**The Supreme Court of Virginia holds that an at-will employee who was terminated failed to state a claim for wrongful termination under the *Bowman* exception.**

*Noemie S. Francis v. National Accrediting Commission of Career Arts & Sciences, Inc.*, No. 160267 (February 23, 2017) Supreme Court of Virginia
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On March 27, 2014, Noemie S. Francis was hired as a full-time administrative assistant on an at-will basis at the National Accrediting Commission of Career Arts & Sciences (NACCAS). On January 23, 2015, while Francis was at work, another NACCAS employee, Peri Blow, yelled obscenities at Francis, called her derogatory names, and threatened her. Other NACCAS employees witnessed this event, and Shanna Love attempted to pull Blow away from Francis, but Blow "continued to come back to [Francis] with additional threats and vituperations."

Later that day, NACCAS's Executive Director, Anthony Mirando, and its Human Resources Director, Alicia Williams, met with Francis, Blow, and Love, instructing them to observe "NACCAS star core values" and to improve their behavior. However, NACCAS didn't investigate the incident between Blow and Francis. Several days later, Williams sent out a summary of the meeting, but the summary did not address Blow's actions, any disciplinary measures, or any measures to protect Francis. Francis expressed concern that the summary didn't address her safety and that she was uncomfortable "working closely with someone" who threatened "her physical wellbeing"

On January 30, 2015, Francis filed an *ex parte* petition for a preliminary protective order (PPO) against Blow. The court granted the PPO later that day, and on February 5, 2015, a police officer served the PPO on Blow at the NACCAS office, in Williams' presence. On February 9, Williams told Francis that she was terminated effective immediately because she "did not fit the vision of the organization."

On June 11, 2015, Francis filed suit against NACCAS in the Circuit Court of the City of Alexandria, alleging wrongful discharge in violation of public policy under *Bowman v. State Bank of Keysville*, 229 Va. 534 (1985). The court sustained NACCAS's demurrer, which alleged that "there are no sufficient allegations of a true public policy violation." Francis filed for an amended complaint on August 25, 2016, based upon the allegations that NACCAS wrongfully discharged her in violation of the public policy represented in Code §§ 19.2-152.7:1 through 19.2-152.10 (the Protective Order Statues). On September 9, 2015, NACCAS filed an amended demurrer, which the court again sustained. Francis appealed.

A demurrer is properly sustained when the pleading to which it is directed fails to allege facts sufficient to state a cause of action. *Brown v. Jacobs*, 289 Va. 209, 215–19 (2015). On demurrer, the trial court is only permitted to determine "whether the factual allegations of the complaint are sufficient to state a cause of action." *Harris v. Kreutzer*, 271 Va. 188, 196 (2006).

Virginia follows the employment at-will doctrine, which allows "[a]n employee [to] remain[] at liberty to leave his employment for any reason or no reason," and "[b]y the same token, the employer is free to terminate the employment relationship without the need to articulate a reason." *Johnston v. William E. Wood & Assocs.*, 292 Va. 222, 225–26 (2016).

In *Bowman*, the Supreme Court of Virginia recognized an exception to the employment at-will doctrine based upon an employer's violation of public policy in the discharge of an employee. This court has only recognized three scenarios in which a claim was sufficient to constitute a common law cause of action for wrongful termination of an at-will employee under the *Bowman* exception,[1] two of which are relevant here:

(1) When "an employer violated a policy enabling the exercise of an employee's statutorily created right" (hereinafter Scenario 1); and
(2) When "the public policy violated by the employer was explicitly expressed in the statute and the employee was clearly a member of that class of persons directly entitled to the protection enunciated by the public policy" (hereinafter Scenario 2).

In order to successfully state a claim for wrongful discharge under *Bowman* Scenario 1, a claimant must show that the employer's termination violated public policy. *Rowan v. Tractor Supply Co.*, 263 Va. 209, 213–14 (2002). When analyzing a claim, a court must discern what right was given to an employee by statute, and then whether the employer's termination of employment violated the public policy underlying the right.

The Protective Order Statutes grant an individual the right to seek a protective order. The public policy under the Protective Order Statutes clearly states "to protect the health and safety of the petitioner or any family or household member of the petitioner." Code § 19.2-152.9(A). Thus, the court reasoned that a viable *Bowman* claim in this case would require a showing that the termination of employment *itself* violated the stated public policy of protection of health and safety.

Here, Francis does not allege that the termination itself violated the public policy stated in the Protective Order Statutes by somehow endangering her health and safety. She also doesn't allege that NACCAS prevented her from exercising her statutory rights under the Protective Order Statutes. Francis merely alleged that she was terminated because she exercised her rights under the Protective Order Statutes. As this court has previously stated, *Bowman* does not recognize "a generalized cause of action for the tort of 'retaliatory discharge.'" *Miller v.*

[1] Francis does not assert any claims under the third scenario, so it is irrelevant to this analysis.

*SEVAMP, Inc.*, 234 Va. 462, 467–68 (1987). Because there is no public policy violated by the termination of Francis's at-will employment, she failed to state a claim under *Bowman* Scenario 1.

Additionally, Francis argued that her amended complaint demonstrates that she is "clearly a member of [a] class of persons directly entitled to the protection enunciated by the public policy [in *Bowman* Scenario 2]." The court found that even if Francis was a member of a protected class of persons entitled to the protections enunciated by public policy, she failed to allege that NACCAS's action in terminating her violated the public policy *to protect her health and safety*. Thus, the court held that she also failed to state a claim under *Bowman* Scenario 2. Given Francis's failure to state a claim, the circuit court did not err in sustaining the demurrer.

**DESCRIPTION:** Supreme Court of Virginia affirms lower court judgment sustaining demurrer for failure to state a valid claim for wrongful discharge.

**SUMMARY:** The Supreme Court of Virginia found that an at-will employee who was terminated failed to state a valid claim for wrongful discharge under the *Bowman* exception. The court held that the employee did not show that the employer's termination violated public policy.