FILED
United States Court of Appeals
Tenth Circuit

September 15, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

SHEILA GARVEY,

Plaintiff - Appellant,

v.

OGDEN CLINIC PROFESSIONAL CORP., a Utah professional corporation; COLUMBIA OGDEN MEDICAL CENTER, INC., a Utah corporation, d/b/a Ogden Regional Medical Center,

Defendants - Appellees.

No. 25-4059
(D.C. No. 1:22-CV-00077-DAO)
(D. Utah)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **TYMKOVICH** and **MORITZ**, Circuit Judges.

Sheila Garvey performed emergency trauma surgery on a rotating, on-call basis at Columbia Ogden Medical Center, Inc. (the Hospital) under an employment agreement with Ogden Clinic Professional Corp. (the Clinic). After the Hospital received several complaints about Garvey's behavior, it barred her from participating in the trauma-call rotation. The Clinic then fired Garvey based on her inability to participate in the rotation. Garvey sued, alleging contract, tort, and discrimination

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. But it may be cited for its persuasive value. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

claims against the Hospital and the Clinic. The district court granted defendants' motions for summary judgment, holding that Garvey failed to establish a genuine dispute of material fact on any of her claims. We affirm.

Background

In 1999, the Clinic hired Garvey as a general surgeon. Garvey's employment agreement required her to "meet the performance standards and clinic and call[-]schedule requirements of . . . her specialties as set forth by" the Clinic. App. vol. 2, 292. If Garvey breached this or any other material term of the agreement, the Clinic had cause to immediately terminate her.

Garvey practiced medicine at the Hospital, where she had held privileges since 1998. Before 2012, the Hospital contracted with Garvey directly for her services. But beginning in 2012, the Hospital contracted for trauma-surgery services through the Clinic. Under the terms of that professional services agreement (PSA), the Clinic, or "[c]ontractor," provided 24-hour "[e]mergency [d]epartment call coverage in accordance with . . . the call schedule maintained by the [Hospital]." App. vol. 7, 1284 (sealed). The PSA partially defined "[c]ontractor" as "a partnership, professional service corporation[,] or association duly organized and validly existing under the laws of the [s]tate in which the [Hospital] is located[] and authorized to practice medicine through its designated [c]ontractor's [r]epresentatives." *Id.* (sealed). And the "[c]ontractor's [r]epresentatives" included "all of [c]ontractor's employees, shareholders, partners[,] and agents providing services under" the PSA. *Id.* (sealed).

In March 2018, the Hospital began receiving complaints about Garvey's conduct toward its patients and staff. After the Hospital received three complaints between August and November 2019, its Medical Staff Leadership Council met with Garvey to discuss a performance improvement plan (PIP). The council required Garvey to attend a program for distressed physicians, which she completed in November 2020.

But in December 2020 and January 2021, the Hospital received more complaints about Garvey's behavior toward patients and staff. So on January 28, 2021, the Hospital informed Garvey that she could no longer "participate" in the call rotation for trauma surgery "as of February 28, 2021."[1] App. vol. 1, 73. The Hospital communicated this decision to the Clinic and expressed its desire to remain a party to the PSA as long as the Clinic removed Garvey from the "trauma[-]call panel effective February 28, 2021." *Id.*

However, instead of removing Garvey from the trauma-call panel, the Clinic terminated her employment. In the termination letter, the Clinic stated that because the Hospital was no longer allowing Garvey to participate in the trauma-call rotation, Garvey failed to meet the call-schedule requirements of the employment agreement.[2]

[1] The Hospital did not revoke Garvey's privileges.

[2] Although the Clinic's termination letter identified several other bases for termination (specifically, "deliberate disregard" of its policies; "improper conduct in dealing with a fellow employee, patient[,] or any third person"; "acting in conflict with the interests of [the Clinic]"; and "failure to work up to established levels of performance"), the Clinic stipulated below that it terminated Garvey's employment solely because she was unable to meet the call-schedule requirements of her employment agreement. App. vol. 1, 76.

Having found a material breach of that agreement, the Clinic terminated Garvey's employment for cause.

Garvey sued the Clinic and the Hospital in state court, alleging breach of contract, breach of the implied covenant of good faith and fair dealing, tortious interference with business relations, and libel and defamation under Utah law, as well as sex discrimination under Title VII of the Civil Rights Act of 1964 and age discrimination under the Age Discrimination in Employment Act of 1967 (ADEA). The Clinic removed the action to federal court. Following the Clinic's and the Hospital's motions, the district court granted summary judgment to defendants on all claims.

Garvey appeals.

Analysis

Garvey challenges the district court's grant of summary judgment on her claims for breach of contract by the Hospital and the Clinic, breach of the implied covenant of good faith by the Clinic, tortious interference with business relations by the Hospital, and sex and age discrimination by the Hospital and the Clinic. We review de novo, applying "the same standard as the district court." *Lazy S Ranch Props., LLC v. Valero Terminaling & Distrib. Co.*, 92 F.4th 1189, 1198 (10th Cir. 2024). Summary judgment is appropriate if there is no genuine issue of material fact and "the movant is entitled to judgment as a matter of law." *Id.*; *see also* Fed. R. Civ. P. 56(a). "An issue is 'genuine' if there is sufficient evidence on each side so that a rational trier of fact could resolve the issue either way." *Lazy S Ranch*, 92 F.4th at

1198 (quoting *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998)). In surveying the evidence, we view "the facts and their reasonable inferences in the light most favorable to the nonmovant." *Id.*

We begin with Garvey's state-law contract and tort claims before turning to her federal discrimination claims.

I. State-Law Claims

As a federal court exercising supplemental jurisdiction over Garvey's state-law claims, we "apply the substantive law of the forum state and reach the same decision we believe that state's highest court would." *Lytle v. City of Haysville*, 138 F.3d 857, 868 (10th Cir. 1998). Here, the forum state is Utah.

A. Breach of Contract by the Hospital

Garvey advances two breach-of-contract theories against the Hospital. First, she argues that the Hospital breached the PSA—a theory the district court rejected by concluding that Garvey cannot enforce the PSA under Utah law. Generally, "only parties to a contract can bring suit under the contract." *Holmes Dev., LLC v. Cook*, 48 P.3d 895, 908 (Utah 2002). However, a third party may sue to enforce a contract if they are an "*intended*, and not merely an *incidental*, beneficiary." *Orlando Millenia, LC v. United Title Servs. of Utah, Inc.*, 355 P.3d 965, 972 (Utah 2015). A plaintiff claiming third-party beneficiary status must show "that the contracting parties 'clearly intended to confer a separate and distinct benefit upon the [plaintiff].'" *Wagner v. Clifton*, 62 P.3d 440, 442 (Utah 2002) (quoting *Broadwater v. Old Republic Sur.*, 854 P.2d 527, 536 (Utah 1993)). We assess whether someone is a party to or beneficiary of a contract by examining the written contract. *See id.*; *Holmes Dev.*, 48 P.3d at 908–09.

With these standards in mind, we first consider whether Garvey is a party to the PSA. By its terms, the PSA "[wa]s entered into between [the Hospital] and [the] Clinic." App. vol. 7, 1284 (sealed). Further, the Hospital and the Clinic "duly executed" the PSA as evidenced by the signatures of their respective representatives. *Id.* at 1288 (sealed). Because Garvey is neither a named party nor a signatory, she is not a party to the PSA.

Garvey disagrees, noting that the PSA contains provisions that only individual physicians can satisfy. Thus, she reasons that as one of the Clinic's physicians, she was a party to the agreement. However, Garvey fails to recognize that the PSA explicitly provides that the Clinic is a "contractor" that acts through its "[r]epresentatives," including Garvey and all other employees. *Id.* at 1284 (sealed).

Garvey next insists that she is a third-party beneficiary of the contract. We disagree because the PSA does not "confer a separate and distinct benefit upon" her. *Wagner*, 62 P.3d at 442 (quoting *Broadwater*, 854 P.2d at 536). She neither argues nor shows that the Clinic and the Hospital contracted for her benefit. Instead, she contends that she is one of the Clinic's trauma-surgeon shareholders and that the Clinic acts for the benefit of such shareholders. But "it is not enough that the parties to the contract know, expect[,] or even intend that others will benefit from the contract. The contract must be undertaken for the plaintiff's direct benefit[,] and the contract itself must affirmatively make this intention clear." *Carmona v. Travelers*

Cas. Ins. Co. of Am., 428 P.3d 65, 69 (Utah Ct. App. 2018) (quoting *SME Indus., Inc. v. Thompson, Ventulett, Stainback & Assocs., Inc.*, 28 P.3d 669, 684 (Utah 2001)). Garvey fails to make this showing, so she cannot enforce the PSA.

Garvey's second breach-of-contract theory is that certain of the Hospital's policies created an implied-in-fact contract that the Hospital then breached. But Garvey never argued below that the Hospital's policies created an implied-in-fact contract. Instead, she argued only that the Hospital breached some of its own policies—a position she abandons on appeal. So she forfeited her implied-in-fact-contract theory by not raising it in district court. *See Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1128 (10th Cir. 2011). And because Garvey does not urge us to review the argument under the plain-error standard, we deem it waived and do not consider it. *See Savant Homes, Inc. v. Collins*, 809 F.3d 1133, 1145 (10th Cir. 2016). As such, Garvey's contract claim against the Hospital fails.

B. Breach of Contract by the Clinic

On this claim, Garvey argues that the Clinic breached the employment agreement. *See Co-Diagnostics Inc. v. HuKui Tech. Inc.*, 571 P.3d 1178, 1184 (Utah Ct. App. 2025). The district court found no breach because the Clinic had valid cause to end the agreement: Garvey's inability to meet the call-schedule requirements.

Reviewing that decision, we interpret the agreement "as a matter of law." *Saunders v. Sharp*, 806 P.2d 198, 200 (Utah 1991). The agreement requires Garvey to "meet the performance standards and clinic and call[-]schedule requirements of . . . her specialties as set forth by" the Clinic. App. vol. 2, 292. As the district court found, this requirement impliedly includes the *ability* to participate in the call schedule. So when the Hospital barred Garvey from participating in the trauma-call rotation, Garvey lost the ability to meet the call-schedule requirements. And because Garvey doesn't contest that the call-schedule requirement is a material term of her employment agreement, her breach of that term entitled the Clinic to immediately terminate the agreement for cause, even if her previous performance was satisfactory. *See Bonneville Distrib. Co. v. Green River Dev. Assocs., Inc.*, 164 P.3d 433, 442 (Utah Ct. App. 2007) (finding that plaintiff's "breach of contract resulting from inability to perform its contractual duties [was] adequate legal justification for" defendant to stop performing under agreement and dissolve joint venture).

Resisting this conclusion, Garvey argues that she might have been able to satisfy the terms of the agreement despite the Hospital's decision. She first contends the Clinic could have hired another surgeon or allowed its other surgeons to cover her on-call shifts. But Garvey doesn't identify any provision in the agreement requiring the Clinic to explore alternatives to terminating her employment.

Garvey also suggests that the Hospital might have reversed its decision, but she identifies no evidence creating a genuine dispute over the permanence of the Hospital's decision. Garvey highlights that the Hospital did not revoke her privileges to practice medicine, but these privileges simply allowed her to see patients at the Hospital; there is no evidence that the Hospital permitted her to retain privileges so she could participate in the trauma-call rotation in the future. Garvey also emphasizes a letter from the Medical Staff Leadership Council acknowledging completion of her

PIP. However, she doesn't explain how this letter supports an inference that the Hospital would reverse its call-schedule decision, considering that the Hospital removed Garvey from the rotation *after* she completed the mandatory program for distressed physicians—a key component of the PIP. Although Garvey argues that the letter is "inconsistent with a permanent ban from [the Hospital]," the Hospital did not "permanent[ly] ban" her; it only barred her from participating in the trauma-call rotation. Aplt. Br. 18.

Because the Clinic didn't breach the employment agreement when it terminated Garvey's employment for cause, we affirm summary judgment on Garvey's breach-of-contract claim.[3]

C. Breach of Implied Covenant of Good Faith and Fair Dealing by the Clinic

Garvey argues that the Clinic violated the implied covenant of good faith and fair dealing by failing to investigate the Hospital's decision and consider alternatives before terminating her employment. The implied covenant of good faith and fair dealing "inheres in every contract." *S.S. ex rel. Shaffer v. IHC Health Servs., Inc.*, 417 P.3d 603, 606 (Utah 2018). The covenant "prohibits the parties from intentionally injuring the other party's right to receive the benefits of a contract[] and prevents either party from impeding the other's performance of their obligations by rendering it difficult or impossible for the other to continue performance." *Bear v.*

[3] Because we affirm summary judgment for the Clinic on this basis, we do not address the Clinic's argument that other provisions in the employment agreement limit Garvey's damages for breach of contract.

LifeMap Assurance Co., 503 P.3d 507, 518–19 (Utah Ct. App. 2021) (cleaned up) (quoting *Backbone Worldwide Inc. v. LifeVantage Corp.*, 443 P.3d 780, 785 (Utah Ct. App. 2019)). However, the "covenant cannot be read to establish new, independent rights or duties to which the parties did not agree." *Oakwood Vill. LLC v. Albertsons, Inc.*, 104 P.3d 1226, 1240 (Utah 2004).

As the district court reasoned, this latter principle is fatal to Garvey's claim. The implied covenant inherent in the employment agreement did not require the Clinic to conduct a pre-termination investigation or explore alternatives to termination; the parties simply never agreed to such obligations. Granted, if the Clinic terminated Garvey's employment for "improper conduct in dealing with a fellow employee, patient[,] or any third person with whom [she] ha[d] contact through employment with [the Clinic]"—one provision justifying for-cause termination—then Garvey may have had a reasonable expectation of a pre-termination investigation, based on the Clinic's employee handbook. App. vol. 2, 299. But the Clinic terminated her employment based on her "breach of a material term of th[e] [a]greement"—a separate provision entitling the Clinic to terminate Garvey's employment for cause. *Id.* And Garvey provides no evidence of her entitlement to a pre-termination investigation in that circumstance.

Garvey also contends that the agreement's noncompete provisions "[a]t a minimum . . . required [the] Clinic to investigate and, if warranted, challenge [the Hospital's] improper decision to bar her from the trauma[-]call rotation, rather than simply accept it at face value." Aplt. Br. 31. But the agreement's noncompete provisions don't impose that obligation on the Clinic, and Garvey doesn't explain how those provisions generate such a duty. Accordingly, we affirm summary judgment for the Clinic on Garvey's claim for breach of the implied covenant.

D. Tortious Interference with Business Relations by the Hospital

Turning to Garvey's tort claim, she argues that the Hospital tortiously interfered in her business relations with the Clinic by conditioning continuance of the PSA on the Clinic's removing Garvey from the trauma-call rotation.[4] To establish tortious interference with economic relations, Garvey must prove "(1) that the [Hospital] intentionally interfered with [her] existing or potential economic relations, (2) by improper means, (3) causing injury to [her]." *Harvey v. Ute Indian Tribe of Uintah & Ouray Rsrv.*, 416 P.3d 401, 425 (Utah 2017) (cleaned up) (quoting *Eldridge v. Johndrow*, 345 P.3d 553, 565 (Utah 2015)). To prove improper means, Garvey "must show that the [Hospital's] means of interference were contrary to statutory, regulatory, or common law or violated an established standard of a trade or profession." *Id.* (cleaned up) (quoting *Anderson Dev. Co. v. Tobias*, 116 P.3d 323, 331 (Utah 2005)). For example, "violence, threats or other intimidation, deceit or misrepresentation, bribery, unfounded litigation, defamation, or disparaging falsehood" are improper means. *Leigh Furniture & Carpet Co. v. Isom*, 657 P.2d 293, 308 (Utah 1982) (quoting *Top Serv. Body Shop, Inc. v. Allstate Ins. Co.*, 582 P.2d

[4] Below, she also pursued claims that the Hospital tortiously interfered in her business relations with another hospital where she held privileges and with prospective employers. But she doesn't maintain those claims on appeal.

1365, 1371 n.11 (Or. 1978)), *overruled on other grounds by Eldridge*, 345 P.3d at 565.

The district court determined that Garvey failed to present evidence that the Hospital engaged in "improper means." App. vol. 4, 989. We agree. Garvey doesn't show that the Hospital's decision ran afoul of a statute or regulation, the common law, or a trade standard. Instead, Garvey contends that the Hospital's decision violated the text or purpose of (1) an "implied contract based on [the Hospital's] policies," (2) the PSA between the Hospital and the Clinic, and (3) the PIP. Aplt. Br. 31. We have already rejected Garvey's implied-contract and breach-of-PSA theories, and we are not convinced that the PIP was an enforceable contract. But even assuming that these theories are viable, they are insufficient. "A deliberate breach of contract, even where employed to secure economic advantage, is not, by itself, an 'improper means.'" *Leigh Furniture*, 657 P.2d at 309. Although a breach of contract "committed for the immediate purpose of injur[]ing the other contracting party" can constitute "improper means," Garvey doesn't argue that the Hospital made its decision with the purpose of injuring her. *Id.*

Because a rational trier of fact could not find that the Hospital tortiously interfered with Garvey's employment with the Clinic, we affirm summary judgment on this claim.

II. Federal Claims

We turn finally to Garvey's sex- and age-discrimination claims against the Hospital and the Clinic. Under Title VII and the ADEA, "a plaintiff bears the ultimate burden of proving her employer intentionally discriminated against her." *Bennett v. Windstream Commc'ns, Inc.*, 792 F.3d 1261, 1266 (10th Cir. 2015).

A. The Hospital

The district court determined that Garvey's discrimination claims against the Hospital failed because she provided no evidence that the Hospital employed her. Ordinarily, we apply one of three tests to determine whether a defendant is a plaintiff's employer: the hybrid test, the joint-employer test, or the single-employer test. *Knitter v. Corvias Mil. Living, LLC*, 758 F.3d 1214, 1225–26 (10th Cir. 2014). Each test serves a distinct purpose. The hybrid test "distinguish[es] an employee from an independent contractor"; the joint-employer test applies "when an employee of one entity seeks to hold another entity liable as an employer"; and "the single[-]employer test permits 'a plaintiff who is the employee of one entity to hold another entity liable by arguing that the two entities effectively constitute a single employer.'" *Id.* at 1226 (cleaned up) (quoting *Bristol v. Bd. of Cnty. Comm'rs*, 312 F.3d 1213, 1218 (10th Cir. 2002)).

On appeal, Garvey ignores these tests. Instead, she contends that the Hospital employed her because it controlled participation in the trauma-call rotation, it requested that the Clinic remove her from the trauma-call panel, and it maintained credentialing policies that Garvey had to follow to keep her privileges. But she cites no authority showing that this evidence establishes an employment relationship. Because Garvey's briefing is inadequate on this point, we deem the argument waived and decline to consider it. *See Simpson v. T.D. Williamson Inc.*, 414 F.3d 1203, 1206 n.4 (10th Cir. 2005) (declining to consider arguments as inadequately briefed). For this reason, we affirm summary judgment for the Hospital on Garvey's discrimination claims.

B. The Clinic

Garvey separately argues that the Clinic discriminated against her on the basis of age and sex when it terminated her employment. "Where, as here, a plaintiff seeks to use circumstantial evidence to show her employer's discriminatory intent, we employ the three-step burden-shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)." *Bennett*, 792 F.3d at 1266 (cleaned up). Under that framework, a plaintiff must first establish a prima facie case of discrimination. *Id.* Then, the burden shifts to the defendant "to articulate a legitimate, nondiscriminatory reason for its actions." *Id.* And if the defendant satisfies that burden, then the plaintiff must show that the defendant's explanation was pretextual. *Id.* "Pretext can be shown by 'such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non[]discriminatory reasons.'" *Riggs v. AirTran Airways, Inc.*, 497 F.3d 1108, 1118 (10th Cir. 2007) (quoting *Rivera v. City & County of Denver*, 365 F.3d 912, 925 (10th Cir. 2004)).

Applying these standards, the district court found that Garvey established a prima facie case of age and sex discrimination and that the Clinic met its burden of articulating a legitimate, nondiscriminatory reason for terminating Garvey's employment: "she was in breach of her employment agreement when the Hospital disallowed her from participating in trauma call." App. vol. 4, 1005. At the third prong, though, it concluded that Garvey failed to show that the Clinic's reasoning was pretextual.

Challenging the pretext ruling on appeal, Garvey points to evidence that the Clinic treated other physicians who could not meet their trauma-call requirements for extended periods of time differently than it treated her. Specifically, she highlights that when two of the Clinic's surgeons were unable to take on-call shifts due to parental leave and military deployment, the Clinic's other surgeons filled in for them, and the Clinic didn't terminate the absent surgeons' employment.

We agree with the district court that this evidence doesn't create a genuine dispute on the pretext issue because Garvey hasn't shown that these two colleagues are "relevant comparators." App. vol. 4, 1011. To be sure, "whether two employees are similarly situated ordinarily presents a question of fact for the jury." *Riggs*, 497 F.3d at 1117 (cleaned up) (quoting *George v. Leavitt*, 407 F.3d 405, 414 (D.C. Cir. 2005)). But "at summary judgment, [we] must determine whether '[Garvey] has adduced enough evidence to support a finding that the other employee and [Garvey] were sufficiently similarly situated to support an inference of discrimination.'" *Id.* (cleaned up) (quoting *Mandell v. County. of Suffolk*, 316 F.3d 368, 379 (2d Cir. 2003)). Here, she has failed to do so. Although the two other surgeons were absent for extended periods, their absences were temporary. Garvey's ban from participating in the trauma-call rotation was not. And Garvey doesn't identify any male physician or younger physician who was also barred from working the trauma-call rotation but received better treatment from the Clinic.[5]

Because Garvey fails to present evidence of pretext, we affirm summary judgment on her discrimination claims against the Clinic.

Conclusion

Garvey fails to show a genuine dispute of material fact on any of her claims, so we affirm summary judgment in favor of the Clinic and the Hospital. We also grant Garvey's motion to seal.

Entered for the Court

Nancy L. Moritz
Circuit Judge

[5] Garvey also argues that the Clinic's failure to explore alternatives to termination is evidence of pretext. But, again, Garvey doesn't show that the Clinic ever made those arrangements for a similarly situated employee.