FILED
JAN 26 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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WENDELL L. OLIVER and **MARILYN OLIVER**,	)	
Plaintiffs-Appellants,	)	
vs.	)	
CHAMBERLAIN MANUFACTURING CORPORATION,	)	8-552 / 87-1736
Defendant-Appellee.	)	

Appeal from the Iowa District Court for Linn County (No. LA 11747), Thomas M. Horan, Judge.

Plaintiffs appeal the decision of the district court which granted defendant's motion for summary judgment. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Donald L. Carr, II, of Turner & Carr, Cedar Rapids, for plaintiffs-appellants.

Eldon R. McCann and Jim D. DeKoster, of Swisher & Cohrt, Waterloo, for defendant-appellee.

Heard by Schlegel, P.J., and Sackett and Habhab, JJ.

SACKETT, J. 218

In this appeal from the trial court's granting of a motion for summary judgment we address the issue of whether there is substantial evidence to support the allegation plaintiff's claim against defendant employer following plaintiff's discharge. We affirm in part, reverse in part and remand.

Plaintiff-appellants Wendell L. and Marilyn Oliver filed a petition in several counts against Wendell's former employer, defendant-appellee Chamberlain Manufacturing Corp., claiming defendant had breached an employment contract. Defendant filed a motion for summary judgment which the trial court sustained. Plaintiff appeals. The facts taken in the light most favorable to plaintiff are substantially as follows:

Plaintiff-appellant Wendell Oliver was employed by defendant-appellee Chamberlain Manufacturing on December 1, 1980. His job was quality control manager at its Albia, Iowa plant. Wendell was able to implement a successful quality control program for the company. In the latter part of 1981 Chamberlain purchased Feather-Lite Corporation in Hot Springs, Arkansas. Wendell had been reviewed for job performance and received an increase in salary in December 1981.

In February 1982 Wendell accepted a job at the Arkansas plant as group quality control manager. Discussed in the

decision to relocate was that additional plants were going to be added for quality control management in approximately two or three years. Chamberlain agreed to pay Wendell a $32,900 a year salary in the Hot Springs, Arkansas plant. In preparation for the new job Wendell sold his Cedar Rapids residence for less than fair market due to time constraints. Mrs. Oliver had papers prepared for a leave of absence from her employment.

Oliver believed the promotion was of a permanent duration. If the job had been for less than a one-year period of time Oliver would not have accepted the job. It was known by the company that it would take at least one and a half to two years to implement the Oliver program. Oliver testified he believed the contract would be for a minimum of one year. Oliver was terminated by Chamberlain on September 10, 1982.

I.

Before proceeding to plaintiff's claims we find it necessary to address an issue raised by Chamberlain. Chamberlain says Arkansas law should apply. Arkansas law was neither pled or proved in the trial court. We therefore assume the law to be the same as Iowa's. Zeman v. Canton State, 211 N.W.2d 346, 349 (Iowa 1973). We therefore find it unnecessary to address the issue of what state's law should be used. We further note defendant filed no cross-appeal. We apply Iowa law in our interpretations.

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II.

Plaintiff contends there is evidence he had a contract with defendant for a definite period. Plaintiff's argument centers on the fact he showed there was additional consideration and he had a contract for at least one year. Restatement, Second, Agency, § 442, Comment b provides:

> 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).

See Kitchen v. Stockman Nat'l Life Ins. Co., 192 N.W.2d 796, 802 (Iowa 1971).

Iowa has long subscribed to the doctrine an employee at will is ordinarily terminable at any time by his or her employer. Wolfe v. Graether, 389 N.W.2d 643, 652 (Iowa 1986); Albert v. Davenport Osteopathic Hosp., 385 N.W.2d 237, 238 (Iowa 1986); Abrisz v. Pulley Freight Lines, Inc.,

270 N.W.2d 454, 455 (Iowa 1978); Harper v. Cedar Rapids Television Co., Inc., 244 N.W.2d 782, 791 (Iowa 1976); Allen v. Highway Equipment Co., 239 N.W.2d 135, 139 (Iowa 1976). Whether an employer can discharge his employee without cause and not incur liability is a question which is to be resolved with reference to the express and implied terms of the contract. Allen v. Highway Equipment Co., 239 N.W.2d at 140 (citing 53 Am.Jur.2d, Master and Servant, section 43, page 118.

Contracts expressly offering lifetime or permanent employment or which a trier of fact has interpreted as offering such employment based on extrinsic evidence will be interpreted as indefinite and terminable at will in the absence of some executed consideration in addition to the services to be rendered. Wolfe v. Graether, 389 N.W.2d 643, 652-53 (Iowa 1986). The question of what constitutes sufficient additional consideration must be determined on a case-to-case basis. Id.; Albert, 385 N.W.2d at 238. An employee who gives up other employment to accept an offer of a permanent job provides independent consideration - at least, when the employment surrendered is permanent and the new employer knows of the facts. Collins v. Parsons College, 203 N.W.2d 594, 599 (Iowa 1973). In Wolfe v. Greather, 389 N.W.2d 643, 653 (Iowa 1986), an employee who because of family control may have enjoyed permanent employment with a partnership and had voting privileges in

the partnership, his forebearance in changing to a professional corporation where he did not enjoy similar rights was legally sufficient to satisfy the requirement for additional consideration. Id.

The evidence taken in the light most favorable to plaintiff reveals plaintiff, with defendant's consent and knowledge, gave up a secure position in Iowa for which he had just received a raise because of satisfactory job performance and accepted the job in Arkansas. Plaintiff commenced working in Arkansas as expected and made efforts to move his family and negotiated the sale of his house at a reduced price. The job plaintiff took was an important one and the kind to which a temporary appointment would not likely be made. Plaintiff was terminated from his employment. We determine there is evidence the parties understood and intended Oliver's employment in Arkansas was not temporary or at will but rather for an initial period of one year. See Kitchen v. Stockman, 192 N.W.2d at 802-3. We remand on this issue.

We consider the other allegations of plaintiff's petition, including abuse of discharge, intentional infliction of emotional distress and fraudulent misrepresentation. We agree with the trial court there is not sufficient evidence on these claims. See Haldeman v. Total Petroleum, Inc., 376 N.W.2d 98, 104-05 (Iowa 1985). We affirm the summary judgment as to these issues.

Costs on appeal are taxed one-half to each party.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.