

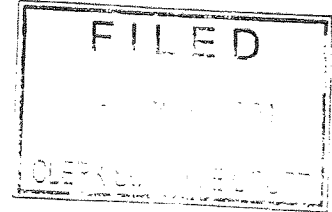
IN THE COURT OF APPEALS OF IOWA

No. 1-573 / 00-2017
Filed December 28, 2001

PENNY SUE ALLEN,
Plaintiff-Appellant,

vs.

HON INDUSTRIES, INC.,
Defendant-Appellee.



Appeal from the Iowa District Court for Muscatine County, James E. Kelley, Judge.

The plaintiff appeals a district court ruling granting the defendant's summary judgment motion on plaintiff's action against defendant for breach of contract and promissory estoppel. **AFFIRMED.**

Jay T. Schweitzer and Timothy K. Wink of Schweitzer & Wink, Columbus Junction, for appellant.

Frank B. Harty and Mary E. Funk of Nyemaster, Goode, Voigts, West, Hansell & O'Brien, P.C., Des Moines, for appellee.

Heard by Vogel, P.J., and Miller and Eisenhauer, JJ.

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EISENHAUER, J.

The plaintiff appeals a district court ruling granting the defendant's motion for summary judgment on plaintiff's action for breach of contract. Plaintiff contends she is entitled to damages under three theories, (1) unilateral contract, (2) promissory estoppel, and (3) negligent misrepresentation. We conclude the district court was correct in granting summary judgment and affirm.

Background Facts and Proceedings. Penny Allen commenced employment with Hon Industries, Inc. (Hon) in 1977. The company referred to employees as "members". As part of their members' benefits, Hon provided for family and medical leave for up to one year. The employee handbook, however, specifically stated there was no guarantee of employment once the leave expired. If the leave lasted longer than a year, Hon reserved the right to layoff a member for no longer than ninety days while waiting for an open position for which the member was qualified. If, after ninety days, any member was not re-employed, the member's employment was terminated. The handbook also included several statements that none of the policies or provisions were intended to constitute a contract.

In June 1997, Allen filed a written request for a one-year personal leave of absence, which was approved by Hon management. Hon sent Allen a certified letter stating it did not guarantee her reemployment after her leave expired. In May 1998, Allen requested an additional leave until December 1998. Allen received verbal permission from Gale Bruhn, Hon's human resources manager, who told Allen "that there should be no problem." Allen informed Hon she was ready to return to work in November 1998. She did not, however, qualify for any

open positions at the time her leave expired, and her employment was terminated.

Allen filed a petition against Hon, claiming damages for breach of contract. She later amended her petition to allege negligent misrepresentation. Hon filed a motion for summary judgment. The district court granted the motion, noting that when Allen took her personal leave, she was not promised a job when her leave expired. The court ruled the wording of the handbook was clear and unambiguous that the policies contained therein did not constitute a contract. The court rejected her claims of a unilateral contract, concluding she was an at-will employee, and there was insufficient evidence of a definite policy promising an absolute right to reinstatement upon expiration of personal leave. The court also ruled Allen could not raise the issue of promissory estoppel since she had not previously pleaded that theory. Allen has appealed.

Scope of Review. Pursuant to Iowa Rule of Civil Procedure 237(c), summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. We examine the record before the district court to determine whether any genuine issue of material fact exists and whether the court correctly applied the law. *Schoff v. Combined Ins. Co. of America*, 604 N.W.2d 43, 45 (Iowa 1999). We view the facts in a light most favorable to the party opposing the motion for summary judgment. *Phipps v. IASD Health Servs. Corp.*, 558 N.W.2d 198, 201 (Iowa 1997).

Unilateral Contract. Allen first argues Hon breached a contract by failing to provide her with employment at the end of her personal leave. She maintains

she detrimentally relied on the handbook, policies, and statements of Hon's human resources personnel in taking her leave of absence. We find no merit to this argument.

Under Iowa law, employment relationships are presumed to be at will. *Schoff*, 604 N.W.2d at 47. Iowa law therefore permits termination at any time for any lawful reason so long as it is not contrary to public policy. *Lockhart v. Cedar Rapids Community Sch. Dist.*, 577 N.W.2d 845, 846 (Iowa 1998). Our courts have recognized an exception to this rule, where an employer's handbook or policy manual creates a unilateral contract. In order to qualify, "the handbook or manual must meet the requirements for a unilateral contract." *Thompson v. City of Des Moines*, 564 N.W.2d 839, 844 (Iowa 1997). An employee handbook may create a unilateral contract if (1) the handbook is sufficiently definite in its terms to create an offer, (2) the handbook has been communicated to and accepted by the employee so as to constitute an acceptance; and (3) the employee continues working to provide consideration. *Id.* The party relying on the unilateral contract carries the burden to prove its existence. *Anderson v. Douglas & Lomason Co.*, 540 N.W.2d 277, 281 (Iowa 1995). Unless there is ambiguity, the question of whether a handbook binds the parties in contract is a question of law. *Fogel v. Trustees of Iowa College*, 446 N.W.2d 451, 456 (Iowa 1989).

Our review of the documents in question reveals no ambiguity concerning their purpose that would generate a factual question for the jury. Neither the handbook nor the information Allen allegedly relied upon contains language sufficiently definite to constitute an offer of continuous employment. The handbook specifically states:

This member handbook does not constitute a contract of employment. I understand that the handbook contains only a summary of information found in greater detail in Company benefit plans, summary plan descriptions, policies and procedures that may be changed, altered, modified or amended from time to time. In case of conflict between provisions in this handbook and language of the actual plans, policies and procedures, the actual documents will apply.

These provisions were repeated later in the handbook, stating “[t]his handbook contains general information and is not a contract of employment.” Allen acknowledged and signed a receipt of the handbook.

Our courts have recognized that similar disclaimer language prevents the formation of a contract by highlighting the employer’s intent not to be bound by its policies. *Phipps*, 558 N.W.2d at 204; *Anderson*, 540 N.W.2d at 288; *Kavanaugh v. Medical Associates Clinic, P.C.*, 491 N.W.2d 194, 195 (Iowa Ct. App. 1992). Unlike in *Jones v. Lake Park Care Center, Inc.*, 569 N.W.2d 369, 375 (Iowa 1997), in which the supreme court concluded a contract existed between the employee and the company where the handbook specifically stated its terms were binding on both employee and management, here the handbook unambiguously states no such contract exists.

We find no evidence Hon intended its policies and procedures or handbook to constitute a contract between the company and its employees. The handbook specifically states there is no guarantee of reemployment at the end of a personal leave period. Allen was informed by letter after receiving her first leave that there was no guarantee of reemployment when she returned. Any oral statements by Bruhn merely reflected his impression or understanding there would be no problem with Allen taking a second leave. Allen admitted Bruhn

made no direct statements to her that she would be reemployed once she completed her personal leave. The district court correctly granted summary judgment on this ground.

Promissory Estoppel. Allen also raises a claim on the basis of promissory estoppel. The district court ruled Allen untimely raised the issue of promissory estoppel and therefore declined to consider it. The district court noted Allen did not raise this issue in her original pleadings. Allen amended her petition to allege claims of negligent misrepresentation pursuant to Iowa Rule of Civil Procedure 69, but did not include a claim of promissory estoppel. Allen did not raise the promissory estoppel issue until her response to Hon's summary judgment motion, and at no time filed a motion to amend her petition to reflect this new claim. We do not believe the district court abused its discretion in concluding that Allen's claim of promissory estoppel was untimely.

Negligent Misrepresentation. Allen alleges negligent misrepresentation, contending Hon owed her a duty to properly advise her of the policies and procedures in the employee handbook. She contends Hon's personnel office was in the business of disseminating information to its employees. However, the supreme court in *Alderson v. Rockwell Int'l. Corp.*, 561 N.W.2d 34, 36 (Iowa 1997) ruled that an action for negligent misrepresentation under Restatement (Second) of Torts section 552 will not lie for alleged wrongful termination of employment. See also *Fry v. Mount*, 554 N.W.2d 263, 266 (Iowa 1996). We find no reason under the facts in this case to depart from established precedent.

We therefore affirm the district court's ruling granting Hon's summary judgment motion.

AFFIRMED.