IN THE COURT OF APPEALS OF IOWA

No. 1999-324 (9-577) / 98-1359
Filed January 12, 2000

FILED
JAN 1 2 2000
CLERK SUPREME COURT

PAUL RUNYON,
Plaintiff-Appellee,

vs.

CITY OF CARTER LAKE, IOWA,
Defendant-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Charles L. Smith, Judge.

City of Carter Lake (hereinafter City) appeals following a jury verdict in favor of Paul Runyon. Carter Lake contends the court erred in not granting it's motion for a directed verdict as there was insufficient evidence (1) to prove a contract existed for overtime or compensatory wages, and (2) to support a jury determination of unjust enrichment. Carter Lake also contends there was insufficient evidence to support the jury's determination that damages equaled $65,790.00. **AFFIRMED.**

Michael J. O'Bradovich, Council Bluffs, for appellant.

Kristopher K. Madsen of Stuart, Tinley, Peters, Thorn & Hughes, Council Bluffs, for appellee.

Heard by Sackett, C.J., and Zimmer and Miller, J.J.

MILLER, J.

Defendant City of Carter Lake (City) appeals from a judgment entered on a jury verdict in favor of the plaintiff, Paul Runyon. The City claims the trial court erred in overruling its motion for directed verdict made at the close of the evidence. We affirm.

1. Factual and procedural background.

Paul Runyon began his employment with the City in April of 1992, in the capacity of golf pro at the City's golf course, Shoreline Golf Course. He was in charge of the day-to-day operation of the golf course, including overseeing the actual condition of the golf course. In addition to performing all duties that would normally be considered the duties of the golf pro, Runyon also engaged in activities that the golf pro would not normally be charged with, such as certain custodial, maintenance, and concession duties. These additional duties were made necessary by the financial circumstances of the golf course operation.

As part of the terms of employment, the City agreed to pay Runyon a salary, together with other benefits including health insurance, IPERS, and vacation and sick leave. There was no written contract of employment.

From the evidence presented at trial, the jury could find the following facts: Upon hire, Runyon was instructed by various members of the City's Golf Board and City Council to keep track of all hours worked, including those in excess of forty hours per week. He did in fact keep track of all his hours, until his employment was

terminated in October 1995.[1] Often, he worked sixty to sixty-five hours per week. Every two weeks he turned in his hours worked, including those in excess of forty hours per week, to the City Clerk. He spoke with various Board and Council members about receiving compensatory time off during the off-season, and they represented to him he would receive either compensatory time or overtime pay when the golf course's financial situation improved. During his tenure, Runyon accumulated 3128.5 hours of overtime. He did not receive compensatory time or pay for that overtime, however.

On June 23, 1993 the City Council passed, and the Mayor signed, Resolution No. 33-93, which set out that overtime hours would be paid at a rate of one and one-half the normal salary, or the employee could ask to take off one and one-half hours for each overtime hour. This resolution was effective for the July 1, 1993 to June 30, 1994 fiscal year, and similar resolutions were passed for the 1994-1995 and the 1995-1996 fiscal years. However, it was not until after his employment was terminated that Runyon asked to be paid for his accumulated overtime.

At the time of Runyon's dismissal, the City Council passed a severance package for him, but the Mayor vetoed it. Runyon then brought this suit on April 16, 1996, alleging in six counts: (I) Breach of Contract; (II) Breach of Implied Covenant of Good Faith and Fair Dealing; (III) Unjust Enrichment; (IV) Constructive Fraud; (V) Violation of the Iowa Wage Payment Collection Law; (VI) Violation of the

[1]Runyon's termination was a result of the City's default on revenue bonds and a bank taking over the golf course.

Federal Fair Labor Standards Act. He later amended his petition to add Count VII, Promissory Estoppel, and Count VIII, Negligent Misrepresentation.

At the close of the trial to the jury, Runyon dismissed his claims based on the theories set forth in Counts II, IV and VI. The City moved for a directed verdict on each of the five remaining counts. The trial court denied the motions. The case was submitted to the jury on the five remaining counts. The jury returned a general verdict in favor of Runyon in the amount of $65,790. The City appeals, claiming the trial court erred in denying its motion for directed verdict.

II. Scope and standard of review.

This action was tried at law. In such cases our review, including review of a trial court's denial of motions for directed verdict, is for correction of errors at law. Iowa R. App. P. 4; *Seastrom v. Farm Bureau Life Ins. Co.*, 601 N.W.2d 339, 345 (Iowa 1999). We review the evidence in the same light as the district court and determine whether a fact question was generated. *Id.* We view the evidence in the light most favorable to the non-moving party. *Id.* Factual findings of the jury are binding upon us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). If there is substantial evidence to support a claim the motion should be denied. *Seastrom*, 601 N.W.2d at 345. Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *Id.* Even if the facts are undisputed, the case should be submitted to the jury if reasonable minds could draw different inferences from the evidence. *Id.* Where no substantial evidence exists to support

each element of a claim, directed verdict is proper. *Stover v. Lakeland Square Owner's Ass'n.*, 434 N.W.2d 866, 873 (Iowa 1989).

III. The merits.

A. Agreement Regarding Compensation For Overtime.

The City claims the trial court erred in not dismissing Runyon's claims because he did not show there was ever an agreement for the payment of overtime. The City does not argue it had no agreement with Runyon to hire and compensate him, and under the undisputed facts it could not reasonably do so. Rather, it urges its agreement with Runyon contained no provision for the payment of overtime. A review of the record reveals there is substantial evidence to support a jury finding of an agreement Runyon would be paid, or receive compensatory time, for overtime hours worked.

We have above noted evidence from which the jury could find Runyon was told to keep track of overtime, he was told he would receive compensatory time or overtime pay when golf course finances improved, he kept track of his regular and overtime hours worked and turned in those hours every two weeks, and he accumulated 3128.5 hours of overtime for which he was not paid (or given compensatory time off). This evidence supports Runyon's claim that his employment agreement with the City included an agreement for overtime compensation.

The evidence noted in the preceding paragraph is not the only evidence supporting Runyon's claim, however. The City Council's resolutions support his claim. They include his name and position of golf pro among those "persons and

positions" to be paid for overtime or given compensatory time off. They constitute formal action by the City Council. See Iowa Code § 364.3(1). They constitute formal action in an area in which the Council has express authority to act, "appoint[ing] city . . . employees, and prescrib[ing] their . . . compensation . . . ." Iowa Code § 372.13(4).

In addition, at the time Runyon was being employed by the City, the City gave him a "Personnel Packet," which he received. It contains definitions of "OVERTIME," "COMPENSATION," and "COMPENSATORY TIME OFF." In language identical to that contained in the three annual resolutions previously referred to, it states:

> Overtime pay shall be paid for at one and one half times the hourly or hourly equivalent rate for any hours over forty per week for the job performed. Employees may request or be asked to take off compensatory hours to avoid overtime costs, at one and one half compensatory hours for each overtime hour over forty per week.

We need not determine whether this document and the actions of the parties resulted in a unilateral contract. *See, e.g., Anderson v. Douglas & Lomason Co.*, 540 N.W.2d 277, 283 (Iowa 1995). It is sufficient to note this document provides still further evidence in support of Runyon's claim compensation for overtime was part of the parties' agreement.

Having reviewed the evidence in the light most favorable to the non-moving party, Runyon, we conclude there was substantial evidence to support Runyon's claim the parties' agreement included an agreement he would receive pay or compensatory

time for overtime hours worked. We conclude this asserted ground for directed verdict was properly overruled by the trial court.

B. Sufficiency of the Evidence.

The City makes two claims of insufficiency of the evidence to support the jury verdict. It does not, as required by Iowa Rule of Appellate Procedure 14(a)(5), state how the issues were preserved for review or refer to the places in the record where the issues were raised and decided. We are left to assume the City's claim, as with the issue concerning overtime compensation, is the trial court erred in overruling the City's motion for a directed verdict.

Review of a trial court's denial of a motion for directed verdict is limited to the grounds raised in the motion. *Pierce v. Staley*, 587 N.W.2d 484, 485 (Iowa 1998); *Podraza v. City of Carter Lake*, 524 N.W.2d 198, 202 (Iowa 1994). An appellate court will not consider grounds for a motion for directed verdict which the movant did not place before the trial court. *Podraza*, 524 N.W.2d at 202. The sole exception to this tenet is that an appellate court will consider grounds not precisely raised in a motion for directed verdict where the record indicates the trial court, counsel, and both parties had no doubt what the grounds for the motion were and these grounds were obvious and discussed thoroughly in the court below. *Id.*

1. Unjust Enrichment.

The City claims there is insufficient evidence to support a jury determination of unjust enrichment in the amount of $65,790 (the amount of the jury verdict). In that part of its motion for directed verdict which concerned the unjust enrichment theory,

the ground relied on by the City was that "The plaintiff has provided no evidence upon which a reasonable person could determine that the city received any enrichment of any kind and character due solely to the plaintiff's work for which he did not receive compensation." We limit our consideration to this ground.

Unjust enrichment is a doctrine of restitution. *Smith v. Harrison*, 325 N.W.2d 92, 94 (Iowa 1982). It "*is an equitable principle mandating that one shall not be permitted* to unjustly enrich oneself at the expense of another or *to receive* property or *benefits without making compensation for them*" *West Branch State Bank v. Gates*, 477 N.W.2d 848, 851-52 (Iowa 1991) (emphasis added). "'Unjust enrichment' is the modern designation for the doctrine of quasi contracts or contracts implied in law, sometimes called constructive contracts." *Robert's River Rides, Inc. v. Steamboat Development Corp.*, 520 N.W.2d 294, 302 (Iowa 1994). The essential elements of a quasi contractual obligation, upon which a recovery may be had, are the receipt of a benefit by a defendant from a plaintiff, which benefit it is inequitable that the defendant retain. *Moll v. Wayne County*, 50 N.W.2d 881, 883 (Mich. 1952).

From the evidence presented at trial the jury could find the City had been unjustly enriched by receiving benefits, 3128.5 hours of Runyon's labor, without making compensation for those benefits. The City's assertion there was no evidence to support a claim of unjust enrichment was without merit and the trial court did not err in overruling the City's motion for directed verdict on this ground.

2. Amount of Damages.

The City claims there is insufficient evidence to support a jury verdict in the amount of $65,790 for overtime wages claimed by Runyon.

The City first argues because Runyon failed to prove an agreement for compensation for overtime, there was insufficient evidence to support a jury verdict in the amount of $65,790 for wages. We have above, at III-A, found against the City on its claim there was insufficient evidence of an agreement that overtime hours would be compensated. This argument requires no further discussion.

The City also argues because Runyon's damages under the Iowa Wage Payment Collection Law, Count V of his Amended Petition, are limited to the two-year period prior to the April 16, 1996 filing of his petition in this case, based on the evidence concerning Runyon's earnings and the trial court's instruction regarding Count V it is not possible for the jury to have found $65,790 in overtime wages proved.

The trial court did rule that damages under Count V were limited to those occurring in the period of two years prior to the filing of Runyon's Petition, and so instructed the jury in Instruction No. 7. The City's position would have merit if Runyon's claim under the Iowa Wage Payment Collection Act, Count V, were the only theory upon which the case was submitted to the jury. However, the case was submitted under five separate theories, of which Count V was only one, and the other four were not limited as Count V was. The case was submitted to the jury on a general Form of Verdict, to which neither Runyon nor the City objected, and the jury returned a general verdict in the amount of $65,790. From the evidence the jury could

find Runyon had accumulated 3182.5 hours of uncompensated overtime during a tenure in which he was paid an average of approximately $17.50 per hour and was to receive substantial, additional benefits. The City's claim there is insufficient evidence to support the verdict of $65,790 is without merit.

AFFIRMED.