

IN THE COURT OF APPEALS OF IOWA SEP 23 1980

CLERK SUPREME COURT

679

JAMES A. WILSON,

Appellant,

vs.

LONG MFG. N.C. INC.,

Appellee.

Filed September 23, 1980

0-169

2-63988

Appeal from Scott District Court - James R. Havercamp, Judge.

Employee appeals from trial court's order granting employer's motion for summary judgment in an action involving an employment contract alleging trial court erred in ruling 1) that plaintiff's giving up permanent employment, protected by a union contract with discharge only for good cause, did not constitute sufficient additional consideration to make plaintiff's managerial employment contract terminable only for good cause, 2) that his managerial contract was terminable at will, and 3) that there was no disputed issue of material fact concerning whether plaintiff's discharge was for good cause.

REVERSED AND REMANDED.

Michael J. McCarthy of McCarthy & Hart, Davenport, Iowa, for appellant.

Michael L. Roeder of Stevens, Glotfelty, Roeder, Sissel & Schulte, Davenport, Iowa, for appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Plaintiff, James A. Wilson, appeals from trial court's order granting defendant's motion for summary judgment in an action involving an employment contract. He alleges trial court erred in ruling 1) that giving up permanent employment with discharge only for cause did not constitute sufficient consideration to make plaintiff's managerial employment contract one of permanent employment, 2) that his managerial employment contract was terminable at will for any cause and 3) that there was no disputed issue of material fact concerning whether plaintiff's discharge was for good cause. We reverse and remand for further proceedings on the merits.

Plaintiff began working as a laborer for defendant, Long Manufacturing Company, in 1974. He was subject to the union contract between defendant and the United Auto Workers. Article X of the contract provided that he could not be discharged except for good cause. In 1976, he was promoted by oral agreement to foreman, a management position, and was no longer covered by the union contract. Plaintiff was fired from the foreman position on July 14, 1978.

Plaintiff filed this action seeking actual and punitive damages for wrongful discharge. Defendant answered alleging that defendant was fired for poor work performance. Defendant thereafter moved for summary judgment on the basis that plaintiff's employment was terminable at will, with or without cause. Plaintiff resisted on the grounds that giving up his secured permanent employment furnished additional consideration sufficient to make the indefinite-period, management-position contract enforceable as long as the employer was in business and plaintiff performed competently. Plaintiff further resisted on the basis that the issue of the competency of his performance was for the jury.

Trial court granted defendant's motion for summary judgment finding the consideration furnished by plaintiff insufficient to make the employment contract anything more than terminable at will. Plaintiff's timely appeal followed.

I. Scope of Review. The general principles governing entry of summary judgment are set forth in In re Eickman Estate, 291 N.W.2d 308, 311-12 (Iowa 1980). Defendant, as movant, has the burden of showing that no material facts exist and that it is entitled to judgment as a matter of law. Id. at 311. Even if the facts are undisputed, summary judgment is not appropriate if reasonable minds could draw different inferences from the facts. Id., Tasco, Inc. v. Winkel, 281 N.W.2d 280, 282 (Iowa 1979). In making such determinations, trial court, and this court on review, must look at the

entire record, including pleadings, affidavits, and depositions, in the light most favorable to plaintiff, as the party against whom the motion is made. Eickman, 291 N.W.2d at 312; Tasco, 281 N.W.2d at 282. In summary, we must "determine only whether a genuine issue of material fact exists and whether the law was correctly applied." Drainage District No. 119 v. City of Spencer, 268 N.W.2d 493, 500 (Iowa 1978).

II. Sufficiency of Consideration. Plaintiff contends that trial court improperly granted defendant's motion for summary judgment because trial court should have concluded that giving up permanent employment with discharge only for cause was sufficient consideration to make plaintiff's managerial employment contract with defendant valid and enforceable.

Generally, a contract for permanent (as opposed to temporary) employment that is indefinite as to time of duration, and one wherein the employee merely promises to perform services, is terminable at will by either party, with or without cause. Stauter v. Walnut Grove Products, 188 N.W.2d 305, 311 (Iowa 1971). See also Hanson v. Central Show Printing Co., 256 Iowa 1221, 1224, 130 N.W.2d 654, 656 (Iowa 1964); Lewis v. Minnesota Mutual Life Insurance Co., 240 Iowa 1249, 1259, 37 N.W.2d 316, 322-24 (Iowa 1949); Faulkner v. Des Moines Drug Co., 117 Iowa 120, 122, 90 N.W. 585, 586 (Iowa 1902). However, where consideration in addition to services is provided by the employee, "a contract for permanent or lifetime employment is valid and enforceable and continues to operate so long as the employer remains in business and has work for the employee once the employee performs competently. [citations omitted]" Stauter, 188 N.W.2d at 311. With the additional independent consideration, the contract is enforceable even though the promisee has the right to terminate at any time. Collins v. Parsons College, 203 N.W.2d 594, 598 (Iowa 1973). Further, the additional consideration need not move to the employer or promisor. Id. at 599.

The cases have not been unanimous in deciding what constitutes legally sufficient additional consideration to support enforcement of a permanent employment contract. See Bixby v. Wilson & Company, Inc., 196 F. Supp. 889, 901-02 (N.D. Iowa 1961) (detriment of moving expenses to the employee was insufficient consideration); Laird v. Eagle Iron Works, 249 N.W.2d 646, 648 (Iowa 1977) (giving up employment terminable at will was insufficient consideration); Hanson, 256 Iowa 1221, 1229, 130 N.W.2d 654, 659 (giving up opportunity for another job was insufficient consideration).

On the other hand, adequate consideration has been found where a tort claim against the employer was released, Eggers v. Armour & Co. of Delaware, 129 F.2d 729 (8th Circuit 1942), where an employee gave up his business to work at the same occupation with an agreement for permanent employment, Riefkin v. E. I. DuPont de Nemours & Co., 53 App. D.C. 311, 390 Fed. 286, 289 (1923), and where an employee agreed to give up a government job in exchange for other employment, Carnig v. Carr, 167 Mass. 544, 547, 46 N.E. 117, 118 (1897).

More recently the Iowa Supreme Court has held that giving up tenured employment is sufficient additional consideration to enforce a permanent employment contract. Collins, 203 N.W.2d at 594. In Rowe v. Noren Pattern and Foundry Co., 91 Mich. App. 254, 283 N.W.2d 713 (1979), a union employee's giving up of a "virtually secured position and pension for the rest of his life" for a position promising union protection after forty-five days was found to be similar to giving up the tenured position in Collins and, therefore, constituted sufficient additional consideration to enforce the contract during the probationary period.

In Rowe, as in Collins, the employer knew that the employee would not have given up the secured position but for assurance of receiving the same protections in the new job. Thus, both cases came within an exception to the general rule that a contract of indefinite duration is terminable at will. As the Iowa Court stated in Collins:

... we think the better rule to be that an employee who gives up other employment to accept an offer of a permanent job provides independent consideration—at least, when as here the employment surrendered was itself permanent and the employer is aware of the facts.

Collins, 203 N.W.2d at 599 (emphasis added).

Contrary to defendant's arguments, Collins does involve a permanent employment contract of indefinite duration; only the salary increments were to stop on a given date. The additional consideration question is therefore similar. Further, in Laird, the employee sought to enforce the company's promise that he could stay on as a consultant for as long as he wanted. He gave up a position as vice president in charge of sales and accepted a part-time consultant's job at half-pay. The issue was whether he had furnished consideration for the promise of permanent employment. Because his vice president's position was terminable at will, the court could not find the required independent consideration necessary to enforce the contract. Laird gave up nothing that his employer could not have taken away anyway. Laird, 249 N.W.2d at 648.

Here, plaintiff, even though not a union member, was protected by the union contract. Article X of that contract provided for discharge only for cause. The protection of the union contract giving plaintiff a "virtually assured position and pension for the rest of his life" is an additional factor not present in the cases supporting the general rule. Rowe, 283 N.W.2d at 717. Therefore, when plaintiff was promoted from the union protected position, he gave up a position that the employer could not have taken away except for cause.

Our holding does not extend beyond the determination that the trial court erred in finding the purported consideration insufficient. It remains to be determined whether the evidence will otherwise support an employment contract between the parties whereby plaintiff could only be discharged for good cause. On this issue, there is a genuine issue of material fact. As stated in Thompson v. Miller, 251 Iowa 324, 329, 100 N.W.2d 410, 413 (1960): "It is clear from the evidence we have set out that the parties placed different constructions upon their contract and the evidence is such as to generate a jury question as to what the parties intended when they entered into . . . the contract involved herein. Definitely the court cannot say as a matter of law what this . . . contract was or how the parties understood or intended it." In addition, if the trier of fact agrees with plaintiff's contentions as to his contractual rights, there is also a genuine issue of material fact as to whether defendant did have good cause to effect the discharge.

We conclude summary judgment was not warranted and the trial court erred in ordering same. We, therefore, reverse the trial court's order and remand for trial on the merits.

REVERSED AND REMANDED.

Danielson, Snell and Carter, JJ., concur. Oxberger, C.J., and Johnson, J., concur specially.

I concur in the majority's conclusion that trial court erred in granting defendant's motion for summary judgment. However, I cannot concur in the majority's determination of what plaintiff must prove in a trial on the merits. Quoting Thompson,¹ the majority concludes that a factual issue exists as to whether the parties intended the contract to be one in which the plaintiff could be discharged only for cause and, if the trier of fact agrees with plaintiff's contentions that the parties so intended, a factual issue exists as to whether defendant had good cause to effect the discharge. I believe it is irrelevant whether the parties in the case entered a contract wherein they intended that plaintiff be discharged only for good cause. (emphasis added)

Contracts for permanent (as opposed to temporary or provisional) employment generally are indefinite in time and terminable at will by either party with or without cause. Stauter, 188 N.W.2d at 311. If the terms of the contract show that the parties intended it to be one for employment to continue so long as the employer has a job or the employee performs competently, the courts will enforce the contract according to its terms. Absent a showing of the parties clear intent to include these terms, the contract is considered one terminable at will by either party unless the employee shows additional consideration beyond a mere promise to perform services. Laird, 249 N.W.2d 647. (emphasis added).

The majority concludes, and I agree, that plaintiff's giving up permanent employment terminable only for cause is legally sufficient additional consideration. This renders plaintiff's managerial contract valid and enforceable. As Collins states:

... we think the better rule to be that an employee who gives up other employment to accept an offer of a permanent job provides independent consideration--at least, when as here the employment surrendered was itself permanent and the employer is aware of the facts.

203 N.W.2d at 599. (emphasis added).

Defendant's awareness of the facts surrounding plaintiff's promotion cannot be realistically disputed since defendant was the only employer involved. Nor does defendant contend that plaintiff's promoted position was for temporary employment only. Defendant merely argues that plaintiff's contract was terminable at will. I conclude this case to be that "different case" noted by the supreme court in Laird where

¹ Sufficiency of consideration was not an issue in Thompson.

the court said: "Had Laird possessed permanent employment as sales manager which he surrendered in return for Eagle's promise to provide him permanent employment as consultant, we would have a different case" 249 N.W.2d at 648.

Having determined plaintiff has shown sufficient additional consideration, I believe the rule of Collins applies and the contract is enforceable as long as the defendant is in business, has work for plaintiff, and plaintiff performs competently. Stauter, 188 N.W.2d at 311. In this case, the evidence as to the grounds for plaintiff's discharge is in conflict. The defendant claims competency reasons for plaintiff's firing, while plaintiff argues a personality conflict as the discharge basis. An employee of defendant, superior to plaintiff, testified that, in the superior's opinion, plaintiff's discharge was due to a personality conflict which did not effect his job performance or plant production. A jury question therefore was generated on the competency issue.² I would reverse and remand for trial of this issue on the merits.

Oxberger, C.J., joins in this special concurrence.

² If the grounds for discharge under the contract had been employer dissatisfaction with the employee, the jury question would be different. The jury in such a case would only examine whether the asserted dissatisfaction is in good faith or feigned where evidence is presented showing the discharge to be for reasons other than dissatisfaction. Stauter, 188 N.W.2d at 309.