

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 CA 1991

JANICE FAIRCHILD

VERSUS

INTRA-OP MONITORING SERVICES OF MARYLAND, INC.;  
INTRA-OP MONITORING SERVICES, LLC;  
INTRA-OPERATIVE MONITORING SERVICES OF LOUISIANA, LLC;  
PAUL GREMILLION; GLEN GREMILLION; AND  
DEREK LANCASTER

*Handwritten initials: J.F. and J.S.D.*

Judgment Rendered: May 2, 2008.

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On Appeal from the  
19th Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Trial Court Number 522,536

The Honorable Janice Clark, Judge

\*\*\*\*\*

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Maryland, Inc.; Intra-Op Monitoring  
Services, LLC; Intra-Operative  
Monitoring Services of Louisiana, LLC;  
Paul Gremillion; Glen Gremillion; and  
Derek Lancaster

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BEFORE: CARTER, C.J., PETTIGREW AND WELCH, JJ.

*Welch J. concurs without reasons.*

**CARTER, C.J.**

Plaintiff, Janice Fairchild, appeals a district court judgment granting the defendants' motion for summary judgment and dismissing her suit. For the reasons that follow, we affirm.

**FACTUAL AND PROCEDURAL HISTORY**

Intra-Op Monitoring Services of Maryland, Inc. (Intra-Op) is a neuro-diagnostic testing and monitoring company that performs neurological testing during spinal or brain surgery. At the request of a surgeon, Intra-Op provides a trained technician with specialized monitoring equipment to audit the neurological responses of a patient during surgery and keep the surgeon apprised of any potential neurological injuries that are detected.

Derek Lancaster, Intra-Op's Vice President of Clinical Affairs, hired Ms. Fairchild, to work as a monitoring technician for Intra-Op. On April 21, 2003, Ms. Fairchild and "Intra-Op Monitoring Services, Inc." executed a two-year employment contract and non-competition agreement. In accordance with the employment contract, Ms. Fairchild agreed "to perform all the duties which may be required of [her] pursuant to this agreement quickly and reasonably to the best of [her] ability and experience and talents." One of Ms. Fairchild's obligations was "implementing the employer's intra-operative nerve testing and monitoring and providing the services to employer's clients, physicians, hospitals and clinics." Ms. Fairchild also agreed "to devote all of her time, skill, ability, effort, labor and attention to the employment and to the satisfaction of employer during the term of this agreement."

During her training period, Ms. Fairchild attended or was supervised by other Intra-Op technicians at thirty-one surgeries. Intra-Op gradually

began to send Ms. Fairchild to monitor surgeries on her own in July 2003. By August or September 2003, Ms. Fairchild was predominantly working solo; consequently, Intra-Op gave her the concomitant pay raise as provided for in the employment contract. However, after receiving complaints from physician clients or their staffs, on January 23, 2004, approximately nine months after the contract was executed, Mr. Lancaster terminated Ms. Fairchild's employment with Intra-Op.

In July 2004, Ms. Fairchild filed suit against Intra-Op and various other defendants seeking to recover her salary for the balance of time remaining under her employment contract, as well as other damages including attorney fees and costs.<sup>1</sup> In the defendants' answer, Intra-Op conceded that it had employed Ms. Fairchild pursuant to a term employment contract; however, Intra-Op asserted that it had terminated Ms. Fairchild for good cause because she had failed to perform adequately under the terms of that contract. The remaining defendants, collectively referred to in their answer as "Non-Employer Defendants," generally denied Ms. Fairchild's allegations against them.<sup>2</sup>

In October 2006, the defendants filed a motion for summary judgment seeking the dismissal of Ms. Fairchild's suit, arguing that Intra-Op had good

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<sup>1</sup> In her original and supplemental petitions, Ms. Fairchild also asserted state and federal employment discrimination claims based upon her age, gender, and disability. As a result, the defendants had the matter removed to federal district court where they subsequently filed a motion for summary judgment. In her reply memorandum, Ms. Fairchild expressly stated that she had no opposition to the defendants' motion with respect to her federal and state law age and gender discrimination claims. Nor did she argue therein in opposition to the defendants' motion as it pertained to her federal and state disability discrimination claims. Accordingly, the federal district court granted the defendants' motion for summary judgment as to all of Ms. Fairchild's federal and state law discrimination claims and dismissed them with prejudice. However, it declined to exercise jurisdiction over Ms. Fairchild's state law claims for breach of contract and unpaid wages and remanded those claims to the state district court.

<sup>2</sup> These defendants include Intra-Op Monitoring Services, LLC; Intra-Operative Monitoring Services of Louisiana, LLC; Paul Gremillion; Glen Gremillion; and Derek Lancaster.

cause to terminate her employment.<sup>3</sup> Specifically, Intra-Op asserted that four surgeons had complained about Ms. Fairchild's job performance in the operating room and requested that Intra-Op not send her to monitor their future surgeries. Because these doctors did not want her monitoring for them, Mr. Lancaster "concluded that there was little work available for Ms. Fairchild and terminated her...." In light of these facts, Intra-Op contended that its termination of Ms. Fairchild was sanctioned under the terms of the employment contract, specifically section I.C,<sup>4</sup> and La. Code Civ. P. art. 2749.

In opposing the motion, Ms. Fairchild argued that she could only be terminated for the reasons set forth in section IV of the contract, which provided for Intra-Op's reservation of its right to terminate its obligations under the employment contract in the event of Ms. Fairchild's (1) death; "physical or mental disability;" or (3) "act of dishonesty, fraud, misrepresentation or other act of moral turpitude." Ms. Fairchild claimed section IV specifies the only instances that would constitute good cause to terminate the agreement. Because none of the express circumstances listed in section IV occurred, Ms. Fairchild maintained that her termination was improper. Alternatively, Ms. Fairchild argued that genuine issues of material fact existed regarding her job performance and other related matters, thus precluding summary judgment.

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<sup>3</sup> Contemporaneously, defendants also filed a peremptory exception raising the objection of *res judicata* based upon rulings rendered by the federal court in this matter. Because the trial court ultimately granted the defendants' motion for summary judgment, it dismissed, as moot, the peremptory exception. Thus, the exception is not implicated in this appeal.

<sup>4</sup> Section I.C provides: "Employee further agrees to devote all of her time, skill, ability, effort, labor and attention to the employment and to the satisfaction of employer during the term of this agreement."

Following a hearing, the trial court granted the defendants' motion for summary judgment and dismissed Ms. Fairchild's suit. From this judgment, Ms. Fairchild appeals.

### DISCUSSION

Appellate courts review summary judgments *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. **Duplantis v. Dillard's Dept. Store**, 2002-0852 (La. App. 1 Cir. 5/9/03), 849 So.2d 675, 679, writ denied, 2003-1620 (La. 10/10/03), 855 So.2d 350. A motion for summary judgment should only be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, if any, together with the affidavits show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. Code Civ. P. art. 966B.

The determination of whether a contract is clear or ambiguous is a question of law. **Sims v. Mulhearn Funeral Home, Inc.**, 2007-0054 (La. 5/22/07), 956 So.2d 583, 590. Moreover, when a contract can be construed from the four corners of the instrument without looking to extrinsic evidence, the question of contractual interpretation is answered as a matter of law, and summary judgment is appropriate. **Id.** The contract herein is clear and unambiguous, and contrary to Ms. Fairchild's assertion, the contract does not limit termination only to those situations involving death, physical or mental illness, or moral turpitude. "Each provision in a contract must be interpreted in light of the other provisions so that each is given the meaning suggested by the contract as a whole." La. Civ. Code art. 2050. To limit termination only to those instances specified in section IV would

render the other provisions of the contract delineating Ms. Fairchild's duties meaningless.

Because the contract is for a definite term, Intra-Op had the burden of proof at trial and on the motion for summary judgment to establish just cause, or "serious ground for complaint," for termination of Ms. Fairchild's employment during the term of the contract. La. Code Civ. P. art. 966C(2); La. Civ. Code art. 2749;<sup>5</sup> see **Bartlett v. Doctors Hospital of Tioga**, 422 So.2d 660, 664-665 (La. App. 3d 1982), writ denied, 427 So.2d 869. Whether an employer had just cause to terminate an employee under a term contract of employment is a question of fact. **Laneville v. Majestic Industrial Life Insurance Co.**, 223 La. 724, 66 So.2d 786, 788-789 (1953).

The defendants presented the uncontradicted affidavits of Dr. George R. Williams and Dr. Jeffrey Oppenheimer, clients of Intra-Op. Both physicians stated that they were not satisfied with Ms. Fairchild's performance and that they informed Intra-Op that they did not want her monitoring future surgical procedures. The collective effect of the clients' complaints against Ms. Fairchild cannot be ignored. See **Smith v. Department of Health & Human Resources, Greenwell Springs Hospital**, 408 So.2d 411, 413 (La. App. 1st Cir. 1981) ("It is well established that, while any of several minor charges against an employee, when viewed in isolation, might not justify his dismissal, the aggregation of those charges could be sufficient cause for his termination.") The defendants met their burden of presenting undisputed facts to establish a

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<sup>5</sup> Louisiana Civil Code article 2749 provides:

If, without any serious ground of complaint, a man should send away a laborer whose services he has hired for a certain time, before that time has expired, he shall be bound to pay to such laborer the whole of the salaries which he would have been entitled to receive, had the full term of his services arrived.

serious ground for complaint such as would provide just cause for Ms. Fairchild's termination.

### **CONCLUSION**

After a *de novo* review of the record, we find that the trial court was correct in granting summary judgment, and we affirm the judgment by memorandum opinion in accordance with Uniform Rules-Courts of Appeal, Rule 2-16.1.B. Costs are assessed against the appellant, Janice Fairchild.

**AFFIRMED.**