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MARY L. SWAIN
BUTLER COUNTY
CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO**

RONALD DAVIS

Plaintiff

vs.

BUTLER COUNTY BOARD OF
COMMISSIONERS

Defendant

: CASE NO: CV 2018 04 0887

: (Judge Keith M. Spaeth)

: **ENTRY GRANTING MOTION**
: **TO DISMISS**

: **FINAL APPEALABLE ORDER**

This matter came before the Court on the Defendant, Butler County Board of County Commissioners' Motion to Dismiss filed under Civ.R. 12(B)(6). The Court has considered the motion, the supporting and opposing memorandums and the applicable law. For the reasons stated herein, the Court finds that Plaintiff, Ronald Davis' ("Davis") complaint fails to establish that a clear public policy exists and is manifested in a state or federal constitution, statute or administrative regulation, or in the common law (the clarity element).

Davis alleges he was wrongfully discharged in violation of Ohio public policy, claiming that he was terminated because he complained that funds belonging to the Butler County Regional Airport were used in a manner that violated Federal Aviation Administration ("FAA") statutes and regulations. Plaintiff cites the following in support of his public policy wrongful discharge claim: 49 U.S.C. § 47107(a)(13);(b); Department of Transportation and Related Agencies Appropriations Act of 1998; FAA Airport Compliance

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Manual, Order 5190.6B §§15.13(j) and §17.11 (Compl., ¶¶ 52-57). Davis alleges he was terminated because he complained about violations of the enumerated statutes and regulations and that such termination was in violation of Ohio public policy.

Dismissal of a claim under Civil Rule 12(B)(6) is appropriate where it “appears beyond a doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery.” *O’Brien v. University Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus. A court must presume all factual allegations of the complaint are true when construing a complaint upon a motion to dismiss for failure to state a claim. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988).

Civ.R. 8(A), which sets the pleading standard for a complaint, requires a “short and plain statement of the claim showing that the party is entitled to relief[.]” The complaint must be “so construed as to do substantial justice.” Civ.R. 8(F). In construing a motion to dismiss, the Court must accept all of the factual allegations of the complaint as true and draw all reasonable inferences in favor of the plaintiff. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 522 N.E. 2d 753 (1988). The Court may only dismiss a complaint “when it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief” *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 573 N.E. 2d 1063 (1991).

To state a retaliatory or public policy claim for wrongful discharge in Ohio, a plaintiff must either comply with the requirements of Ohio Revised Code 4113.52 or establish an

independent source of public policy to support his claim. As set forth in the memorandum opposing the motion, “Davis did not plead a claim pursuant to O.R.C. § 4113.52” . . . “[Davis’] sole claim is termination in violation of public policy.”

The Ohio Supreme Court first recognized a public policy exception to Ohio’s employment-at-will doctrine over 25 years ago when it held that an at-will employee may not be discharged or disciplined for reasons that violate a statute or public policy. *Greeley v. Miami Valley Maintenance Contrs., Inc.*, 49 Ohio St.3d 228, 551 N.E.2d 981 (1990), paragraph two of syllabus. Since that time, the Ohio Supreme Court has set forth the four elements of a public policy wrongful discharge claim: (1) a clear public policy exists and is manifested in a state or federal constitution, in statute or administrative regulation, or in the common law (the clarity element), (2) dismissing employees under circumstances like those involved in the plaintiff’s dismissal would jeopardize the public policy (the jeopardy element), (3) the plaintiff’s dismissal was motivated by conduct related to the public policy (the causation element), and (4) the employer lacked an overriding legitimate business justification for the dismissal (the overriding-justification element). *Sutton v. Tomco Machining, Inc.*, 129 Ohio St.3d 153, 2011-Ohio-2723, 950 N.E.2d 938 (2010), at ¶ 9 (quoting *Collins v. Rizkana*, 73 Ohio St.3d 65, 69-70, 652 N.E.2d 653 (1995)).

The clarity and jeopardy elements are questions of law and policy to be determined by the court, while the causation and overriding justification elements are questions of fact for the jury. *Kulch v. Structural Fibers, Inc.*, 78 Ohio St.3d 134, 151, 677 N.E.2d 308

(1997)(citing *Collins* at 70). In this case, the Court finds the Complaint fails as a matter of law because it fails to establish the clarity element.

Davis alleges that he was terminated in retaliation for his complaints about the misuse of airport revenues. 49 U.S.C. § 47107 places limitations on airports that, like the Butler County Regional Airport, receive Airport Improvement Project grants from the FAA. (Compl. ¶ 51-63). Two of these limitations are applicable to this case: 49 U.S.C. § 47107(a)(13) requires grant recipients to make the airport as self-sustaining as possible under the circumstances (the self-sustaining requirement); and 49 U.S.C. § 47107(b) requires revenues generated by the airport to be expended only for the capital or operating costs of the airport (the revenue use requirement).

49 U.S.C. § 47107 also instructs the Secretary of Transportation to award grants to an airport only upon the receipt of written assurances that the airport will meet these requirements and the other requirements imposed by the statute. 49 U.S.C. §47107(a), (b). Pursuant to this instruction, the FAA promulgated a list of written Grant Assurances that bind all grant recipients. AIP Grant Assurances, *available at* https://www.faa.gov/airports/aip/grant_assurances/media/airport-sponsor-assurances-aip.pdf; *see also* Department of Transportation, Federal Aviation Administration: Airport Improvement Program (AIP) Grant Assurances, 79 Fed. Reg. 18755 (April 3, 2014). The self-sustaining requirement is expressed in Grant Assurance 24, which states that the grant recipient “will maintain a fee and rental structure for the facilities and services at the airport

which will make the airport as self-sustaining as possible under the circumstances.” *Id.* The revenue use requirement is expressed in Grant Assurance 25, which states, “All revenues generated by the airport . . . will be expended by it for the capital or operating costs of the airport[.]” *Id.*

Defendant argues that the violations that Davis complained about do not satisfy the clarity element of a public policy claim. The clarity element requires a clear public policy manifested in a state or federal constitution, in statute or administrative regulation, or in the common law. Davis argues that 49 U.S.C. § 47107 and the accompanying Grant Assurances express a clear public policy against diverting revenues from airports that are funded by federal grants. In passing the Department of Transportation and Related Agencies Appropriations Act of 1998, Congress stated: “a grant recipient that uses Airport revenues for purposes that are not Airport-related in a manner inconsistent with [49 U.S.C. § 47107] illegally diverts Airport revenues, [which] undermines the interest of the United States in promoting a strong national air transportation system[.]”. Pub. L. No. 105-66, §340 (1-5). Congress also stated that it is “the policy of the United States that Airports should be as self-sustaining as possible and that revenues generated at Airports should not be diverted from Airport purposes[.]” *Id.*

It is Davis’ burden to articulate a **clear** Ohio public policy. *Dohme*, 2011-Ohio-4609 at syllabus. Davis has failed to supply one example of a case recognizing an Ohio public policy involving federal laws regulating the use of federal grant funds. Unlike federal laws

and regulations affecting public safety, the self-sustaining requirement (49 U.S.C. §47107(a)(13)) reflects an aspirational goal of making airports as financially solvent as possible; and the revenue use requirement (49 U.S.C. §47107(b)) is an accounting guideline designed to discourage grant recipients from supplanting local funding of the airport. There is not a clear, Ohio-specific public policy expressed in these FAA regulations. Similarly, by way of example, if the Federal regulations dictated the color of the restrooms or the level of food accommodations inside the airport terminal, such Federal regulations would not reflect a clear public policy of the State of Ohio.

The mere fact that a subject matter is covered by an administrative regulation and *may* serve as a basis for a public policy claim does not mean that each and every such regulation will be found to set forth a clear public policy. Accepting an argument that a clear public policy is established because an administrative regulation covers the subject matter at issue would expand the public policy claim to all statutory and administrative enactments. Under that view, the exception would swallow the rule.

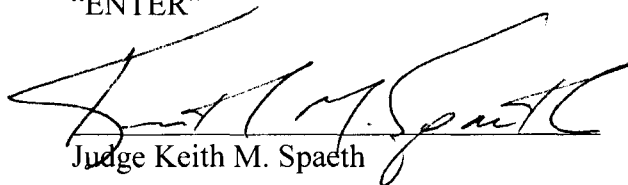
Hale v. Mercy Health Partners, 20 F. Supp. 3d 620, 639 (S.D. Ohio 2014), *citing* *Crowley v. St. Rita's Medical Ctr.*, 931 F. Supp. 2d 824, 831 (N.D. Ohio 2013).

“This Court finds more persuasive the reasoning of the Ohio courts that require the public policy invoked in a *Greeley* claim to parallel the policies underlying the whistleblower statute or protect employee or public safety. The courts of Ohio generally have found that *Greeley* claims cannot lie with every public policy, even “good” ones, and appropriately so. Without these limitations, *Greeley* claims could evolve from exceptions to the employment at-will doctrine to the rule itself . . .”

Crowley at 831.

This Court finds that Ohio does not have a public policy interest in the way federal grant funds are used by public (or private) Ohio airports. Davis cannot meet the clarity element of his public policy claim. Plaintiff's Complaint is dismissed. Costs to be paid by Plaintiff. So ordered.

"ENTER"



Judge Keith M. Spaeth

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