

IN THE COURT OF APPEALS OF IOWA

No. 0-244 / 89-1209

FILED

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CLERK SUPREME COURT

LaWANA D. CREIGHTON,

Appellant,

48

vs.

WENDELL H. CHRISTENSEN, JR., Sheriff of Black Hawk County,
Iowa; and BLACK HAWK COUNTY, IOWA, a political subdivision
of the State of Iowa,

Appellees.

Appeal from the Iowa District Court for Black Hawk
County, James L. Beeghly, Judge.

Appellant appeals adverse judgments for appellees'
failure to employ her after making an offer of employment.

REVERSED AND REMANDED.

David R. Gault and Gary J. Otting of Legal Services
Corporation of Iowa, Waterloo, for appellant.

Peter W. Burk, Assistant County Attorney, for
appellees.

Heard by Schlegel, P.J., and Hayden and Sackett, JJ.

SCHLEGEL, P.J.

Appellant LaWana D. Creighton appeals adverse judgments entered in favor of appellees Wendell H. Christensen Jr. and Black Hawk County. Appellant sought damages for appellees' failure to employ her after making an offer of employment. The trial court, sitting without a jury, determined there was no promissory estoppel or fraudulent misrepresentation as claimed. We reverse and remand.

Appellant Creighton, a cook for Hawkeye Valley Area Agency on Aging, learned of a food service supervisor position for the Black Hawk County Jail through the retiring supervisor and through newspaper advertisements. Eager for better pay, benefits, and hours, Creighton applied immediately, and appellee Sheriff Christensen interviewed her on October 1, 1987. At that October 1 meeting, the sheriff believed and represented to Creighton that he had complete hiring authority and, in fact, told her she had the job, asking her to start as soon as possible. It is clear from the record, and the trial court found that the sheriff did not tell Creighton hiring was contingent on passing a physical examination.

Encouraged by the sheriff to give notice and start work as soon as possible, Creighton walked a block from the courthouse to her place of employment and gave her employer two weeks' notice. Meanwhile, the sheriff, who admittedly was not familiar with county hiring policy, had his secretary call Creighton to tell her she would have to take

a physical examination and she would have to pick up forms from the personnel office. Creighton picked up the forms on October 2. The parties dispute whether the secretary and the personnel official told Creighton hiring was contingent on passing the physical examination, but the trial court found that at least the secretary had told her hiring was conditional.

Creighton was examined on October 6, and the physician notified the personnel office he would not recommend Creighton for lifting. The parties arranged for and Creighton took a complete biomechanical evaluation on October 8. The results were transmitted on October 16 to the personnel office, which notified Creighton she had failed the evaluation for significant heavy lifting and would not be hired. Creighton's last day of work was also October 16. She was unemployed from October 17, 1987, until April 1988. There was evidence to indicate Creighton received unemployment compensation but suffered the loss of wages and medical and dental benefits. The trial court did not make any findings with respect to the extent of Creighton's damages.

We review for correction of errors at law; findings of fact by the trial court have the effect of a special verdict. Iowa R. App. P. 4. In other words, we are bound by the trial court's findings of fact if they are supported by substantial evidence. Iowa R. App. P. 14(f)(1). We will disturb these findings only if the party having the

burden of proof carried that burden as a matter of law. Public Finance Co. v. Van Blaricome, 324 N.W.2d 716, 718 (Iowa 1982) (citing First Nat'l Bank of Lennox v. Claisher, 308 N.W.2d 1, 3 (Iowa 1981)).

Creighton appeals the trial court's conclusion that she failed to establish her claim of promissory estoppel. The court concluded "it was not reasonable for her to rely upon the promise of Sheriff Christensen, after she became aware passing the physical examination was a condition of her employment." Creighton argues she has proven the elements of promissory estoppel and it was reasonable for her to rely on the representations made.

In In re Graham, 295 N.W.2d 414 (Iowa 1980), the supreme court stated:

The elements of promissory estoppel are (1) a clear and definite agreement, (2) proof that the party seeking to enforce the agreement reasonably relied upon it to his detriment, and (3) a finding that the equities support enforcement of the agreement. [Citations omitted.] This doctrine is essentially based upon the Restatement of Contracts § 90 (1932): "A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise."

This concept binds the promisor to a gratuitous promise where, "in reliance upon the promise, the promisee had suffered a substantial loss, expended money or incurred liability, that he would not have suffered, expended or incurred except for the promise."

Id. (citing O. Patton, Iowa Annotation to the Restatement of Contracts § 90, at 179 (1934) (quoting 4 A.L.I.

Proceedings 101 (1926))). The supreme court had also adopted Restatement (Second) of Contracts section 217A (Tent. Draft 1-7, 1973), which contains substantially the same language and which contains circumstances significant in determining whether injustice can be avoided only by enforcing the contract. Warder & Lee Elev., Inc. v. Britten, 274 N.W.2d 339, 342-43 (Iowa 1979).

We find there was a clear and definite agreement. The record reflects the fact that Sheriff Christensen believed and represented he had the authority to hire Creighton. Appellees admit "that the Sheriff was fully responsible for hiring jail personnel." It is equally clear that both believed the job was hers. Appellees do not, nor do we think they can, seriously dispute that representations were made on October 1 that constituted a promise of employment. The trial court found and we agree that Sheriff Christensen did not tell Creighton about the physical examination requirement.

"A person basing a cause of action on equitable estoppel or promissory estoppel must demonstrate justifiable reliance on the defendant's promise, representation, or concealment of material facts." Bruns v. Hartford Accident & Indemnity Co., 407 N.W.2d 576, 580 (Iowa 1987) (citing Merifield v. Troutner, 269 N.W.2d 136, 137 (Iowa 1978)). At the time Creighton resigned her position with Hawkeye Valley Area Agency on Aging, she believed, as could a reasonable person in her situation,

that Sheriff Christensen had hired her unconditionally. She acted accordingly, and we note, she acted with the encouragement of Sheriff Christensen. Because of this, Creighton was unemployed for several months. The trial court's findings to the contrary and conclusions drawn therefrom are without basis in the record. Appellant carried her burden of proof as a matter of law.

Both the trial court and the appellees make much of the fact that Creighton did nothing to stop her resignation after she learned she would have to take a physical. This fact and whether she knew after she had resigned that her future employment would be conditioned on passing the physical examination are simply irrelevant to whether the action she did take was in reasonable reliance upon the promise made. Although the trial court stated that "[n]o evidence was presented" on these subjects, it proceeds to draw factual and legal conclusions based upon its assumptions. The questions posed relate to a different issue not before us, perhaps mitigation of damages; however, they do not bear any relevance to the question of whether appellees should be estopped to deny the existence of the promise. To the extent the trial court relied upon these "facts" in finding promissory estoppel was not established, it was in error.

Under Warder & Lee, 274 N.W.2d at 343 (quoting Restatement (Second) of Contracts § 217A(2) (Tent. Draft 1-7, 1973)), we determine whether injustice can be avoided only by enforcing the contract by examining these factors:

(a) the availability and adequacy of other remedies particularly cancellation and restitution;

(b) the definite and substantial character of the action or forbearance in relation to the remedy sought;

(c) the extent to which the action or forbearance corroborates evidence of the making and terms of the promise, or the making and terms are otherwise established by clear and convincing evidence;

(d) the reasonableness of the action or forbearance;

(e) the extent to which the action or forbearance was foreseeable by the promisor.

Applying the facts of this case; it is clear Creighton took a definite and substantial action which, in reliance upon the promise, caused her to be unemployed for several months and for which there is no other remedy adequate to compensate her for her damages. Creighton's resignation corroborates existence of the promise and was clearly reasonably consistent with her belief that she had been hired, especially in light of Sheriff Christensen's expressed desire for Creighton to quit as soon as possible. We conclude that injustice can only be avoided by enforcing the contract.

Creighton also appeals the trial court's conclusion that the sheriff's negligent misrepresentations about the necessity of passing a physical examination were not the proximate cause of her damages. Creighton argues she has proven the sheriff to be the legal cause of damage and the trial court's ruling is against the weight of the evidence. Because of our determination above, however, we need not reach this issue.

For the foregoing reasons, we reverse the judgment of the trial court and remand for further proceedings in accordance with this opinion.

REVERSED AND REMANDED.

Hayden, J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I dissent. I would affirm the trial court.

Plaintiff-appellant LaWana D. Creighton sought damages from defendants-appellees Weldell H. Christensen, Jr., and Black Hawk County for their refusal to hire her following an offer of employment. The district court denied her claim.

The evidence viewed in the light most favorable to the verdict is that plaintiff had other employment when she applied to defendant Christensen for a job as Food Service Supervisor at the Black Hawk county jail. On October 1, 1987, defendant Christensen told her she had the job and she verbally advised her then current employer she would be terminating her employment. Later that same day, plaintiff talked to the sheriff's office and learned defendant Christensen had failed to tell her a physical examination was necessary. On October 2 she picked up forms and made arrangements for her physical examination. The physical examination was completed on October 4. On October 6 she submitted a written resignation to her current employer.

After the physical, the examining physician notified the county personnel office he would not recommend plaintiff for any job requiring lifting. Defendant Christensen wanted to hire plaintiff. Therefore, additional testing was ordered. On October 16, on the

basis of the additional testing, the county personnel office determined plaintiff would not be hired. By that time plaintiff's former job had been filled. Plaintiff was without employment for a period. She was ultimately rehired by her current employer.

Plaintiff brought suit, relying on theories of promissory estoppel and negligence. The trial court denied her claims. The review of this court is to correct errors at law. We are bound by the findings of the trial court if they are supported by substantial evidence.

I.

Plaintiff first contends the trial court erred as a matter of law in concluding she failed to establish promissory estoppel. There is contradicted evidence that plaintiff was advised within several hours of her being hired that passing a physical was a condition of employment. The trial court found the plaintiff had been so advised. There is substantial evidence to support these findings. We are bound by them. See Iowa R. App. P. 14(f)(1).

The trial court also found there was no evidence presented that plaintiff could not have gotten her old job back at that time. The trial court found the evidence that she was later rehired by her former employer and had not formally resigned until six days later supported a conclusion she would have been rehired. The evidence, as

found by the trial court, does not support the elements necessary for plaintiff to support her claim of promissory estoppel. I would affirm on this issue.

II.

Plaintiff's second claim is the trial court erred in not finding the sheriff's negligence was a proximate cause of plaintiff's damages. The trial court concluded plaintiff's own actions, in not wanting to believe her employment was conditional, was the cause of her damages. There is substantial evidence to support this finding. I would affirm on this issue.