IN THE COURT OF APPEALS OF IOWA

No. 3-638 / 92-1935

MARSHALL HILDRETH,

Appellant,

vs.

CRAWFORD & CO.,

Appellee.

FILED
AUG 25 1994
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Gene L. Needles, Judge.

Plaintiff brought this action against his employer alleging breach of an oral employment contract, fraud, and intentional infliction of emotional distress. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Marshall Hildreth, Des Moines, pro se, appellant.

Patricia J. Martin of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, P.C., Des Moines, for appellee.

Considered by Hayden, P.J., and Sackett and Cady, JJ.

CADY, J.

Marshall Hildreth began employment with Crawford & Company on August 6, 1990, as a part-time automobile damage appraiser. Hildreth informed his supervisors, Dave Hakes and Chuck Runcie, he was interested in full-time employment. In July 1991, Holmes Oldsmobile offered Hildreth a full-time position as assistant body shop manager. This job paid $32,000 per year, but offered little chance of advancement.

Hildreth accepted the job with Holmes, and told Crawford he was quitting. Hakes and Runcie attempted to get Hildreth to stay and told him there was much more room for advancement with Crawford. Hildreth stated he would need a full-time position which paid at least $24,000 per year in order to stay at Crawford. Hakes made several telephone calls and told Hildreth had had obtained authorization to pay him $24,000 per year. Hildreth agreed to stay with Crawford. Hakes then said a final decision would have to be made by Runcie. Runcie told Hakes the company would pay him $24,000 per year.

Hildreth told Holmes he was accepting full-time employment with Crawford and could not accept the job there. Holmes hired someone else for the position. Hildreth began work as a full-time employee for Crawford on August 1, 1991. On August 13, 1991, Runcie told Hildreth he would have to return to part-time employment because he did not actually have authorization to offer him a

full-time job. Runcie and Hakes were apologetic to Hildreth about the situation.

On September 11, 1991, Hildreth filed suit against Crawford alleging breach of an oral employment contract, fraudulent misrepresentation, and intentional infliction of emotional distress. After the suit was filed, on September 24, 1991, Crawford again offered a full-time position to Hildreth. However, the offer did not include retroactive pay or benefits. Hildreth turned down the offer. He quit his job with Crawford in January 1992.

Crawford filed a motion for summary judgment. The district court granted the motion. The court determined Hakes and Runcie both thought they had authorization to hire a full-time person, but found out they did not and Hildreth's employment had to be reduced from full-time to part-time. The court found no evidence of deliberate misrepresentation. Additionally, the court found no evidence to support a claim of permanent employment or of intentional infliction of emotional distress. Hildreth appealed.

Hildreth contends the district court should not have granted summary judgment to Crawford. He claims there is a genuine issue of material fact as to whether Hakes and Runcie had authorization to make him a full-time employee. He claims summary judgment was improper on the issues of breach of contract and fraudulent misrepresentation. Hildreth has not challenged the summary judgment on his

claim of intentional infliction of emotional distress and we will not address this issue.

I. Summary judgment is proper only when the entire record before the court shows there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Bob McKiness Excavating & Grading, Inc. v. Morton Buildings, Inc., 507 N.W.2d 405, 408 (Iowa 1993). The requirement of a genuine issue of fact means the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Fees v. Mutual Fire & Automobile Insurance Co., 490 N.W.2d 55, 57 (Iowa 1992). An issue of fact is material only when the dispute is over a fact that might affect the outcome of the suit, given the applicable governing law. Id.

The party moving for summary judgment has the burden of showing the nonexistence of a genuine issue of material fact. Hofco, Inc. v. National Union Fire Insurance Co., 482 N.W.2d 397, 400 (Iowa 1992). The resisting party should be afforded every legitimate inference that can reasonably be deduced from the evidence. Id.

II. In considering a claim of breach of contract, it is important to recognize that the parties to an employment contract must manifest their assent to be bound and do so in a manner that is sufficiently definite to be enforceable. See Hunter v. Board of Trustees, 481 N.W.2d 510, 514 (Iowa 1992). Generally, employment contracts are terminable at the will of either party. Benishek v. Cody,

441 N.W.2d 399, 401 (Iowa App. 1989). A contract for permanent employment arises only where the employee gives additional consideration beyond the services to be rendered and the parties intended to create such a contract, or the employee so intended and the employer should reasonably have known of this intent. Wolfe v. Graether, 389 N.W.2d 643, 657 (Iowa 1986).

In the present case, Hildreth has not shown either he or Crawford intended to enter into a contract for permanent employment. When asked how long he though his employment at Crawford would last, Hildreth replied, "There was no specific time set, but it was insinuated that it was going to be a long time." We conclude Hildreth was an at-will employee and could be terminated at any time or, as in this case, placed on part-time hours at any time. We conclude summary judgment on the breach of contract claim was appropriate.

III. We next turn to Hildreth's claim of fraudulent misrepresentation. The elements for a cause of action based on fraud consist of: (1) representation; (2) falsity; (3) materiality; (4) scienter; (5) intent to deceive; (6) reliance; and (7) resulting injury and damage. Garren v. First Realty, Ltd., 481 N.W.2d 335, 338 (Iowa 1992).

The only elements in question here are scienter and intent to deceive. We find there is sufficient evidence Crawford made a representation to Hildreth, offering him a

full-time position and an annual salary of $24,000, which turned out to be false because the company had not authorized such a position, and Hildreth relied on this representation to his detriment.

Scienter and intent to deceive may be shown when the speaker has actual knowledge of the falsity of his or her representations or speaks in reckless disregard of whether those representations are true or false. Id. In this second situation, a misrepresentation may result in liability where the speaker has merely a belief in its existence and recognizes there is a chance, more or less great, the fact may not be as it is represented, even though the speaker is honestly convinced of its truth from hearsay or other sources he believes to be reliable. Beeck v. Kapalis, 302 N.W.2d 90, 95 (Iowa 1981) (citing Restatement (Second) of Torts §526, Comments e, f (1977)). Thus, an honest belief in the truth of one's statements does not preclude a finding of fraud. Id.

After reviewing the evidence, we find there is sufficient evidence to create a jury issue on the elements of scienter and intent to deceive. In his affidavit, Hildreth asserts Hakes made several telephone calls before offering him the full-time position, and Hakes stated "he had made all of those phone calls to get authorization . . . " However, Hakes and Runcie later stated they did not actually get authorization from the company.

Hildreth also asserts that at a meeting he attended on September 11, 1991, the regional supervisor stated the

company had been planning for two months to hire a vehicle services coordinator. Hildreth believed the new position would reduce the need for vehicle damage appraisers and made it more unlikely the company would have approved increasing his hours from part-time to full-time. Furthermore, Jim Braklow, a fellow employee of Crawford, stated in his affidavit Hakes had told him he had gotten authorization from the regional office to hire Hildreth as a full-time employee, but the regional supervisor was "back-pedaling and denying it."

We find there is sufficient evidence in the record to allow a jury to find either one of two scenarios. A jury could find Hakes and Runcie represented to Hildreth they had authorization to hire him as a full-time employee when in fact they had not actually received such authorization. A jury could also find the regional office had represented to Hakes and Runcie they had authorization for the hire, when they did not. We note Hildreth's suit is not against Hakes and Runcie alone, but is against the company. As Hildreth testified, "somebody somewhere had to have some authority."

We conclude summary judgment was not appropriate on the issue of fraudulent misrepresentation. We reverse the district court decision on this issue and remand for further proceedings.

IV. Although it did not file a cross-appeal, Crawford raises an issue in its brief claiming the district court

did not have jurisdiction to hear the case because the amount in controversy was less than $2,000. Under Iowa Code section 631.1, a civil action for a money judgment where the amount in controversy is $2,000 or less should be tried as a small claims action. Because Crawford claims the district court lacked subject matter jurisdiction, we may consider the claim even though it is raised for the first time on appeal. See State v. Pinckney, 306 N.W.2d 726, 729 (Iowa 1981).

Chapter 602 creates a unified trial court system in Iowa. Section 602.6101 provides:

> A unified trial court is established. This court is the "Iowa District Court". The district court has exclusive, general, and original jurisdiction of all actions, proceedings, and remedies, civil, criminal, probate, and juvenile, except in cases where exclusive or concurrent jurisdiction is conferred upon some other court, tribunal, or administrative body. The district court has all the power usually possessed and exercised by trial courts of general jurisdiction, and is a court of record.

Aside from the appellate courts, there is only one court in Iowa, the district court. Wilson v. Iowa District Court, 297 N.W.2d 223, 225 (Iowa 1980). An action for monetary damages may be placed on the small claims docket of the district court or the civil docket of the district court. Id. at 226. The case may be heard, however, by a district associate judge or district judge. Id. at 225.

We determine the district court had jurisdiction to hear this case, and the only question is whether it should

have been placed on the small claims docket. The test for determining the existence of the requisite amount in controversy is whether the trial court could have entered judgment against any party for that amount. Ackerman v. International Business Machines Corp., 337 N.W.2d 486, 488 (Iowa 1983). The amount may be determined by looking to the pleadings of the case. Davis v. United Fire & Casualty Co., 500 N.W.2d 725, 727 (Iowa App. 1993).

Here, Hildreth specifically alleged in his pleadings that he had been damaged in an amount which exceeded the requisite amount to invoke the jurisdiction of the district court. He sought compensatory and punitive damages in his claims for breach of contract, fraudulent misrepresentation, and intentional infliction of emotional distress. We conclude this case was properly tried by regular proceedings in the district court.

V. In summary, we affirm the district court's grant of summary judgment to Crawford & Company on the issues of breach of contract and intentional infliction of emotional distress. We reverse the district court's grant of summary judgment of the issue of fraudulent misrepresentation. We remand this issue to the district court for further proceedings. We do not retain jurisdiction. Costs of this appeal are assessed one-half to each party.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.