

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
October 25, 2007 Session

**LINDA JOHNSON v. THE LENOIR CITY HOUSING AUTHORITY, ET AL.**

**Appeal from the Chancery Court for Loudon County  
No. 10185 Frank V. Williams, III, Chancellor**

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**No. E2006-02774-COA-R3-CV - FILED MARCH 31, 2008**

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Linda Johnson (“Ms. Johnson”), former executive director of the Lenoir City Housing Authority (“LCHA”), seeks damages against LCHA and its disability insurance provider, Sun Life Assurance Company of Canada (“Sun Life”), arising out of Sun Life’s denial of her application for disability coverage, which application was filed more than two years after her termination by LCHA. As to Sun Life, Ms. Johnson argues that her belatedly-submitted claim was wrongfully rejected because she was, she now says, disabled at the time of her termination. As to LCHA, Ms. Johnson argues that LCHA failed to provide her with proper notice of the available disability benefits while she was still employed, and further failed to assist her in filing a timely disability claim. Both defendants moved for summary judgment. Sun Life and LCHA both argue that Ms. Johnson was not disabled when she was terminated, and that she is judicially estopped from asserting otherwise, due to several prior statements by her in which she indicated she was not disabled. In addition, LCHA argues that Ms. Johnson in fact knew about the disability policy, and that LCHA was under no duty to provide her with additional information or help her file a claim. The court granted summary judgment with respect to both defendants. Ms. Johnson appeals. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court  
Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J. and SHARON G. LEE, J., joined.

David H. Dunaway, LaFollette, Tennessee, for the appellant, Linda Johnson.

John E. Winters, Knoxville, Tennessee, for the appellee, the Lenoir City Housing Authority.

James T. Williams, William A. Harris, III, and Robert F. Parsley, Chattanooga, Tennessee, for the appellee, Sun Life Assurance Company of Canada.

## OPINION

### I.

Ms. Johnson began working as executive director of LCHA in 1983. Her job was to oversee the organization's day-to-day operations. She reported to the organization's Board of Directors ("Board"). She testified in a deposition that she was responsible for "everything" at LCHA. She claims she suffered a serious head injury in January 2000. She thereafter returned to work. According to her amended complaint, she suffered medical problems upon her return, "including mini-strokes, seizures, and thereafter uncontrolled high blood pressure."

Meanwhile, in 2001, Ms. Johnson's future at LCHA came into question because of allegations that she had misappropriated federal funds received by the authority. After a preliminary audit by the U.S. Department of Housing and Urban Development ("HUD") revealed that more than \$150,000 had been inappropriately expended, Ms. Johnson was placed on administrative leave on August 24, 2001. Following a pre-termination hearing, she was terminated December 6, 2001.

Three weeks before being placed on administrative leave, and approximately three months before being fired, Ms. Johnson went on voluntary medical leave, beginning on August 3, 2001. Ms. Johnson now claims that, due to the alleged lingering aftereffects of her head injury, she was "totally unable to perform her duties as executive director" from August 2001 onward, and as such, was entitled to disability benefits. She further claims that LCHA knew, or should have known, that she was suffering from total disability during this time period, and that LCHA should have told her about the disability benefits available to her. In fact, she goes further than that, arguing that LCHA "had a fiduciary obligation to . . . assist [her] with obtaining disability benefit status due to [her] longevity and tenure as an employee with [LCHA]."

During Ms. Johnson's pre-termination hearing on December 6, 2001, her attorney told the LCHA Board that Ms. Johnson "is ready, willing, and able to return to this job and to try to correct whatever perceived problems exist[.]" Nevertheless, Ms. Johnson was terminated. Just over three weeks later, she filed for unemployment benefits. By signing the application form for these benefits, she affirmed that she is "able and available for full-time work." Her application was granted, but LCHA appealed, which led to an administrative hearing on May 6, 2002. During that hearing, she testified as follows:

[LCHA's attorney]: So is it your position that in this Tribunal you are not disabled from working, but— ?

Ms. Johnson: No, I'm not now. I'm not now and I wasn't at the time I was fired.

The administrative appeals tribunal reversed the initial grant of unemployment benefits, finding that Ms. Johnson had been terminated due to "misconduct" and therefore was not eligible for

unemployment benefits. It held that Ms. Johnson had been fired “for failure to comply with the directives of the [Board]” and for failure to “explain apparent malfeasance and/or misfeasance with regard to certain HUD refinancing funds expended outside the allowed parameters apparently for [Ms. Johnson’s] personal use.” Ms. Johnson appealed. Her appeal was eventually heard by this court, and in *Johnson v. Reineke*, No. E2003-01972-COA-R3-CV, 2004 WL 350646 (Tenn. Ct. App. E.S., filed February 25, 2004), we upheld the denial of unemployment benefits.

Meanwhile, even as the unemployment benefits case proceeded, Ms. Johnson opened a second front in her legal battle with LCHA. On May 16, 2002, she filed the lawsuit that began *this* action. It was initially a wrongful termination suit, alleging breach of contract, discrimination based upon sex, age and physical condition, retaliatory discharge, defamation and intentional infliction of emotional distress. Ms. Johnson alleged that LCHA’s reasons for firing her were “pretextual” and “fabricated,” and that there was “no legitimate reason” to fire her. Her complaint did not mention any head injury, and in fact stated that the reason she took a medical leave starting on August 3, 2001, was because of “hypertension and . . . emotional problems” due to an “additional and unusual physical work load and the added unusual stress and strain on [Ms. Johnson].” Nor did the complaint allege that LCHA was aware that Ms. Johnson was so disabled as to be unable to work. On the contrary, the complaint alleged that LCHA “terminated [her] employment knowing . . . [t]hat [she] planned to work for [LCHA] until [she] reached retirement.” Further, the complaint demanded that she “be reinstated to her employment” and “restored to her position as Executive Director.” Moreover, in a deposition taken on November 18 and 19, 2003, Ms. Johnson testified that “at the time I was fired, I was hurting, but I wasn’t totally disabled.”

Ms. Johnson now advances a variety of arguments in an attempt to convince this court to disregard her prior statements indicating her lack of disability and her willingness to continue working. First and foremost, she argues repeatedly that those statements were “solely a product of [her] total denial as to the seriousness of her physical and emotional problems.” Thus, for instance, we are asked to ignore her statement under oath that “I’m not [disabled] now and I wasn’t at the time I was fired” because, she claims, this testimony reflects only that she was “in denial” rather than the actual facts. She cites no authority for the proposition that statements made in judicial proceedings and legal documents may be simply ignored if the declarant later announces that he or she was in a state of “denial” when the statement was made, but Ms. Johnson nevertheless seems hopeful that this court will follow such an approach.

She also emphasizes that the statement to LCHA at the pre-termination hearing that she was “ready, willing, and able to return to this job” was “made by Ms. Johnson’s former counsel, not by Ms. Johnson herself.” Moreover, she says “it is clear that this statement by former counsel is by no means an assertion of Ms. Johnson’s physical and emotional good health in any sense.” The statement is, we are told, “clearly unavailing” as proof that Ms. Johnson was not disabled at the time of her dismissal, because the “context” reveals that the statement was only uttered in an attempt to clear Ms. Johnson’s name, and, in any event, she was in “denial” at the time. We are asked to conclude that the statement was merely “an example of wishful thinking undertaken in good faith by an employee who loved her job and wanted to return to it.”

Similarly, we are also asked to take no heed of Ms. Johnson's assertion on her unemployment application that she is "able and available for full-time work." Although Ms. Johnson signed this document, which noted that "there are severe penalties for false statements made for the purpose of obtaining or increasing benefits," she now asks us to conclude that "such a mere signature, executed by one deeply in need of financial support and eager – even if not able – to work, can[not] be taken as [a] preclusive declaration of good health."

In addition to contradicting her past statements about whether she was disabled when terminated, Ms. Johnson also contradicts her past statements about whether she knew she had disability insurance. At the same November 2003 deposition in which she stated that she "wasn't totally disabled," Ms. Johnson also testified as follows:

Q: What benefits did you receive as executive director?

A: Health benefits, life insurance, dental insurance, *disability*, the whole nine yards.

\* \* \*

Q: Who was your *disability* benefits package through?

A: They have changed. I don't know who was – which I'm checking on that. They had changed the insurance so much.

Q: Have you filed a claim under that *disability* policy?

A: No.

Q: Do you know what the value of those benefits were?

A: No.

(Emphasis added). In her brief before this court, Ms. Johnson asserts that the above-quoted deposition testimony "does not establish that Ms. Johnson actually knew about the disability insurance policy[]." She says the testimony is "much too uncertain to support that conclusion" and that her "statements about the disability insurance are in fact rather vague on the point" because she was unable to identify the insurance carrier or recite the value of the benefits. "Thus," she argues, "the most that can be said is that Ms. Johnson had some vague notion that disability benefits might be floating out there somewhere but that she was unaware of the specific policy, the carrier, the requirements for receiving benefits, or the amount of the benefits."

According to the affidavit of Ms. Johnson's attorney, David Dunaway, "[i]t was obvious, during Ms. Johnson's deposition, that she was not aware of the existence of any policy nor had the

same ever been brought to her attention.” The “obviousness” of that assertion eludes this court, given that it is contradicted by the very deposition in question, but Mr. Dunaway presses on. He asserts that it “became apparent” *during the deposition* that Ms. Johnson “had suffered and was continuing to suffer from severe disability.” Thus, Mr. Dunaway states that on November 20 – one day after the deposition ended – he inquired with LCHA “as to whether there was a long term disability benefit policy in effect” as of August 2001. In response, Mr. Dunaway says, LCHA promptly sent him a copy of the policy. Based on this occurrence, Ms. Johnson now claims that she *first became aware* of the disability policy on November 20, 2003 – notwithstanding her prior testimony explicitly indicating that she knew she had disability insurance.

Armed with this “new” knowledge, Ms. Johnson submitted a disability insurance claim to Sun Life in February 2004 – more than two years after her termination from LCHA. The claim was denied in March 2004. In denying the claim, Sun Life determined that Ms. Johnson had failed to provide timely notice of her alleged disability, and that her disability, if any, had not arisen until after the termination of her employment, which also terminated her coverage. In September 2004, Ms. Johnson amended her complaint in this action, joining Sun Life as a party and adding a new claim against LCHA. As to Sun Life, she argued that her application for coverage had been wrongfully denied. As to LCHA, she buttressed her arguments about wrongful termination, defamation, and the other causes of action with a claim that LCHA had not provided her with proper notice of the available disability benefits, and had failed to properly assist her in filing a timely disability claim.

In October 2005, Ms. Johnson voluntarily nonsuited her original claims against LCHA. Thus, the only operative claims remaining in this action against LCHA and Sun Life are the ones that she added in her amended complaint, all of which are related to her disability.

## II.

### A.

As the above-stated facts demonstrate, Ms. Johnson’s case is built upon her disavowal of numerous prior statements in legal documents and judicial and administrative proceedings. In her briefs, she argues again and again that her various rationales for ignoring these statements must “clearly” prevail. Yet we find no such clarity in Ms. Johnson’s arguments. In fact, if anything is clear, it is that Ms. Johnson is advancing a hodgepodge of self-serving excuses designed to convince this court to let her completely reverse her position and her testimony because it has now become convenient for her to do so. Thus, she argues that she was “in denial” when she made the statements; that she cannot be held responsible for statements by her agent; that her underlying motives are more important than her words; and that her words do not mean what they appear to mean.

### B.

Ms. Johnson’s claims against LCHA are particularly easy to resolve. To prove that LCHA breached a duty to help her file a disability claim – assuming *arguendo* that such a duty would arise

at all – she must, at the very least, establish that LCHA knew or should have known that she was disabled. Additionally or alternatively, to prove that LCHA failed to inform her about her disability insurance coverage, she must establish that she was in fact unaware of the coverage. On summary judgment, her duty to demonstrate a genuine issue of material fact with regard to these issues is triggered only if LCHA first negates her claims, *McCarley v. West Quality Food Serv.*, 960 S.W.2d 585, 588 (Tenn.1998), but LCHA meets this burden simply by pointing to Ms. Johnson’s own prior statements. Specifically, the statement of Ms. Johnson’s attorney, her agent, to LCHA, made in her presence at the termination hearing, that Ms. Johnson was “ready, willing, and able to return to this job,” negates the assertion that LCHA knew or should have known that she was disabled; and Ms. Johnson’s own testimony about her disability coverage negates the assertion that she was unaware of the existence of that coverage. In addition, LCHA has presented evidence that all employees were provided with a copy of the disability plan, and has argued that it would be unreasonable to suppose, after 18 years as the executive director responsible for “everything,” that Ms. Johnson would not know about these benefits.

Because LCHA has negated these points, Ms. Johnson must “establish the existence of the essential elements of the claim” that have been negated, whether by presenting new evidence, pointing to overlooked evidence, “rehabilitating the evidence attacked by” LCHA, or explaining that further discovery is needed. *Id.* She has failed to do any of these things.

Ms. Johnson’s evidence that she was “in denial” about her purported disability does nothing to establish that LCHA should have known about that disability in spite of her explicit denials. She does not argue that LCHA knew, or had reason to know, that she was “in denial.” Similarly, she cannot now distance herself from her own attorney’s statements to the LCHA Board, to which she voiced no objection at the time, and upon which LCHA could have reasonably relied as an agent’s authorized assertion that Ms. Johnson was not disabled. Nor can Ms. Johnson escape the significance of this admission by pointing out the purported motives underlying it. Whatever her (or her attorney’s) private reasons for telling LCHA that she was not disabled, the fact is that the statement was made, and Ms. Johnson provides no evidence that LCHA knew or should have known that the statement was false.

As for her knowledge that she was covered by disability insurance, we are profoundly unmoved by the contention that Ms. Johnson’s deposition testimony about her disability insurance policy “does not establish that Ms. Johnson actually knew about the disability insurance policy[.]” Of course it does. It establishes precisely that. The mere fact that she could not recite the policy’s value or the name of the provider is irrelevant. She claims now that she did not know she had disability insurance at all – that she was unaware of the policy’s *existence* – yet her own prior testimony proves this claim false. Her affidavit swearing “[t]hat until November 20, 2003, I was not made aware of the existence of a Group Disability Policy” is flatly contradicted by her deposition testimony of November 18 and 19, 2003. No adequate explanation is offered for how, if she was unaware of the policy’s existence, she could have testified that she had “[h]ealth benefits, life insurance, dental insurance, disability, the whole nine yards,” that “[t]hey had changed the [disability] insurance so much,” and that she had not filed a claim “under that disability policy.”

There is nothing “vague” or “uncertain” about these statements. The only disputed issue of material fact raised by Ms. Johnson’s evidence is whether she perjured herself in her affidavit. That is not for us to decide, but we certainly will not reward this apparent double-talk by pretending that Ms. Johnson’s blatant self-contradictions have created a disputed issue of material fact. She is stuck with her own words. Summary judgment for LCHA was properly granted.

C.

That leaves Ms. Johnson’s claim against Sun Life. Unlike her claim against LCHA, this claim arguably does not depend on the notion that she lacked knowledge of the insurance policy, nor on the notion that anyone knew or should have known about her disability. Instead, the key fact at issue is the claim that Ms. Johnson was disabled at the time of her dismissal. Sun Life negates this claim by pointing to the prior inconsistent statements of Ms. Johnson and her former attorney. As previously noted by us, Ms. Johnson responds by contending that these statements reflect only her “state of denial,” not the actual reality of her status at the time. She argues in her brief:

When one examines these data, it is clear that they fail to support the conclusion that Ms. Johnson was not disabled at the time her employment was terminated. The evidence proves only that Ms. Johnson may have been, or at least considered herself to have been, non-disabled at some point subsequent to her termination. These examples by no means prove that Ms. Johnson was not disabled on the date of her termination or before that time. Indeed, the evidence in the record strongly points to the conclusion that she was in fact disabled on and before that date.

Again, we do not believe it is at all “clear” that the evidence “strongly points” to any such finding. Ms. Johnson does offer affidavits of two doctors supporting her proposed conclusion, but again, the specter of her own self-contradictions looms large. However, we need not actually decide the factual question based on the usual summary judgment standard, because the doctrine of judicial estoppel decides it for us.

There are two distinct branches of judicial estoppel: estoppel by oath and estoppel by inconsistent position. *Reed v. Alamo Rent-A-Car, Inc.*, 4 S.W.3d 677, 683 n.2 (Tenn. Ct. App. 1999) (“principles of judicial estoppel may preclude a party from contradicting sworn testimony given in a prior judicial proceeding or from maintaining inconsistent legal positions in judicial proceedings”). The first branch is designed to “uphold the sanctity of an oath.” *Marcus v. Marcus*, 993 S.W.2d 596, 602 (Tenn. 1999). “The sworn statement is not merely evidence against the litigant, but (unless explained) precludes him from denying its truth.” *Id.* The second branch is “founded on the administration of justice and seek[s] to prevent litigants from unfairly benefitting from a strategic shift in legal position.” *Butler v. Butler*, No. 02A01-9702-CH-00038, 1997 WL 576533, at \*4 (Tenn. Ct. App. W.S., filed September 18, 1997). Both branches of judicial estoppel

aim to prevent parties from “play[ing] fast-and-loose with the courts.” *Cothron v. Scott*, 446 S.W.2d 533, 536 (Tenn. Ct. App. 1969) (quoting 31 C.J.S. *Estoppel* § 117).

Estoppel by oath bars Ms. Johnson’s action because of her statement in the earlier unemployment benefits case that “I’m not [disabled] now and I wasn’t at the time I was fired.”<sup>1</sup> We recognize that this statement was initially made during an administrative appeal, rather than a judicial one. However, we need not decide the question of whether judicial estoppel applies to administrative proceedings such as these, because Ms. Johnson subsequently appealed to the chancery court and ultimately to this court, thus bringing the administrative case under the umbrella of the judicial system. Her sworn statement that she was not disabled when terminated became part of the record in that judicial proceeding. Tenn. Code Ann. § 50-7-304(k) (Supp. 2007) is inapplicable; that statute applies only to collateral estoppel and/or res judicata, not to judicial estoppel by oath. Additionally, we recognize that “judicial estoppels are not favored” in this state. *Layhew v. Dixon*, 527 S.W.2d 739, 741 (Tenn. 1975). However, we believe, based on Ms. Johnson’s demonstrated history of ever-shifting, self-serving statements on this issue, that this is precisely the sort of circumstance where this otherwise disfavored doctrine properly applies.

The exception to estoppel by oath for statements “made inadvertently, or through mistake,” *Schultz, Baujan & Co. v. Bell*, 130 S.W.2d 149, 151 (Tenn. Ct. App. 1939), does not apply here. Ms. Johnson is charged with personal knowledge of her own physical and mental condition. She offers no caselaw suggesting that a litigant can avoid the application of judicial estoppel simply by asserting that she was “in denial” when the earlier contrary statement was made, and we believe it would seriously undermine the doctrine to so hold. Like all citizens, Ms. Johnson has a duty to make truthful statements under oath and to advance truthful arguments in her prosecution of a case through the judicial system. This duty remains operative even if she was, as her brief asserts, “an impecunious, jobless woman of a certain age seeking to put bread on her table,” and a bare, self-serving assertion of “denial” does not entitle her to avoid this duty. Moreover, we note that even *after* her supposed realization in November 2003 that she was disabled and had been “in denial” about it, Ms. Johnson *still* pursued the unemployment-benefits case to its conclusion in *Johnson v. Reineke*, 2004 WL 350646, with oral arguments heard on February 6, 2004. For all of these reasons, summary judgment for Sun Life was properly granted.

### III.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the appellant, Linda Johnson. This case is remanded to the trial court for collection of costs assessed below, pursuant to applicable law.

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CHARLES D. SUSANO, JR., JUDGE

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<sup>1</sup>We do not decide whether estoppel by inconsistent position also bars her action.