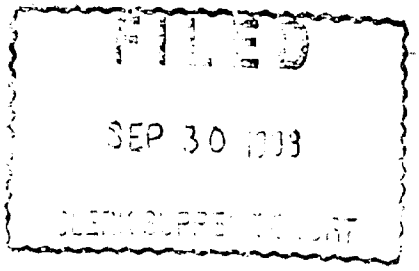
IN THE COURT OF APPEALS OF IOWA

No. 7-782 / 97-761



BEVERLY TORKELSON and **JOEL REINERT,**
Appellants/Cross-Appellees,

vs.

RICHARD WALLACE and **AMERICAN FAMILY INSURANCE COMPANY, AMERICAN FAMILY LIFE INSURANCE COMPANY,** and **AMERICAN STANDARD INSURANCE COMPANY OF WISCONSIN,**
Appellees/Cross-Appellants.

Appeal from the Iowa District Court for Clayton County, James L. Beeghly and Robert J. Curnan, Judges.

The plaintiffs appeal the grant of the defendants' motion for summary judgment on their wrongful termination action. The defendants cross-appeal, claiming the district court improperly denied their second motion for summary judgment on the plaintiffs' amended claims. **AFFIRMED ON APPELLANTS' APPEAL; AFFIRMED ON APPELLEES' CROSS-APPEAL; AND REMANDED FOR FURTHER PROCEEDINGS.**

Kevin C. Neylan of Neylan Law Office, Guttenberg, for appellants.

Edward W. Remsburg and Elizabeth Gregg Kennedy of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, P.C., Des Moines, for appellees.

Considered by Cady, C.J., Mahan, J., and Perkins, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

PERKINS, S.J.

The plaintiffs, Torkelson and Reinert, were employed as insurance agents for the defendants. Reinert's employment was terminated in August 1993, and Torkelson was terminated in August 1994. They brought suit against the defendants alleging they had not been terminated for good cause consistent with the terms of their employment agreement.

The defendants filed a motion to dismiss. On July 16, 1996, the district court dismissed twelve of the plaintiffs' counts and it struck portions of four others.

The defendants filed a motion for summary judgment which was granted on February 19, 1997. The plaintiffs' motion pursuant to Iowa Rule of Civil Procedure 179(b) was denied. The plaintiffs previously-filed motion to amend was granted and they were allowed to add two counts of misrepresentation. The defendants filed a second motion for summary judgment which was denied on April 22. Their rule 179(b) motion was denied on May 9. Both the plaintiffs and the defendants filed applications for interlocutory appeal which were granted by this court on May 20, 1997.

On appeal, the plaintiffs argue the district court erred in finding there were no disputed material facts as to whether the defendants had good cause to terminate their employment. They also claim the court erred in finding the defendants could terminate their employment without cause. The plaintiffs contend the district court erred in dismissing twelve of their counts and striking portions of four others.

In their cross-appeal, the defendants claim the findings in the first summary judgment order established the law of the case. They argue the misrepresentation claims were barred by issue preclusion and their second motion for summary judgment should have been granted.

Issues preserved and presented for appellate review by the appellants:

I. That trial court erred in finding that there were no disputed material facts as to whether American Family had good cause to terminate Reinert's and Torkelson's employment contracts.

II. That trial court erred in finding that American Family could terminate Reinert's and Torkelson's 1993 employment contract without cause.

III. That trial court erred in dismissing various counts and striking portions of other counts of Reinert's and Torkelson's petition.

The scope of review of the district court's grant of summary judgment is for the correction of errors at law. Iowa R. App. P. 4; *Vande Kop v. McGill*, 528 N.W.2d 609, 611 (Iowa 1995). The court must view the record in the light most favorable to the party opposing the summary judgment and will uphold the judgment only when the moving party has shown that there is no genuine issue of material fact and it is entitled to judgment as a matter of law. *Anderson v. Douglas & Lomason Co.*, 540 N.W.2d 277, 281 (Iowa 1995).

The trial court found that under the written contract the plaintiffs could be terminated with or without cause. In so ruling, the trial court was relying upon the

agent agreement entered into by the parties and the specific provisions of section 6(h)(1) and 6(h)(2), which are as follows:

> 6(h)(1). Except as provided in paragraph (2) below, this agreement may be terminated by either party with or without cause by giving written notice to the other and shall be deemed terminated as of the date specified in that notice. If both parties give notice, the earlier termination date shall control. This agreement shall automatically terminate upon your death or upon the date your license to act as an agent for the company is suspended, revoked, or canceled.
>
> (2). After two years from the effective date of this agreement or after the termination date of your Agent Advance Compensation Plan, whichever is later, the company will give you notice in writing of any undesirable performance which could cause termination of this agreement if not corrected. The company will not terminate this agreement for those reasons for a period of six months after that written notice . . . .

The agency contract became effective January 1, 1993. Reinert was notified of termination on August 31, 1993. Torkelson was notified of termination as of August 31, 1994. For each, this was within the two-year period provided in the contract. The trial court found under the language of the contract the termination could be without cause. Where the intent of the parties is expressed in clear and unambiguous language, then the court must enforce the contract as written. *Iowa Fuel & Minerals, Inc. v. Iowa State Bd. of Regents*, 471 N.W.2d 859, 863 (Iowa 1991).

We agree with the trial court and affirm. Since we find the terminations were effective under subparagraph 6(h)(1), we do not reach the alternative ground under subparagraph 6(h)(2).

The trial court, in its ruling sustaining the motions to strike and dismiss, found that emotional distress damages are not recoverable on the contract; that attorney fees are not recoverable in contract without an express provision; that there is no general cause of action for violation of fundamental public policies and no claim upon which relief may be granted has been stated; no claim for harassment, humiliation, and harmful conduct has been stated; and no claim for conspiracy or intentional interference has been stated. A motion to dismiss will be sustained only if the petition on its face shows no right of recovery under any statement of facts. *Tate v. Derifield*, 510 N.W.2d 885, 887 (Iowa 1994). A careful review of the pleadings and consideration of the authority cited by the parties leads us to the same conclusions. The ruling of the trial court is affirmed.

Cross-Appeal.

The defendants, in their cross-appeal, claim the district court improperly denied defendants' second motion for summary judgment.

The standard of review for summary judgments is as stated earlier.

The amended petition makes claims of misrepresentation and fraud. These are matters not presented to the district court and were not ruled upon by the district court in the first motion for summary judgment. There is no preclusion of these issues by the first summary judgment. There is a genuine issue of material fact. *See Brubaker v. Barlow*, 326 N.W.2d 314, 315 (Iowa 1982).

We affirm the district court on the cross-appeal.

Summarizing: We affirm the district court's ruling that the agency contract could be terminated without cause and its grant of the first motion for summary judgment. We affirm the district court's ruling dismissing twelve counts and striking portions of four others in the petition. We affirm the district court's ruling denying the second motion for summary judgment.

The matter is remanded to the district court for further proceedings. We do not retain jurisdiction. Costs are taxed one-half to appellants and one-half to appellees.

AFFIRMED ON APPELLANTS' APPEAL, AFFIRMED ON CROSS-APPEAL; AND REMANDED FOR FURTHER PROCEEDINGS.