IN THE COURT OF APPEALS OF IOWA

No. 6-796 / 96-515

RUSSELL L. PRUESS,

Plaintiff-Appellant/Cross-Appellee,

vs.

FAHR BEVERAGE, INC.,

Defendant-Appellee/Cross-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, Thomas N. Bower, Judge.

Plaintiff appeals and defendant cross-appeals from the district court's order granting a new trial after a jury returned a verdict in favor for breach of employment contract, wrongful discharge, and slander, and awarded punitive damages. **AFFIRMED AND REMANDED.**

Robert J. Dieter and Mark W. Fransdal of Redfern, Mason, Dieter, Larsen & Moore, Cedar Falls, for appellant.

Bruce L. Braley of Dutton, Braun, Staack, Hellman & Iversen, P.L.C., Waterloo, for appellee.

Heard by Cady, P.J., Huitink, J., and Schlegel, S.J.*

*Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

CADY, P.J.

This is an appeal and cross appeal in an action for breach of employment contract, retaliatory discharge, and slander following a plaintiff's verdict and the grant of a new trial by the district court. We affirm the district court and remand for a new trial.

Russell Pruess was terminated as a salesman for Fahr Beverage, Inc. the day after he drank a small portion of a new alcoholic beverage called "Izen Klar" on the company premises before leaving for his sales route. The drinking incident occurred in the driver's check-in room around 6:00 a.m. after Pruess had been notified the new product was available to sell. Pruess opened a bottle of Izen Klar, poured a few ounces into a plastic beverage cup, and drank it. This was done in the presence of other employees, including Pruess's immediate supervisor. However, Pruess never asked permission to open the bottle or drink its contents. Pruess then left the room after announcing he could not sell the product if he did not "know what it" was. The supervisor and another driver drank the remaining contents of the bottle after Pruess left.

Robert Fahr, president of the company, promptly terminated Pruess after he learned of the incident. He called Pruess into his office and asked him for an explanation. Pruess acknowledged he opened the bottle and sampled the beverage. Fahr then fired Pruess for violating the company policy against drinking an alcoholic

beverage on the job. He also instructed another employee to inform Fahr Beverage employees Pruess had been discharged for drinking on the job.

Pruess subsequently filed a claim against Fahr Beverage for breach of employment contract, wrongful termination, and slander. Pruess asserted the employment handbook created a contract which required Fahr to follow the discipline procedures described in the handbook before he could be terminated and limited termination as a sanction to conduct other than sampling a new product. He also claimed the termination was contrary to public policy because it was in retaliation for filing a workers' compensation claim over a year prior to his termination. Finally, he claimed the announcement Fahr made to the other employees explaining the reason for his termination was slanderous.

A jury returned a verdict in favor of Pruess on all claims. He was awarded $146,405 for breach of contract, $43,750 for wrongful discharge, and $77,250 for slander. Additionally, Pruess was awarded $50,000 in punitive damages. The trial court granted Fahr a new trial after finding insufficient evidence to support the wrongful discharge claim and further finding the verdict was the result of passion and prejudice.

Both parties appeal. Pruess claims the trial court abused its discretion in granting a new trial on all claims. Fahr asserts the claims brought by Pruess were not supported by substantial evidence and should not have been submitted to the jury.

I. New Trial

Our review of the grant of a new trial is for an abuse of discretion. *Benson v. Richardson*, 537 N.W.2d 748, 762 (Iowa 1995). Trial courts have broad discretion in ruling on motions for new trial, and their decision will be disturbed on appeal only when clearly unreasonable under the circumstances. *In re Estate of Hughbanks*, 506 N.W.2d 451, 453 (Iowa App. 1993). This broad discretion stems from a trial court's favorable vantage point enabling it to observe and evaluate the totality of the circumstances at trial. *See Houvenagle v. Wright*, 340 N.W.2d 783, 785 (Iowa App. 1983). The trial court is in the best position to determine if the verdict effectuated substantial justice between the parties. *See* Iowa R. App. P. 14(f)(3). Additionally, we are more reluctant to interfere with the grant of a new trial than with a denial of a new trial. *Northrup v. Miles Homes, Inc. of Iowa*, 204 N.W.2d 850, 861 (Iowa 1973).

The trial court granted a new trial based on inadequate evidence to support the wrongful discharge claim, excessive damages which appeared to result from passion and prejudice, and excessive punitive damages which were not supported by the evidence. To help support a finding of passion and prejudice, the trial court relied on evidence the jury indicated during its deliberations they wanted to award punitive damages to Pruess's wife and children.

We cannot conclude the decision to grant a new trial constituted a clear abuse of discretion. We believe the inferences to be drawn from the jury communication and its effect on the trial as a whole are best judged by the trial court. Furthermore,

the trial court's concern over the excessiveness of the total damages was not clearly untenable, considering the jury essentially awarded Pruess all his lost wages for the remainder of his life expectancy on the breach of contract claim.

II. Sufficiency of Evidence

Fahr claims there was insufficient evidence to support the three claims brought by Pruess. It asserts the trial court should have granted its motions for a directed verdict notwithstanding the verdict. We review for corrections of errors at law. *Gerace v. 3-D Mfg. Co., Inc.* 522 N.W.2d 312, 315 (Iowa App. 1994).

We agree with the trial court there was insufficient evidence to support the claim of wrongful or retaliatory discharge. This claim required proof that Pruess's protected conduct was the determining factor in Fahr's decision to terminate him. *See Smith v. Smithway Motor Express, Inc.*, 464 N.W.2d 682, 686 (Iowa 1990). A jury question is not generated merely because the termination occurred after the protected employee conduct. *Phipps v. IASD Health Servs. Corp,* 558 N.W.2d 198 (Iowa 1997).

In this case, the record supports no connection between Pruess's workers' compensation claim and his discharge. Pruess injured his back at work in November 1992. He returned to work in April 1993. The termination occurred in February 1994. Prior to the termination, there was no evidence or reasonable inference Fahr had any problem with the workers' compensation claim. Pruess attempted to imply Fahr terminated him for filing the workers' compensation claim based on his belief

the drinking incident was not serious enough to justify a reasonable employer to terminate an employee, as well as the prompt, summary manner he was terminated. We find, however, the circumstances surrounding the termination in this case, without more, are insufficient to prove the protected employee conduct was the determining factor in Fahr's decision to discharge Pruess. There was no evidence to support a reasonable inference Fahr harbored some lingering problem with the workers' compensation claim and used the drinking episode as an opportunity to discharge Pruess for filing the claim. Pruess does not claim he was treated unfairly in any way by Fahr following his work-related injury. In fact, Pruess voluntarily resigned from his position at Fahr following his claim and Fahr later accepted him back after Pruess changed his mind and asked to retain his position.

We also agree with the trial court that sufficient evidence supported the submission of the contract and slander claims to the jury.

We utilize the unilateral contract theory when considering whether an employee handbook creates a contract. *Anderson v. Douglas & Lomason Co.*, 540 N.W.2d 277, 283 (Iowa 1995). An employee handbook becomes a unilateral contract when it is sufficiently definite to create an offer, it is communicated to and accepted by the employee, and the employee provides considerations. *Id.*

We believe the handbook, and the termination guidelines in particular, are sufficiently definite to establish a contract. The handbook set forth a procedure to be followed in the event disciplinary action was to be taken against an employee, while

providing for immediate termination of employment for "drinking" beer or other alcoholic beverages on the company premise except as specifically authorized. The handbook procedures are fairly detailed and, although the employer retains the power to change the handbook, the employee is promised notice of changes to the handbook.

Fahr argues that even assuming the handbook created a contract, no breach occurred as a matter of law because Pruess acknowledged he drank beer while on the job. Pruess responds that sampling a few ounces of a new product does not constitute "drinking on the job." He points out the other employees who sampled the product were not fired, and other employees did not believe Pruess's conduct was wrong. Pruess also points out prior circumstances involving former employees who had been fired for drinking on the job involved consuming beer to the point of intoxication or for personal pleasure.

If the evidence of contract terms is such that a reasonable person could reach but one conclusion, the interpretation of a contract is a matter of law. *Recton v. Alcorn*, 241 N.W.2d 196, 202 (Iowa 1976). However, if the evidence is disputed or if different conclusions may be drawn from the evidence, the interpretation of the contract becomes a question of fact. *Id.* We think Pruess presented sufficient evidence to support the submission of the contract claim to the jury.

Fahr challenges the sufficiency of the evidence to support the slander claim on a number of grounds. The principal claim, however, is the statement by Fahr that Pruess was fired for drinking on the job was true. Truth or substantial truth is a

complete defense to a slander claim. *Marks v. Estate of Hartgerink,* 528 N.W.2d 539, 545 (Iowa 1995).

Clearly, Pruess drank an alcoholic beverage on the job. Thus, the statement by Fahr was verbally accurate. However, we think the defense of truth should generally go to the underlying implication of the statement. *Lewis v. Equitable Life Assur.* Soc., 389 N.W.2d 876, 889 (Minn. 1986); *see Wilson v. IBP, Inc.*, 558 N.W.2d 132, 140-41 (Iowa 1996); *see also* Restatement (Second) of Torts § 581A cmt. e (1977). While the statement made by Fahr was correct in one sense, it also implied conduct far removed from that engaged in by Pruess. We believe it is within the province of the jury to determine the issue of falsity.

III. Conclusion

We have considered all claims and issues raised by the parties. We affirm the district court and remand the case for a new trial on the claims of breach of contract and slander.

AFFIRMED AND REMANDED.