ms. Elfer would go back on her word, as she had always in the past displayed a continued reliability with regard to the restaurant and her employment, by his own admittance.

* * *

Devillier: ...She did say count on me to come in on the 12th and also on that following week. On September 4th, she told me, count on me; she did say that, count on me to be here.

(Transcript p. 81).

B. Continued Employment not Offered

It will also be shown that Ms. Elfer was *not* offered another position within the restaurant although MDES indicated in its final ruling that she was offered another position before she finally left Hide-A-Way Lake Club for the last time in September. Transcript testimony below reveals that Mr. Devillier realized that he could not keep Ms. Elfer on with Hide-A-Way Lake Club in any capacity as he had previously indicated.

* * *

Q. Okay. And so after, so after the restaurant would have opened and you'd have the employees that you needed would she would have still remained under that same capacity and same salary?

A. Yes, she would have until I had to, till I to, it was told that I couldn't do that no more, from, from the current budget. . .

(Transcript, p. 70).

The above testimony reveals that Mr. Devillier was "told" that he could not keep Ms. Elfer on from the current budget. At no point in time was Ms. Elfer offered another position within Hide-A-Way Lake Club as Mr. Devillier indicated. In fact, in their last meeting on September 16, 2005, it is Ms. Elfer contention that she was told that she could not be kept on because Hide-A-Way could not afford to pay her because of the budget situation. At no point in time during this meeting did Mr. Devillier offer to lower Ms. Elfer's pay rate or offer her any other position of employment with Hide-A-Way Lake Club, Inc. Upon completion of this meeting Ms. Elfer left Mr. Devillier's office and did not return. Ms. Elfer was under the impression that she no longer had any recourse to pursue or to think that she would be given any opportunity for future employment with Hide-A-Way Lake Club, Inc. because of Mr. Devillier's statements regarding the budget.

C. Hurricane Katrina

Hurricane Katrina struck during the week of August 26, 2005, while the issues regarding Ms. Elfer's employment situation were ongoing. It is apparent from the transcript testimony of all parties involved that Hurricane Katrina created a crisis not only within their employment but within their personal lives as well. It is also clear that had Hurricane Katrina not knocked out power lines, closed down roads and virtually stopped all telephone communication that the issues involved herein may have been more clear cut. Ms. Elfer would have been able to report to work much sooner and Mr. Devillier would have received phone calls and explanations regarding her

decision with regard to her possible resignation. Mr. Devillier also may not have turned Ms. Elfer away on September 4 but rather discussed her possible resignation. Unfortunately, this was not the case at hand due to the hurricane.

It is obvious that Ms. Elfer's employment record with Hide-A-Way Lake to date had not been one of utter disregard, but quite the opposite. Mr. Devillier testified that he believed there would be no suitable candidates to replace Ms. Elfer and he made this perfectly clear to Ms. Elfer on several occasions, which is ultimately the reason why he begged her to take vacation instead of resign as restaurant manager.

* * *

A: . . . Because we, I wasn't expecting to have an associate because that position was very hard to come by. Sue was trained by, by me during this last year, she, she definitely brought good work practices and she knew how to work hard to manage people and manage numbers, we had to work together and that I was a big investment I, I made in her and was not expecting to have a qualified application, applicant. . . .

(Transcript, p. 73).

This hurricane took an immediate affect on everyone's lives and in effect disrupted Ms. Elfer's ability to communicate as effectively as her employer seemingly required, and not as efficiently as she desired and tried, ultimately resulting in the loss of employment. Ms. Elfer had proven her loyalty to Hide-A-Way Lake Club by rescinding her resignation and accepting vacation time, and even presenting herself before and after the hurricane while she was still technically on vacation. These actions are not indicative of an employee who would "walk off the job." It is clear that the Hurricane caused unforeseeable hurdles for Ms. Elfer and it is for this very reason disaster unemployment assistance was created for individuals whose employment

had been lost or interrupted as a direct result of the Hurricane Katrina disaster. It is apparent that Ms. Elfer's employment was detrimentally affected by the Hurricane due to the fact that she had an agreement with her immediate supervisor to discuss her continued employment and because of the hurricane she was unable to effectively produce herself at a time and date sufficient enough for her employer. Subsequently her employer felt it necessary to make a business decision and hire a new applicant.

SUMMARY OF ARGUMENT

This Court should overturn the ruling of MDES because it erred in its decision to rescind Ms. Elfer's unemployment benefits. Moreover, this is an opportunity for the Court to remedy an injustice, for no individual as hard working and as dedicated as Ms. Elfer should have to be punished for the actions of her employer or for the uncontrollable circumstances of a natural disaster. Ms. Elfer worked for Hide-A-Way Lake Club since April 15, 2003 and she had proven to be an outstanding employee, an employee who took her job very seriously and would never walk out even when under the most extreme pressure, stress, harassment and the imminency of a natural disaster. Ms. Elfer was in the midst of a crisis in her life and in the life of her family, she was aware of the fact that her place of employment had been nearly destroyed and was not operational. Ms. Elfer did her absolute best to remain in contact with her employer under the circumstances.

Hide-A-Way Lake Club, through its representative Bruce Devillier led Ms. Elfer to believe that she would have a position within the club regardless of her resignation as restaurant manager. The facts presented above show that Mr. Devillier wanted to keep her employed because of her continued reliability and excellent work performance. However, it is shown that once the hiring of the stepson of the board member was finalized, it was no longer conceivable to

keep Ms. Elfer employed because of the current budget. A position that had not been given up by Ms. Elfer because she had indicated to Mr. Devillier on September 4, 2006 that he could "count on me to be here." Ms. Elfer's resignation was never accepted and she became more dedicated than ever before after the hurricane damaged the restaurant. Ms. Elfer clearly indicated that she would be there for Hide-A-Way Lake Club during this time of need.

Ms. Elfer would have never walked out on Hide-A-Way and in fact, she never did, she presented herself over and over again and as reflected in transcript testimony, even worked without punching the time clock. This is not the actions of an employee who "walked out on her job." Ms. Elfer continued to show dedication before and after the hurricane and did not leave Hide-A-Way Lake Club until she was told that they could not keep her employed within the current budget.

CONCLUSION

The transcript contains ample evidence to support Ms. Elfer's argument that she did not walk out on her employment and that there was no employee misconduct present.

Ms. Elfer therefore asks this Honorable Court to reverse MDES's ruling and reinstate unemployment benefits previously rescinded in this matter.

Respectfully submitted;

CERTIFICATE OF SERVICE

By:

Gloria Elfer
GLORIA ELFER, in proper person
107 Smith Street
Carriere, MS 39426
Tel: (601) 799-1618

I do hereby certify that I have on this 14th day of August, 2006, served a copy of the foregoing pleading on counsel for all parties to this proceeding, by mailing the same by United States mail, properly addressed, and first class postage prepaid.

Gloria Elfer
