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A Tennessee Court of Appeals, in *Cummings Inc. v. Dorgan*, has held that an at-will employee who was threatened with termination if he did not sign a noncompetition agreement cannot claim the agreement was signed under duress or is otherwise unenforceable. Several other states have found duress in similar circumstances.

Tennessee Court of Appeals Holds At-Will Employee Can Be Forced to Sign a Noncompetition Agreement Upon Threat of Termination

By Harry W. Wellford

On September 23, 2009, the Tennessee Court of Appeals, in *Cummings Incorporated v. Terry J. Dorgan, Jr.*, No. M2008-00593-COA-R3-CV (Tenn. Ct. App. Sept. 23, 2009), held that a noncompetition agreement signed by an at-will employee, under threat of termination, was enforceable. The appeals court specifically rejected the lower court's holding that the noncompetition agreement was unenforceable because it was not supported by consideration and because it allegedly was signed under duress. Rather, the court of appeals specifically held that the noncompetition agreement was enforceable despite the fact that the at-will employee was threatened with termination for refusing to sign it.

Factual and Procedural Background

Defendant Terry Dorgan ("Dorgan") was employed by Cummings, Incorporated ("Cummings"), a company that designs, engineers and manufactures sign products for businesses in the retail, fast food and hospitality industries throughout the United States. Dorgan was employed by Cummings for nine years as a "remote" salesperson, primarily based in Columbus, Ohio. At the inception of his employment, Dorgan signed an Employment Agreement containing provisions prohibiting him from competing after leaving the company. The agreement, which also contained compensation provisions, remained in effect through 2004. Due to changed economic conditions, Cummings decided to alter Dorgan's compensation arrangement and required him to enter into a new noncompetition agreement as a result. Dorgan was, at all times, an at-will employee. Dorgan was also encouraged to move to Nashville, and his territory was significantly reduced. Dorgan reluctantly executed the new agreement.

Subsequently, pursuant to the new agreement, Dorgan received another reduction in compensation and his territory was further reduced. Dorgan submitted his resignation in 2006 and began to work for Federal Health Sign Company, a direct competitor of Cummings. In his new role, Dorgan worked "behind the scenes" to help Federal Health

generate sales in violation of his noncompetition agreement with Cummings.

Cummings filed an action to enforce the noncompetition provisions of the 2004 agreement in Chancery (trial) Court in Nashville, Tennessee. The Chancery Court ultimately held that the 2004 agreement was void because it was signed under duress.

On appeal, the Tennessee Court of Appeals held that Cummings had the legal right to terminate Dorgan's employment at the time he was required to execute the 2004 agreement. Thus, Cumming's assertion of an intent to fire Dorgan if he refused to sign, was simply an assertion of a legal right and could not legally constitute duress. In reaching this conclusion, the court reaffirmed Tennessee law that "long adhered to the doctrine of employment-at-will, which recognizes the right of either the employer or the employee to terminate the employment relationship at any time, for good cause, bad cause, or no cause at all, without being guilty of a legal wrong." Once the court had reaffirmed this principle and found that the execution, under these circumstances, did not constitute duress, it was very simple for the court to enforce the agreement. In conclusion, the court noted, "[h]owever harsh it may be, Cummings had a legal right to terminate Dorgan if he refused to execute the 2004 Contract."

Conclusion

The *Cummings* case keeps Tennessee in line with many states, like Missouri, which continue to hold that the threat of termination of an at-will employee does not void an otherwise enforceable noncompetition agreement.

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