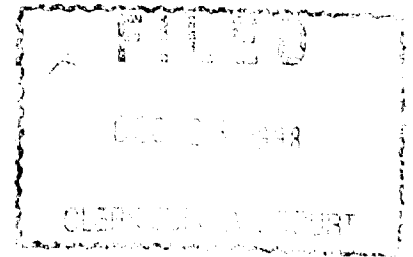


IN THE COURT OF APPEALS OF IOWA

No. 8-569 / 97-2274
Filed December 28, 1998



RITA M. ALTMAN,
Appellant,
vs.

**LUTHER COLLEGE, TRUSTEES OF LUTHER COLLEGE,
RICHARD J. TENNESON, JENNY THOMPSON,
DONALD H. EVENSEN, and GARY L. BRICKMAN,**
Appellees.

Appeal from the Iowa District Court for Winneshiek County, John Bauercamper, Judge.

Rita Altman appeals from the district court's summary judgment dismissing her claims for breach of employment contract, wrongful discharge, and tortious interference with a contract against Luther College and its trustees. **AFFIRMED.**

Kevin E. Schoeberl of Story, Schoeberl & Kowalke Law Firm, Cresco, for appellant.

Calvin R. Anderson of Anderson, Wilmarth & Van Der Maaten, Decorah, for appellees.

Heard by Sackett, C.J., Huitink, J., and Peterson, S.J.*

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

HUITINK, J.

Rita Altman appeals from the district court's summary judgment dismissing her claims for breach of employment contract, wrongful discharge, and tortious interference with a contract against Luther College and its trustees.

I. Background Facts and Proceedings.

Rita Altman was an employee of Luther College from 1991 until her termination in 1994. Upon her employment, Altman received a Support Staff Handbook. The termination section of this handbook includes the following provision:

Termination of employment in good standing may be the result of resignation, retirement or termination for the convenience of the college

....

Before a decision is made to terminate for unsatisfactory performance, an employee should be informed of specific deficiencies and given an opportunity to improve. If sufficient improvement does not take place within a minimum 30 days, the department should initiate termination

....

The handbook also contained the following language in its disclaimer:

It should be noted that the contents of this handbook do not in any way guarantee employment or limit the college's right to change policy.

The undisputed facts indicate Altman made one or more safety complaints and filed a workers' compensation claim while employed at the college. The college's failure to abide by the foregoing termination procedures is also undisputed.

Altman filed suit against the college asserting several counts, only three of which are at issue here: (1) breach of a unilateral employment contract; (2) wrongful

termination in violation of public policy; and (3) tortious interference with an employment contract. The college moved for summary judgment on all of Altman's claims.

The district court granted the motion and dismissed Altman's suit. The court found the handbook did not constitute a unilateral contract of employment because it contained an appropriate disclaimer. Because it found no contract existed, the court also rejected Altman's tortious interference claim. With respect to Altman's wrongful termination claim, the court found Altman failed to prove a causal connection between her discharge and her filing a workers' compensation claim two years earlier.

Altman appeals. She contends there are genuine issues of fact as to whether the college's employee handbook, specifically the termination procedures, created a unilateral contract, notwithstanding the disclaimer language set forth above. Similarly, Altman contends the court erred by dismissing her tortious interference claim on grounds there was no contract. Altman also asserts the court erred by dismissing her wrongful termination claim, arguing a genuine factual dispute exists as to whether the termination was in retaliation for Altman's complaints and workers' compensation claim.

II. Standard of Review.

We uphold summary judgment when the moving party shows no genuine issue of material fact exists and it is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); *C-Thru Container Corp. v. Midland Mfg. Co.*, 533 N.W.2d 542, 544

(Iowa 1995). To decide if the moving party has met this burden, we review the record in the light most favorable to the party opposing summary judgment. *Hoffnagle v. McDonald's Corp.*, 522 N.W.2d 808, 811 (Iowa 1994).

III. Employment Contract.

The supreme court has twice recently examined the question of whether an employee handbook constitutes an enforceable contract. *See Phipps v. IASD Health Services Corp.*, 558 N.W.2d 198, 203-04 (Iowa 1997); *Anderson v. Douglas & Lomason Co.*, 540 N.W.2d 277, 281-89 (Iowa 1995). In *Anderson*, the supreme court stated:

When considering whether a handbook creates a contract we utilize unilateral contract theory. A unilateral contract consists of an offeror making a promise and an offeree rendering some performance as acceptance. An employee handbook is a unilateral contract when three elements are present: (1) the handbook is sufficiently definite in its terms to create an offer; (2) the handbook is communicated to and accepted by the employee so as to constitute acceptance; and (3) the employee provides consideration.

Anderson, 540 N.W.2d at 283 (citations omitted). Altman has the burden to prove the college's handbook created an enforceable contract. *Id.*

Our first consideration is whether the handbook and manual constituted an offer by Luther College to use progressive disciplinary procedures. *Phipps*, 558 N.W.2d at 203. We follow traditional contract principles in our analysis. *Id.*; *Anderson*, 540 N.W.2d at 285. An offer is a "manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his [or her]

assent to that bargain is invited and will conclude it.” *Id.* (quoting Restatement (Second) of Contracts § 24 (1981)). We look for the existence of an offer objectively, not subjectively. *Id.*

In conducting our objective inquiry, we look for terms with precise meaning that provide certainty of performance. *Id.* at 286. If an offer is indefinite, there is no intent to be bound. *Id.* Therefore, to decide how a reasonable employee would construe Luther College’s handbook, we must decide whether the text was sufficiently definite to constitute an offer to apply progressive disciplinary procedures. This is a question of law. *Id.* Several factors, articulated in *Anderson*, guide our inquiry:

(1) Is the handbook in general, and the progressive disciplinary procedures in particular, mere guidelines or a statement of policy, or are they directives? (2) Is the language of the disciplinary procedures detailed and definite or general and vague? and (3) Does the employer have the power to alter the procedures at will or are they invariable?

Id. (citations omitted).

These questions help determine whether an employee is reasonably justified in understanding a commitment has been made. *Id.* at 287.

In addition to these factors, we must also consider the college’s disclaimer. A disclaimer can prevent the formation of a contract by clarifying the employer’s intent not to make an offer. *Phipps*, 558 N.W.2d at 204; *Anderson*, 540 N.W.2d at 287. With regard to employee handbooks, the essential purpose of a disclaimer is to claim at-will status for the employment relationship by repudiating or denying liability for statements expressed in the handbook. *Anderson*, 540 N.W.2d at 287.

With disclaimers, we look at two main factors: (1) whether the disclaimer is clear in its terms; and (2) whether the coverage of the disclaimer is unambiguous. *Id.* at 288. In the instant case, the handbook contained a disclaimer as the first sentence of the introduction. The disclaimer explicitly states the handbook is not intended to guarantee employment or limit the college's right to change policy. Additionally, the college further demonstrates its commitment to "at-will" employment with the first sentence of the termination provisions when the handbook states that employees may be terminated "for the convenience of the college." We believe these two statements clearly illustrate Luther College's intention not to create an employment contract.

Applying the three-factored *Anderson* test, we find the Luther College support staff handbook does not create a unilateral contract of employment. The handbook is not sufficiently definite in its terms to constitute an offer. Specifically, we find the progressive disciplinary procedures outlined in the handbook to be mere guidelines as opposed to directives. We also find the language of the termination provisions to evince an intent on the college's part to maintain an "at-will" employment relationship with its employees. Finally, we find the disclaimer contained in the handbook is clear in its terms and unambiguous in its scope, thus constituting further evidence of Luther College's intent not to make an offer of employment. As a matter of law, no employment contract existed between Altman and Luther College.

Because we find no contract of employment existed between Altman and Luther College, we decline to address Altman's claim of tortious interference with an employment contract.

IV. Wrongful Termination in Violation of Public Policy.

Altman claims she was wrongfully terminated in violation of public policy based upon her filing workers' compensation claims and making several safety complaints. We need not decide whether any public policy was violated because Altman is unable to establish any causal connection between her filing the claims and her termination. Altman filed the workers' compensation claims and safety complaints over two years prior to her termination in 1994. Altman has not offered even a scintilla of evidence proving her filing the claims was a determining factor for her termination over two years later. Proof that an adverse employment action occurs after protected employee conduct, without more, is insufficient to generate a fact question on wrongful discharge in violation of public policy. *See Phipps*, 558 N.W.2d at 203; *Butts v. Univ. of Osteopathic Medicine & Health Sciences*, 561 N.W.2d 838, 841 (Iowa App. 1997).

V. Conclusion.

We find the district court did not err in granting summary judgment in favor of Luther College.

AFFIRMED.