IN THE COURT OF APPEALS
FOR THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICAN INDIANS
AT BOWLER, WISCONSIN

MICHAEL G. MILLER,	)	
Plaintiff/Appellant,	)	**Appeal No. 2017-AA-0001**
	)	**Tribal Judge Robert J. Collins, II**
vs.	)	
	)	
STOCKBRIDGE-MUNSEE COMMUNITY,	)	***OPINION***
Respondent/Appellee.	)	

This action was heard by the Stockbridge-Munsee Tribal Court, the Honorable Robert Collins II, presiding, who determined that the Stockbridge-Munsee Community was entitled to summary judgment in this wrongful termination case. Plaintiff Michael G. Miller appeals this decision. ***We affirm.***

OPINION

Before the Honorable Gregory Smith, Chief Justice, the Honorable Eric M. Lochen, Justice and the Honorable Ronald R. Hofer, Special Justice pro tem.[1]

HOFER, S. J. Michael G. Miller (Miller) appeals from a decision and order of the tribal trial court granting summary judgment to the Stockbridge-Munsee Community (Tribe) in Miller's wrongful termination case. On appeal, Miller raises three broad challenges to the summary judgment, none of which persuades this court. We affirm the decision and order of the tribal trial court.

BACKGROUND

The Tribe employed Miller as its Talent Manager in the NorthStar Casino's Human Resources Department. On August 2, 2017, after an event at work prompted Miller to involve the Tribe's police, Miller sent an email to various individuals and attached a written statement that the Tribe later determined to have breached the confidentiality of two employees. On August 7, the Executive Director of Human Resources, Evan Mills, emailed Miller and gently cautioned him about employee relations, but the email did not mention confidentiality breaches. The next day, however, Mills emailed Miller and, among other things, included the following paragraph:

[1] The Honorable Howard J. Bichler recused himself from this case due to a potential conflict of interest. The Honorable Ronald R. Hofer, the "NJC Distinguished Professor" for the National Judicial College, was appointed on a *pro tem* basis for this case.

IMPORTANT NOTE: Confidential employee interactions/materials are only shared with those with a legitimate business reason to know. Within written statements, there is indication that....confidentiality extended beyond need-to-know. If additional clarity is needed on this point, always consult with the Exec HR [Mills] first. Breaches are not, and will not, be tolerated. [Emphasis ours].

About one week later, at a meeting with other Casino employees, Miller again revealed confidential and not-yet-public information regarding his deliberation process on three separate applicants for a host position at the Casino, including their preference status and full names. Mills then investigated Miller's actions by asking for written statements from shift managers present. One, Karla Delabrue, [now, Karla Kroening] said "*I wonder why [Miller] was discussing this with us and I think that is what the other 2 were thinking too. Wouldn't that be confidential? We all were in awe and did not answer him.*"

On August 30, in a letter to Miller, Beverly Miller, then acting HR supervisor, informed him that she would be conducting an investigation into his conduct and performance. She also included a Tribe Employee Action form stating that Miller had breached confidentiality and that he would get a five-day suspension pending investigation.

On September 8, Ms. Miller provided Miller with another Employee Action form that specified Mills' August 8 memo as a previous action. It also specified that "*On 8/16/17 open discussion of HR matters regarding hiring of specific individuals, their preference status and preference hiring without a legitimate need to know. Signed Confidentiality Statement. Serious nature of Confidentiality in Human Resource has been breached.*"

On September 15, Miller received a formal termination of his employment which set out with particularity the events of August 2 and 16 and their severity. Miller brought suit against the Tribe, which moved successfully for summary judgment, and this appeal ensued.

Miller first argues that the trial court erred in determining *"as a fact that there was a breach of confidentiality."* We cannot agree. Section 5.16(D) of the Stockbridge-Munsee Tribal Court Rules of Procedure states that "*summary judgment....shall be granted by the Trial Court if it appears there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.*" We cannot agree that the tribal court found any fact; rather, it made conclusions from the evidence.

Mills' August 8 email cautions Miller about breaches of confidentiality. The Employee Action of August 30, suspended Miller for six days for "Breach of Confidentiality". The action of September 8 suspended him for five days pending termination for the following reasons: "*On 8/16/17 open discussion of HR matters regarding hiring of specific individuals, their preference status and preference hiring without a legitimate need to know. Signed Confidentiality Statement. Serious nature of Confidentiality in Human Resource has been breached.*" Finally, Miller's September 15 Notice of Termination of Employment detailed the breaches. Therefore, we conclude that the record conclusively establishes breaches of confidentiality.

Next, Miller argues that "*[t]he trial court erred in giving short shrift to the allegations of the plaintiff...*" Primarily, his argument refers to his averment that his superiors directed him to do what he did. We cannot agree.

We take persuasive guidance from our neighboring jurisdiction of Wisconsin.[2] We review summary judgments *de novo*, employing the same methodology as the trial court. Green Spring Farms v. Kersten, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). Having read the nearly four hundred pages of appendices, we conclude as did the trial court: no genuine issue of material fact is created by Miller's averment in an affidavit that his superiors "directed" him to do what he did. Miller's averment creates no genuine issue of fact because he failed to corroborate his claim in the totality of the record.

Miller's averment refers to two superiors: Evan Mills and Michael Bonakdar. Miller apparently did not depose Mills. Further, considering that Mills, on August 8, warned Miller of his confidentiality problem of August 2, we conclude that nothing of record supports Miller's claim that the confidentiality breach was occasioned by Mills.

Miller did depose Bonakdar, but to no real avail. Miller hangs his argument on one hypothetical question asking Bonakdar if, in the course of filling casino employment positions, one might "*actually talk[] to...the supervisors of a potential applicant.*" He replied, "*I can't recall him doing anything like that, but I guess it could be a possibility, yeah.*" The realm of the merely possible in no way bolsters Miller's bare affidavit averment.

On this point, Miller argues from Matsushita Elec. Ind. Co. v. Zenith Radio, 475 U.S. 574 (1986) which employs the F.R.C.P. Rule 56, the federal summary judgment rule. But that case, at page 587, states "*In the language of the Rule, the nonmoving party must come forward with 'specific facts showing that there is a genuine issue for trial.' Fed. Rule Civ. Proc. 56(e).*" Miller has here failed to show a genuine issue because nothing in the substantial record supports or corroborates his mere averment that his superiors 'directed' his actions.

Finally, Miller argues that "There was no showing that a methodology was employed which is necessary under a just cause determination." Again, we cannot agree. Much of his argument relies on Vidmar v. Milwaukee City Bd. of Fire Police Comm'rs, 372 Wis. 2d 701, 892 N.W.2d 740 (Wis. Ct. App. 2016). However, that case was a *certiorari* review; this case is not. *Id.* at 712. Moreover, while Miller argues that the Tribe's review should have followed a rigorous methodology like that in the Vidmar case, the Tribe, nonetheless, has its own methodology set forth in the Stockbridge-Munsee Employment Manual.

Expectably, Miller next argues that the Tribe failed to follow that methodology. Again, we cannot agree. The Manual sets out the methodology in the section entitled "Types of Corrective Action," which sets out a three-step process. While Miller correctly argues that the Tribe did not follow this exactly, we conclude that the Tribe was not required to do so.

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[2] This Honorable Court is not bound by decision of state courts because the Stockbridge-Munsee Community is a sovereign Native American nation. *Accord*, Manygoats v. GMAC, 4 Nav. R. 94 (Nav. Ct. App. 1983), at *7 and Matos v. Mashantucket Pequot Gaming Enter., 2 Mash. 130 (Mash. Pequot Ct. App. 1997), at *4].

The third of these steps, Suspension Corrective Action, "*may also be the first level of corrective action depending on the severity of the incident(s).*" Hence, any of Miller's criticisms about failures of the first two steps are effectively mooted. Miller does not argue that the Tribe failed to place anything in his personnel file, as required by the Manual. He does, however, contend that his superiors "*failed to actually talk with him as required under the ...Manual.*" Assuming, *arguendo*, his contention is accurate, we are nevertheless unpersuaded that this failure constitutes reversible error. The language of the Manual requires the Tribe to "*make[] an effort to discuss the action with the employee.*" [Emphasis ours]. Such language is advisory and not mandatory.

Miller also contends that the Tribe failed to meet various time limits set out in the Manual. Again, assuming, *arguendo*, this is accurate, we conclude that Miller nowhere shows how an action made a few days past a time limit somehow prejudiced or otherwise injured him. If anything, this failure would mean that his termination should have taken place a few days earlier. We deem this point *de minimus*.

Correlatively, Miller contends that the Tribe and the tribal court failed to determine that he was fired for "just cause." While that may be the standard for a person of Miller's status, we are unconvinced that the Tribe had to use the very words, just cause. Various documents, especially his termination letter, set forth the incidents and the severity of the breaches; such is enough for a just cause determination.

By the Court--Decision and Order ***AFFIRMED.***

This is the 21st day of July, 2021.

Ronald R. Hofer

Honorable Ronald R. Hofer
Special Justice

Smith, C.J. and Lochen, J. concur

FILED
STOCKBRIDGE-MUNSEE TRIBAL COURTS
STOCKBRIDGE-MUNSEE INDIAN RESERVATION

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