



West Virginia E-Filing Notice

CC-24-2016-C-241

Judge: David Janes

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA

Corey Watkins v. Marion County Coal Co.
CC-24-2016-C-241

The following order - case was FILED on 6/7/2017 11:19:12 AM

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CLERK OF THE CIRCUIT
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In the Circuit Court of Marion County, West Virginia

Corey Watkins,)
Plaintiff,)
)
vs.)) Case No. CC-24-2016-C-241
)
Marion County Coal Co.,)
Murray American Energy,)
Ohio Valley Resources,)
Murray Energy Corporation,)
Laboratory Corporation Holdings ET)
AL,)
Defendants)
)

ORDER DENYING MOTION TO DISMISS

IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA

COREY WATKINS,
PLAINTIFF

CIVIL ACTION NO.16-C-241

V.

HON. JUDGE JANES

THE MARION COUNTY COAL COMPANY,
MURRAY AMERICAN ENERGY, INC.,
OHIO VALLEY RESOURCES, INC.,
MURRAY ENERGY CORP.,
Eric Zuchowski, individually,

Christopher Fazio, individually,
Timothy Baum, individually,
LABORATORY CORPORATION HOLDINGS, INC.,
Miriam Becker, individually,
AND
COMPREHENSIVE OCCUPATIONAL HEALTH SERVICES, INC.
DEFENDANTS

***ORDER DENYING MURRAY DEFENDANTS' MOTION TO DISMISS COUNTS TWO,
THREE, AND SIX OF PLAINTIFF'S AMENDED COMPLAINT***

On May 22, 2017, after full briefing the Murray Defendants, by and through counsel Charles F. Bellomy, Hardy Pence LLC and Plaintiff Corey Watkins, by and through counsel Rachel Hanna, Law Office of Rachel Hanna, appeared for argument on the Murray Defendants' Motion to Dismiss Counts Two, Three, and Six of Plaintiff's Amended Complaint. After full briefing, oral argument, and careful consideration of all facts and circumstances presented, the Court DENIES Defendants' motion.

I. FINDINGS OF FACT

1. On November 10, 2016, Plaintiff Corey Watson, a former employee of Marion County Coal Company, filed an Amended Complaint seeking damages against the Murray Defendants and other defendants for alleged violations of law in the workplace.
2. Counts Two, Three, and Six of Plaintiff's Amended Complaint allege that the Murray Defendants are liable for Assault, Defamation, and Wrongful Imprisonment.
3. On November 23, 2017, the Murray Defendants answered the Amended Complaint concurrently filing the instant motion, Defendants' Motion to Dismiss Counts Two,

Three, and Six of the Amended Complaint.

4. On May 22, 2017, after briefing, the Court heard oral argument on Defendants' Motion to Dismiss.
5. The Court has fully and carefully considered all facts and circumstances presented and the positions and arguments of the parties.

II. CONCLUSIONS OF LAW

Motion to Dismiss Standard

"A motion to dismiss should be granted only where it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. For this reason, motions to dismiss are viewed with disfavor, and [the Supreme Court] counsel[s] lower courts to rarely grant such motions." *Forshey v. Jackson*, 671 S.E.2d 748, 755 (W. Va. 2008) (cited authority omitted). In reviewing the Murray Defendants' Motion to Dismiss, this Court must view all facts in a light most favorable to the Plaintiff, and may dismiss "only if it appears beyond doubt that the plaintiff can prove no set of facts in support of [his] claim[.]" *Id.*

COUNTS TWO, THREE, AND SIX

The Murray Defendants argue that Plaintiff fails to plead sufficient facts to establish Count Two- Assault, Count Three-Defamation, and Count Six-Wrongful Imprisonment of the Amended Complaint under West Virginia Law. Defendants further argue that as a matter of law Defendants' drug screening obligations and *W.V. Code § 22A-1A-1* afford Defendants certain

privileges and immunities that compel the Court to dismiss Counts Two, Three, and Six.

Pursuant to *West Virginia Rule of Civil Procedure 12(b)(6)* and the motion to dismiss standard, the Court disagrees and concludes that Plaintiff shall be allowed to pursue his causes of action under Counts Two, Three, and Six of the Amended Complaint.

COUNT TWO-Assault

6. Count Two of the Amended Complaint alleges that in the context of employee substance abuse testing Defendants, while within the line and scope of their employment, acted intending to cause an imminent apprehension of harmful or offensive contact with Plaintiff's person.
7. The Murray Defendants argue that the actions taken were attempts to comply with mandatory drug screening requirements under State law and that Plaintiff does not sufficiently allege intent to state a claim for relief.
8. After full consideration of all the facts, circumstances, and arguments presented the Court concludes that Plaintiff has stated a claim for relief under Count Two-Assault.

COUNT THREE-Defamation/Negligent Injury to Reputation

9. Count Three of the Amended Complaint alleges that Defendants owed Plaintiff certain duties concerning employment records, including substance abuse testing results, and that Defendants breached that duty, *inter alia*, by and through inaccurate maintenance of employment records and communications to third parties.
10. The Murray Defendants argue that Plaintiff's Amended Complaint does not identify any nonprivileged or defamatory statements and does not identify communication to any third party other than WVOMHST and the Unemployment Commission. Therefore,

Defendants argue, Plaintiff does not state a claim for relief.

- II. After full consideration of all the facts, circumstances, and arguments presented, the Court concludes that Plaintiff has stated a claim for relief under Count Three-Defamation/Negligent Injury to Reputation.

COUNT SIX-False Imprisonment and Outrage

12. Count Six of the Amended Complaint alleges that the Defendants engaged in outrageous conduct and falsely imprisoned Plaintiff.
13. The Murray Defendants argue that Plaintiff viewed Defendants' actions as requests and attempts to obtain a urine sample for purposes of substance abuse testing. Therefore, Defendants argue, Plaintiff fails to allege sufficient facts to claim relief for false imprisonment and outrage.
14. After full consideration of all the facts, circumstances, and arguments presented, the Court concludes that Plaintiff has stated a claim for relief under Count Six-False Imprisonment and Outrage.

III. Conclusion

For these reasons the Court **DENIES** Defendants' Motion to Dismiss Counts Two, Three, and Six. The Clerk is directed to send a certified copy of this Order to all counsel of record.

Entered this ____ day of _____ 2017.

Hon. David Janes, Judge

Prepared by:

/s/Rachel Hanna

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/s/ David R. Janes
Circuit Court Judge
16th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.