

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

JOHN LAWSON,	:	APPEAL NO. C-080240
	:	TRIAL NO. A-0503349
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
DORAN CHRISTENSEN, M.D.,	:	
FLUOR FERNALD, INC.,	:	
JACOBS ENGINEERING GROUP, INC.,	:	
and	:	
THE CONSORTIUM FOR ENVIRONMENTAL AND OCCUPATIONAL SAFETY AND HEALTH, INC.,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant John Lawson appeals the trial court’s entry of summary judgment in favor of the defendant-appellees, Doran Christensen, M.D., Fluor Fernald, Inc. (“FFI”), and The Consortium for Environmental and Occupational Safety and Health, Inc., on his claims for negligence, intentional infliction of emotional distress (“IIED”), and tortious interference with business relationships. At oral argument,

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Lawson informed this court that he had abandoned his appeal with respect to the trial court's judgment in favor of Jacobs Engineering Group, Inc.

Lawson was employed by Jacobs, a subcontractor for FFI, the prime contractor at the United States Department of Energy's Fernald Environmental Management Project. Christensen was an employee of the Consortium, which was also a subcontractor for FFI. Christensen served as FFI's medical director and as a medical review officer for its substance-abuse-prevention programs.

In October 2003, Lawson submitted to a random drug test as part of the drug-testing program at the Fernald site. Federal regulations required that the temperature of a urine sample provided for the test be between 90 and 100 degrees to ensure that the sample had not been substituted or otherwise tampered with during the test.

Lawson produced a urine sample in a specimen collection cup. A temperature strip on the cup did not change color, which indicated that the temperature of his urine sample was below 90 degrees.

Christensen advised Lawson that, under the rules of FFI, Lawson was not permitted to work at the Fernald site. FFI notified Jacobs that Lawson had been barred from the site due to a violation of FFI policy. Subsequently, Jacobs terminated Lawson's employment.

On appeal, Lawson argues that the trial court erred by granting summary judgment. Summary judgment is appropriate only where the moving party has made an affirmative showing that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.² A summary judgment must not be entered unless, after construing the evidence most strongly in favor of the

² Civ.R. 56(C).

nonmoving party, “reasonable minds can come to but one conclusion and that conclusion is adverse” to the nonmoving party.³

In support of his negligence claims, Lawson argued that Christensen, the Consortium, and FFI had failed to conduct his drug test in compliance with federal law and had failed to ensure the integrity of the testing process. But he offered no evidence to support his assertions.

The uncontroverted evidence was that the temperature strip on Lawson’s specimen cup had indicated that his urine sample was too cold. Lawson’s expert admitted that there had been nothing inappropriate about the drug-testing process at that point, and that he had no evidence to believe that Christensen had interfered with the temperature measurement. The expert also acknowledged that there was no federal requirement that would have prevented FFI from barring Lawson from the Fernald site upon his presentation of a below-90-degree urine sample. In other words, Lawson’s provision of a cold sample, by itself, provided grounds for FFI to deny him site access.

We now turn to the claims for IIED, in which Lawson argued that the defendants-appellees had wrongfully caused him to be terminated from his employment. To avoid summary judgment on his IIED claim, Lawson had to show that the conduct of the defendants-appellees was “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”⁴ Lawson failed to make such a showing in this case, where the evidence indicated that each of the defendants-

³ Id.

⁴ *Yeager v. Local Union 20* (1983), 6 Ohio St.3d 369, 375, 453 N.E.2d 666.

appellees had acted pursuant to their contractual duties in notifying Jacobs of Lawson's expulsion from the Fernald site.

Finally, acts performed within a business relationship are considered subject to a qualified privilege.⁵ So to avoid summary judgment on his tortious interference claims, Lawson had to show that the defendants-appellees had "acted with actual malice, which denotes an unjustified or improper interference with the business relationship."⁶ But Lawson failed to adduce any evidence that the communications between the defendants-appellees and Jacobs had exceeded the scope of the privilege.

Consequently, we overrule the assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., HENDON and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 26, 2008
per order of the Court _____.
Presiding Judge

⁵ *Walter v. ADT Sec. Sys.*, 10th Dist. No. 06AP-115, 2007-Ohio-3324, ¶133.

⁶ *Id.*