FILED
FEB 28 1995
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-461 / 94-253

ROTH YOUNG PERSONNEL SERVICE OF DES MOINES, INC.,

Appellant,

vs.

FOODS, INC., d/b/a **DAHL'S,**

Appellee.

Appeal from the Iowa District Court for Polk County, Dale B. Hagen, Judge.

Appeal from the alleged breach of an oral contract for the provision of employment referral services. **AFFIRMED.**

John C. Conger of Wiggins & Anderson, P.C., West Des Moines, for appellant.

Robert C. Rouwenhorst of Dickinson, Mackaman, Tyler & Hagen, P.C., Des Moines, for appellee.

Considered by Donielson, C.J., and Sackett and Habhab, JJ.

DONIELSON, C.J.

This is an appeal from the alleged breach of an oral contract for the provision of employment referral services. The action was tried to the court and resulted in a judgment in favor of the defendant. On appeal the plaintiff contends: 1) the district court's ruling was not supported by substantial evidence; 2) the district court erred in not finding either an implied in fact or implied in law contract; and 3) the district court should have found the defendant was equitably estopped from denying the existence of the contract. We affirm.

I. SUFFICIENCY OF THE EVIDENCE.

Findings of fact in a law action have the effect of a special jury verdict and are binding on an appellate court if supported by substantial evidence. S & S, Inc. v. Meyer, 478 N.W.2d 857, 859 (Iowa App. 1991). Evidence is substantial or sufficient when a reasonable mind would accept it as adequate to reach the same finding. Id. at 860. Evidence is not insubstantial merely because it could support contrary inferences. Id. "In case of doubt or ambiguity we construe the findings to uphold, rather than defeat, the trial court's judgment." Id. at 859.

The evidence reveals the plaintiff's representative contacted the defendant's director of nonfood operations about providing employment referral services. There was a discussion regarding the defendant's employment needs, and

the plaintiff subsequently delivered resumes and arranged for the defendant to interview an applicant for a pharmacy position. The defendant subsequently hired the applicant referred by the plaintiff, but it denied it had entered into a contractual agreement to pay the plaintiff for referral services.

The district court ruled the plaintiff had failed to prove there was a "meeting of the minds" as to the compensation which would be paid for the referral services. The district court concluded the rate of compensation was a material term of the contract and the plaintiff had not proven by a preponderance of the evidence that the defendant had agreed to pay thirty percent of the employee's salary as compensation for the referral.

We find substantial evidence supports the district court's decision. The district court judge had a first-hand opportunity to view the witnesses and assess their credibility. He specifically found the testimony of the defendant's representative, Mr. Sinnwell, credible with respect to whether he would have agreed to the thirty percent compensation rate. The compensation to be paid for a referral was a material term of the contract, and the evidence supports a finding that the defendant had not agreed to the plaintiff's rates. This was not a case in which the prospective employer had clearly acquiesced to the terms of the referral agreement. See, e.g., Agri Careers, Inc., v. Jepsen, 463 N.W.2d 93 (Iowa App. 1990).

Mr. Sinnwell disputed that he was told of the rates during the July 6, 1992, phone call, and he testified that upon receiving a copy of the rates he called the plaintiff's representative and strongly expressed his shock and disagreement with the fee schedule. The trial court found this testimony credible, and we affirm its finding that plaintiff failed to prove the existence of an agreement.

II. CONTRACT IMPLIED IN FACT/IMPLIED IN LAW.

A contract is implied when the parties show their assent by acts. See Clemens Graf Droste Zu Vischering v. Kading, 368 N.W.2d 702, 712 (Iowa 1985). A contract implied in law (a quasi contract) rests upon the equitable principle that one shall not be permitted to unjustly enrich himself at the expense of another or receive property or benefits without making compensation therefor. See id. One who pleads an express oral contract cannot ordinarily recover under an implied contract or quantum meruit. Clemens Graf Droste Zu Vischering v. Kading, 368 N.W.2d 702, 712 (Iowa 1985).

The plaintiff is barred from recovering under either of these theories by its pleading of an express oral contract. Even if the plaintiff were not otherwise barred, the circumstances of this case do not give rise to a finding of unjust enrichment or assent implied by acts.

III. EQUITABLE ESTOPPEL.

In order to sustain a claim of equitable estoppel a party must show it relied on a false or misleading statement which was made with the intent to induce such reliance. See Wilkin Elevator v. Bennett State Bank, 522 N.W.2d 57, 61 (Iowa 1994). We have reviewed the record and find no evidence any of the statements of Mr. Sinnwell were sufficient to warrant application of the doctrine of equitable estoppel.

AFFIRMED.