FILED
SUPREME COURT
STATE OF WASHINGTON
7/14/2021 3:08 PM
BY ERIN L. LENNON
CLERK

No. 998914

SUPREME COURT
STATE OF WASHINGTON

TODD D. WILSON,

Appellant,

v.

WEYERHAEUSER COMPANY,

Respondent.

RESPONDENT WEYERHAEUSER COMPANY'S RESPONSE / OPPOSITION TO APPELLANT WILSON'S PETITION FOR REVIEW

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I. RELIEF REQUESTED

Appellant Todd Wilson's ("Wilson") petition for review should be denied because he does not demonstrate any of the necessary criteria for discretionary review under RAP 13.4(b).

In its unanimous unpublished opinion (the "Opinion"),[1] Division I correctly applied Washington law when holding that Wilson's employment by Respondent Weyerhaeuser Company ("Weyerhaeuser") was on an at-will and indefinite term basis pursuant to a unilateral contract, and as such, Weyerhaeuser could unilaterally alter Wilson's compensation on a prospective basis.

Wilson claims as unpaid compensation the occupancy value of a house on Weyerhaeuser property, which was destroyed by a fire months before he was scheduled to move in. Based on authority of this Court and the Courts of Appeals, Division I correctly concluded that by continuing to work for Weyerhaeuser for years after he knew the house had been destroyed, he accepted the change in his "compensation" and his case was properly dismissed.

[1] Washington Court of Appeals, Division I, in Appeal No. 80896-6-I filed May 17, 2021, a copy of which was filed with Wilson's petition as Appendix Z.

II. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the Court of Appeals opinion conflicts with any decisions of this Court?

2. Whether the Court of Appeals opinion conflicts with any published opinions of the Court of Appeals?

3. Whether the Court of Appeals opinion involves an issue of substantial public interest that should be determined by the Supreme Court?

III. STATEMENT OF THE CASE

In November 2013, Weyerhaeuser offered Wilson a position as a Seedling Nursery Production Supervisor at its Mima Nursery in Olympia, Washington, with the offer summarized in a letter (the "Offer Letter"). *See* CP 6-7. When Weyerhaeuser extended the offer, there was a house located on the Mima Nursery property ("Mima House"). CP 6. Among other job duties, the Offer Letter listed a requirement that Wilson eventually reside in the Mima House and respond to on-site events no later than August 2014. *Id.*; CP 92 at ¶ 4. Wilson signed the Offer Letter, which expressly stated—immediately above his signature—that his employment was at-will. CP 7. The Offer Letter did not specify any set duration of employment. CP 6-7.

Wilson began his employment with Weyerhaeuser on December 30, 2013. CP 3 at ¶ 7. In March 2014, months before he was scheduled to move in, the Mima House was destroyed in a fire. CP 11 at ¶ 8. Wilson knew that the house was destroyed, would not be rebuilt, and there was no other house on the property. CP 55-56.[2] He did not seek and was not promised any pay in lieu of living in the house. CP 3 at ¶ 8; CP 55 at ¶ 11 ("Weyerhaeuser did not offer to pay . . . me any compensation in exchange for . . . the on-site housing."). Wilson nevertheless continued his at-will employment with Weyerhaeuser for another three-and-a-half years. Because he never resided at the Mima House, he was not tasked with the additional duty of being on call 24/7 to respond to on-site events. CP 12 at ¶ 10.

Wilson filed suit on July 31, 2019, and alleged that Weyerhaeuser breached his employment contract by failing to provide him with free housing during his employment. CP 2-3. After answering the Complaint, Weyerhaeuser filed a Motion for Judgment on the Pleadings pursuant to CR 12(c) ("Weyerhaeuser's Motion"). In opposition to Weyerhaeuser's Motion, Wilson submitted and repeatedly cited to his own declaration.

[2] Wilson's declaration states: "I asked the Weyerhaeuser nursery manager about whether the on-site house at Mima Nursery would be rebuilt so I could move in. She told me it would not be rebuilt." CP 56 at ¶ 15.

See, *e.g.,* CP 65, 67, 70, 73. In reply, Weyerhaeuser pointed out that by submitting additional evidence in opposition, Wilson had converted Weyerhaeuser's Motion to a CR 56 motion, and submitted its own additional declarations. CP 114-115; CP 92-93. None of the declarations were excluded from consideration by the trial court. CP 127-28.

On appeal, Division I reviewed the trial court's decision under CR 56 standards because the trial court had considered Wilson's declaration and other outside pleadings when making its decision. Opinion at 3. On May 17, 2021, Division I unanimously affirmed the trial court's decision.

IV. ARGUMENT

A. STANDARD OF REVIEW.

This Court accepts discretionary review in only limited circumstances. RAP 13.4(b). Here, Wilson asserts that review is appropriate for three reasons: (1) the Opinion conflicts with this Court's precedent; (2) the Opinion conflicts with published Court of Appeals decisions; and (3) this case presents an issue of substantial public importance. Review is unwarranted under any of these bases.

B. THE COURT OF APPEALS' OPINION DOES NOT CONFLICT WITH ANY DECISION OF THIS COURT.

Wilson erroneously contends that the Court of Appeals' Opinion conflicts with this Court's prior decisions in *Ford v. Trendwest Resorts,*

Inc., and *Thompson v. St. Regis Paper Co*. To the contrary, the Opinion is completely consistent with *Ford*, *Thompson*, and this Court's other decisions, which hold that an employer may unilaterally alter the terms of an at-will employment relationship, without consequence.

In *Ford v. Trendwest Resorts*, the employer offered to return the plaintiff-employee to his at-will job position if the employee successfully finished an alcohol rehabilitation program. 146 Wn.2d 146, 43 P.3d 1223 (2002). But after the employee completed the program, the employer refused to reinstate him to his prior job and instead offered him a lower paying position. The employee declined and sued, winning at trial where the jury awarded him back and front pay. This Court reversed, applying the Washington common law at-will doctrine, noting that "an employer can alter or terminate at-will employment without consequence." *Id.* at 152 (emphasis added). This is because "[a]n employee's expectations under an employment at-will contract are no different from the employment itself." *Id.* at 156.

That is exactly the situation in this case: Weyerhaeuser offered and Wilson accepted at-will employment for an indefinite term, and as a matter of law Weyerhaeuser could "alter" the terms of his employment "without consequence." Nothing in *Ford* suggests that Wilson had any claim for the rental value of the Mima House or any other damages when

he kept working for Weyerhaeuser after knowing that there was no house for him to live in. To the contrary, the Court of Appeals Opinion is entirely consistent with *Ford*.

The Court of Appeals Opinion is also consistent with *Thompson v. St. Regis*, which held that employers and employees can contractually modify the at-will relationship. This is an unremarkable proposition, and it does not help Wilson's position. The Offer Letter explicitly stated that Wilson's employment was at-will, and there is no evidence in the record to indicate that the parties contractually modified the at-will nature of the relationship at any time. Further, there is nothing in *Thompson* to suggest that an employer cannot prospectively modify an at-will employee's compensation, as Weyerhaeuser did here.

Finally, Wilson argues that the Court of Appeals misapplied this Court's ruling in *Storti v. University of Washington.* This argument is similarly without merit. In *Storti*, this Court reiterated the basic contract law principal that a unilateral contract is formed when only one party makes a promise, and the second party accepts that promise through performance. 181 Wn.2d 28, 35, 330 P.3d 159 (2014). Wilson's Offer Letter was a quintessential unilateral contract. Weyerhaeuser made a unilateral job offer to Wilson that included information on compensation, benefits, and position requirements (including a requirement that he live

onsite at the Mima Nursery). Wilson did not negotiate any changes to the offer, but merely accepted what was offered. CP 52.

Wilson contends that the fact that he had to move to Washington to perform the Weyerhaeuser job created an enforceable binding promise by him and meant that he was employed under a bilateral contract. Nothing in *Storti*, *Ford*, *Thompson* or any other Supreme Court opinion supports that argument, or presents a conflict with the Opinion in this case. To the contrary, this Court held in *Roberts v. Atlantic Richfield Co*., 88 Wn.2d 887, 895, 568 P.2d 764 (1977), that the necessity to move for a job did not change the at-will nature of employment.

Wilson fails to demonstrate that the Opinion is in conflict with any decision of this Court. Rather, the Opinion is fully consistent with this Court's precedent, and the Court should deny discretionary review under RAP 13.4(b)(1).[3]

[3] Wilson also impliedly argues that the Opinion conflicts with this Court's decision in *P.E. Sys., LLC v. CPI Corp*., 176 Wn.2d 198, 203, 289 P.3d 638, 641 (2012) because the Court of Appeals recognized that by submitting declarations in opposition to Weyerhaeuser's Motion for Judgment on the Pleadings, Wilson converted the motion to a summary judgment motion. *See* Petition at 10. But Wilson fails to provide any argument as to how the Opinion conflicts with *P.E. Sys., LLC*—because it does not.

C. THE COURT OF APPEALS' OPINION DOES NOT CONFLICT WITH ANY PUBLISHED COURT OF APPEALS DECISION.

Wilson likewise fails to identify any published Court of Appeals decision that conflicts with the Opinion in this case. Accordingly, discretionary review under RAP 13.4(b)(2) should also be denied.

Despite Wilson's assertions to the contrary, the Opinion does not contravene *Ebling v. Gove's Cove, Inc.*, or *Flower v. T.R.A. Indust., Inc.*, both of which are distinguishable from the facts of this case because they involved bilateral contracts and employment relationships that were not at-will or for an indefinite period of time. *See Ebling v. Gove's Cove, Inc.*, 34 Wn. App. 495, 663 P.2d 132 (1983) (mutual promises made; not at-will employment); *Flowers v. T.R.A. Indust., Inc.*, 127 Wn. App. 131, 11 P.3d 1192 (2005) (three-year just cause employment contract). These cases are inapplicable to an at-will, indefinite term employment relationship like the one here.

In fact, the Opinion is entirely consistent with Court of Appeals decisions involving similar facts. Unlike the cases to which Wilson points, *Duncan v. Alaska USA Federal Credit Union, Inc.* is factually similar in all material respects: it involved an at-will indefinite term employment contract, an employer who unilaterally modified an employee's compensation on a prospective basis, and an employee who

continued working for the employer following the unilteral change in compensation. 148 Wn. App. 52, 73, 199 P.3d 991 (2008). As the *Duncan* court noted, the employee could either continue working under the new compensation terms or quit, but he could not keep working and recover damages for the reduced wages thereafter. *See id.* ("It is beyond dispute that Washington law provides that a terminable at-will contract may be unilaterally modified.") (internal quotation marks omitted).

Finally, Wilson claims that the Opinion conflicts with *McKasson v. Johnson*, which holds that an employment contract must be construed against the drafter. 178 Wn. App. 422, 429, 315 P.3d 1138 (2013). He is again mistaken. There is nothing in the record to suggest that the Court of Appeals did not adhere to this basic contract principle, nor does this principle mean that an employee is entitled to interpret a contract in whatever way they wish simply because they did not draft it. There is no basis for discretionary review under RAP 13.4(b)(2).

D. THERE ARE NO ISSUES OF SUBSTANTIAL PUBLIC IMPORTANCE.

Wilson is not entitled to review under RAP 13.4(b)(4) because a private employment relationship is not an issue of substantial public importance. Instead, review under RAP 13.4(b)(4) is reserved for critical issues that have a statewide impact. For example, this Court noted that the "prime example of an issue of substantial public interest" was an appellate

decision that had "the potential to affect every sentencing proceeding in Pierce County." *State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005) (emphasis added). This Court has also reviewed cases involving such substantial public issues as sex offender registration, termination of parental rights and statutory child support obligations. *See Matter of Arnold*, 189 Wn.2d 1023, 408 P.3d 1091 (2017); *In re Adoption of T.A.W.*, 184 Wn.2d 1040, 387 P.3d 636 (2016); *In re Marriage of Ortiz*, 108 Wn.2d 643, 646, 740 P.2d 843 (1987). This Court's decisions in all of those cases necessarily have wide-reaching effects and are important to more than just the parties involved.

Here, Wilson cannot show that the public is substantially interested in this Court determining whether a single employee was entitled to compensation for the unforeseen loss of on-site housing after the house was destroyed in a fire. Accordingly, discretionary review is inappropriate.

V. CONCLUSION

This is not a case that warrants discretionary review. Wilson cites to many reasons for why he disagrees with the Court of Appeals' unpublished Opinion, but he fails to show how or why RAP 13.4(b)(1), (2), or (4) apply to any of the issues he raises. For the reasons explained above, Weyerhaeuser asks that the Court deny the Petition for Review.

RESPECTFULLY SUBMITTED this 14th day of July, 2021.

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CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the state of Washington that I caused the foregoing to be filed using the e-filing portal of the Court of Appeals and that the document was emailed to the following:

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July 14, 2021 - 3:08 PM

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Appellate Court Case Number:	99891-4
Appellate Court Case Title:	Todd D. Wilson v. Weyerhaeuser Company

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