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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

MARTIN J. McCARTHY,	)	
Plaintiff-Appellee,	)	Filed January 29, 1985
vs.	)	4-383 / 84-315
DUBUQUE PACKING COMPANY,	)	
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Dubuque County—Robert E. Mahan, Judge.

Defendant employer appeals from judgment for plaintiff in an action for breach of an oral contract of employment, asserting that the evidence was insufficient to support the trial court's finding that the contract of employment was for a duration of one year rather than terminable at will. AFFIRMED.

Alfred E. Hughes of Hughes, Trannel & Jacobs, Dubuque, for defendant-appellant.

Mark S. Beckman of the Pfeiler and Pearce Law Offices, Dubuque, for plaintiff-appellee.

Heard by Oxberger, C.J., and Snell and Sackett, JJ.

SACKETT, J.

This is an appeal brought by the defendant, Dubuque Packing Company, from a final judgment entered on behalf of the plaintiff, Martin J. McCarthy. Damages were awarded in the amount of $9,100 plus interest at the rate of ten percent (10%) from the July 21, 1981 filing of the petition, and costs, with said judgment amount based on plaintiff's claim for wrongful discharge from his employment with the defendant. Plaintiff alleged an oral contract for employment existed between him and the defendant for a period of at least twelve (12) calendar months, with a planned employment of more than twelve months. Plaintiff asserts that the breach of an oral employment contract by the defendant resulted in actual monetary damage being suffered by the plaintiff.

During the latter part of 1980 and the early portion of 1981 the defendant company was seeking a qualified person to fill a position as a staff accountant. At this same time the plaintiff was interested in moving his family back to the Midwest, as plaintiff and his wife are both originally from southwest Iowa. Plaintiff and defendant, by happenstance, utilized the services of the same employment agency. The agency contacted plaintiff on behalf of defendant to see if plaintiff would be interested in a position at Dubuque Packing Company. Plaintiff was indeed interested and began negotiating with defendant over the terms of the employment possibility. Defendant agreed to pay plaintiff at the rate of thirty thousand dollars ($30,000) per year for the first year. Plaintiff testified that the parties discussed other benefits, vacation time, general health insurance coverages, etc. Defendant agreed to review plaintiff's job performance at the end of six months, instead of the usual company practice of waiting twelve months, in an attempt to make plaintiff's salary commensurate with that of the pay scale in other jobs he was qualified for but chose to forego in order to work for defendant. Also, additional company policy considerations were waived, as plaintiff was given a full year's allotment of vacation time even though he would not have ordinarily qualified for such vacation time.

Plaintiff made some commitments when he took the position at Dubuque Packing Company. He left his home in Colorado, put the house up for sale and began building a new house in Dubuque. Plaintiff relinquished a secure job in Colorado, and according to his testimony took a substantial reduction in pay in order to come to work for defendant.

Defendant had a different perception regarding the security that it's position at the company afforded to the plaintiff. The person who hired the plaintiff testified that he felt it was within reason for an out-of-state recruit for a job to be fired after only six months on the job. He felt it reasonable for an out-of-state employee, situated similarly to plaintiff, to be released after only one day on the job. The hiring official testified there was a 90-day probationary period for new employees. This period of probation was outlined in a company handbook given to the new workers, <u>after</u> they began their employment with defendant. The hiring official testified that he felt the employment arrangement was an "at will" relationship with no obligation on the part of either the employee or the company. The plaintiff's perception of the relationship was that his employment period was for at least one year. However, he could leave the job at anytime if: he gave a customary two-week notice, had all of his work projects completed and was able to arrive at a decision with the company regarding a mutually agreeable termination date.

Plaintiff considered defendant's actions in firing him to constitute a breach of an employment contract. Plaintiff further estimated his damages as a result of the breach to be $13,750 for lost wages and $15,723.96 for losses incurred with regard to his housing situation. Plaintiff also sought $15,000 in punative damages. The trial court awarded the plaintiff damages in the amount of $9,100, plus court costs and interest.

I. Scope of Review And Applicable Law

Because this is a law action tried to the court, judgment will only be reversed for correction of errors at law. Iowa R. App. P. 4 (1983). The court's findings of fact have the force of a special verdict and are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1) (1983). A finding of fact is supported by substantial evidence if the finding may reasonably be inferred from the evidence. Briggs Transportation Co. v. Starr Sales Co., 262 N.W.2d 805, 808 (Iowa 1978). The record is reviewed in the light most favorable to the judgment. Ambiguities are construed to uphold rather than defeat the judgment. Pillsbury Co. v. Ward, 250 N.W.2d 35, 38 (Iowa 1977). The substantial evidence rule limiting review of a law action tried to the court, however, does not preclude inquiry into whether, conceding the truth of the findings of facts, the conclusions of law drawn therefrom are correct. Keith v. Community School District of Wilton in the Counties of Cedar and Muscatine, 262 N.W.2d 249, 255 (Iowa 1978).

"Construction" of a contract, the process of determining its legal effect, is always a matter of law to be resolved by the court. Farm Bureau Mut. Ins. Co. v. Sandbulte, 302 N.W.2d 104, 107 (Iowa 1981). "Interpretation," the process of determining the meaning of words used, is also a matter for the court to decide as a matter of law, unless it depends upon extrinsic evidence or a choice among reasonable inferences to be drawn from the extrinsic evidence. Id. at 107-08. In the case before us we have a situation where an employment agreement is partially embodied in a writing which was denoted at trial as plaintiff's Exhibit No. 3. Exhibit No. 3 is a letter written to the plaintiff by the defendant and is a summary of a telephone conversation in which an offer and acceptance took place with regard to the accounting position the defendant was seeking to fill with the hiring of the plaintiff. Extrinsic evidence was considered by the trial court in arriving at its decision that an employment agreement of a 12-month term was involved here instead of a "terminable at will" contract. In the case of Village Supply Co., Inc. v. Iowa Fund, Inc. 812 N.W.2d 551 (Iowa 1981) the supreme court reaffirmed the proposition that the practical construction placed on an agreement by the parties would be given effect. Id. at 555. The employment agreement as embodied in the letter of correspondence is to be read in light of surrounding circumstances. See Lovlie v. Plumb, 250 N.W.2d 56, 59 (Iowa 1977).

We find that the case of Kitchen v. Stockman National Life Ins. Co., 192 N.W.2d 796 (Iowa 1971) is particularly instructive on the issue that confronts us at bar. In a unanimous opinion, the supreme court affirmed a trial court judgment which found that an employment contract for a term of one year existed in a similar situation. In Kitchen, the Iowa Court found the following excerpts from the Restatement Second of Agency law to be pertinent:

> "Unless otherwise agreed, mutual promises by principal and agent to employ and to serve create obligations to employ and to serve which are terminable upon notice by either party; if neither party terminates the employment, it may terminate by lapse of time or by supervening events."

Restatement Second Agency §422 (1933). Then in Comment b. thereunder is this statement:

> "The fact that a servant or other agent is employed under a contract which merely specifies a salary proportionate to units of time which are commonly used for the purposes of accounting or payment, such as a month or a year, does not, of itself, indicate that the parties have agreed that the employment is to continue for the stated unit of time. Such a specification merely indicates the rate at which the salary is earned or is to be paid, and either party is privileged to terminate the relationship at any time unless further facts exist. However, the fact that payment is to be made, in accordance with a time unit is evidence, in connection with other relevant facts indicating that the agreement is for such unit. Thus, an agreement for the period of time mentioned as that for payment, or as the basis for payment, is indicated * * * if the agency is an important one and of a kind such that a temporary appointment would not be likely to be made; or if, as the principal has notice, the employee has made an important

> change in his general relations in order to accept the position, such as the removal of himself and his things to a new place; or if he has given up a position of some value in order to enter the employment." (emphasis supplied in Kitchen).

Id. This portion of the Restatement is an embodiment of the modern American doctrine, adopted in Iowa, which holds that unless circumstances indicate otherwise, through relevant extrinsic facts, a contract which specifies that a salary to be paid at a given rate for a certain period of time does not in and of itself indicate that the parties have agreed that the employment is to last for this certain period of time. This is in contrast to the English doctrine, adhered to by a minority of jurisdictions, that a designated rate of compensation per day, week, month or year in and of itself creates a contract of employment for the stipulated period of time. See Singh v. Cities Service Oil Co., 554 P.2d 1367, 1368 (Okla. 1976).

Keeping in mind the guidance that the Kitchen opinion has given us we work through an analysis of the "tests" found in the Restatement and applied to the facts of our case. Defendant testified that the plaintiff was considered to be in a managerial or technical position, someone who ordinarily had supervisory responsibilities. The plaintiff himself testified that he felt he was in a managerial capacity. He agreed that he had access to the company information related to finances. We determine this was a position of importance. The plaintiff testified that he quit a job in Colorado where he had been working for consecutive one-year terms. He also testified that it was necessary for him to take a reduction in compensation in order to go to work for the defendant.

Furthermore, in applying the "tests" found in the Restatement, we note that defendant was aware that the plaintiff was making important changes in his general relations in order to take the position of staff accountant at Dubuque Pack. In fact, defendant endeavored to aid the plaintiff in making these changes. The defendant paid the costs of moving the plaintiff's family and household goods from Colorado to Iowa. The defendant paid the costs associated with a house-hunting trip the plaintiff made to Iowa. Financing was provided by the defendant in order to make plaintiff's transition to Iowa as speedy as possible.

We find that the defendant waived the normal company vacation policy. The plaintiff was given two-weeks of vacation, as was given on an annual basis, immediately upon assuming employment.

From this analysis and discussion we reach the conclusion that both parties to the employment agreement anticipated, understood and intended the initial contract period was not temporary or at will, but rather for an initial period of one (1) year. See 17 Am.Jur. Contracts §456 (1964). There was no good cause for the plaintiff's termination on or about December 31, 1981. The defendant in a letter of recommendation stated that the plaintiff would make an "excellent employee" for a prospective employer and that he had performed his duties "satisfactorily." Termination of the plaintiff within the initial one year period constituted a breach of contract based on the authority found in Kitchen, supra. We, therefore, affirm the judgment of the trial court in the amount of $9,100, plus costs and interest.

AFFIRMED.