

FILED
DEC 27 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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RICHARD M. JACOBS,)

Plaintiff-Appellant,)

Filed December 27, 1979

vs.)

STATE OF IOWA; STATE BOARD OF
REGENTS OF THE STATE OF IOWA)

(Ray V. Bailey, John M. Baldridge,
Margaret Collison, Stanley Barber,)

S. J. Brownlee, Henry G. Slife,
Steven Zumbach, Mrs. H. Rand)

Petersen and Donald H. Shaw);)

and DONALD J. GALAGAN, Dean
of the College of Dentistry,)

University of Iowa,)

Defendants-Appellees.)

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2-60764

Appeal from Johnson District Court - August F. Honsell, Jr., Judge.

Plaintiff appeals trial court declaratory judgment that his employment contract with defendant university was not breached. - Reversed and remanded.

James McCarragher, of Meardon, Sueppel, Downer & Hayes, Iowa City, for
Plaintiff-Appellant.

Thomas J. Miller, Attorney General of Iowa, Arthur O. Leff, Iowa City, and
Howard Hagen, Assistant Attorney General, for Defendants-Appellees.

Heard by Oxberger, C.J., Donielson, Snell and Johnson, JJ.; Carter, J., takes no
part.

PER CURIAM

Plaintiff, Richard M. Jacobs, appeals trial court declaratory judgment that his employment contract with defendant University of Iowa was not breached. Reversed and remanded.

Plaintiff was employed as a tenured professor by The University of Iowa College of Dentistry. For fiscal year 1971-1972, \$31,000 was budgeted for Jacobs' salary but he was paid only \$22,569. Jacobs contested his salary payment through administrative appeals and an additional \$7000 for the years 1971-1973 was paid as a result. Jacobs maintained, however, his 1971-1972 employment contract had been breached and brought this declaratory judgment action. The trial court found the parties had an employment contract, but held the university had not breached it. This appeal followed.

Review here is on errors assigned and the trial court findings have the effect of a jury verdict. Spilman v. Board of Directors of Davis County Community School District, 253 N.W.2d 593 (Iowa 1977); Iowa R. App. P. 4. The findings of fact by the trial court are binding on appeal if supported by substantial evidence, Iowa R. App. P. 14(f)(1), and the evidence is viewed in a light most favorable to the judgment. Spilman, 253 N.W.2d at 595. However, we are not precluded from inquiry as to whether the trial court applied erroneous rules of law that materially affected the decision, and we are not bound by the trial court's determinations of law. Sandhorst v. Mauk's Transfer, Inc., 252 N.W.2d 393, 395 (Iowa 1977).

In its conclusions of law, the trial court stated Jacobs was a tenured professor and "the compensation payable to a tenured professor for a particular year may be changed since the particular amount involved forms a part of the express contract to teach for a particular given year." The court then concluded Jacobs' agreement with the university had not been breached and entered a declaratory judgment to that effect. We think, however, the latter conclusion is in error. The university had budgeted \$31,000 for Jacobs' fiscal year 1971-1972 salary and that amount was approved by the Board of Regents. Although the \$31,000 represented a ceiling on what Jacobs could earn, due to the dental service plan, it was the amount Jacobs reasonably thought he could earn during the 1971-1972 academic year. Initial salary payments to Jacobs by the university were made on the basis of a \$31,000 annual salary, although the parties admit such

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payments might have been made in error. To us, the evidence indicates the parties had set the earnings ceiling for the "particular given year" and the maximum salary had been accepted by each. Under such arrangement, Jacobs was not assured such compensation, but he was to have the opportunity to obtain it.

The university, however, sent Jacobs a letter indicating his salary ceiling would be less than \$31,000. This de facto reduction in earning potential was made after the parties had agreed to employment terms and after performance was initiated by each. As stated in Heggen v. Clover Leaf Coal & Mining Co., 217 Iowa 820, 822, 253 N.W. 140, 141 (1934): "It is elementary law that in order to establish or modify a contract, it must be shown there was a meeting of the minds. A party to a contract cannot alter its terms without the assent of the other. The minds of the parties must meet as to the proposed contract or its modification." See also Becker v. Gustafson, 279 N.W.2d 744, 753-59 (Iowa 1979). Here, Jacobs did not agree to the reduction of the earnings ceiling he previously had accepted. Instead, the university unilaterally modified the contract by its letter to Jacobs. That action manifested the university's intent to disregard the terms of the employment agreement and materially breached the contract. Although the trial court ruled differently, we find the evidence established breach of the contract. Since the evidence is susceptible to but one reasonable conclusion, the issue of performance is one of law. See 17 Am. Jur. 2d Contracts § 378 (1964). We hold the trial court erred in its conclusions of law and accordingly reverse its declaratory judgment.

Our holding is limited to the conclusion the university breached the contract by reducing Jacob's earning potential from the agreed upon \$21,500 base and \$9,500 projected dental service plan income (a maximum earning, therefore, of \$31,000) to a salary of \$24,825. Jacobs further claims the university breached the contract by interfering with his private patient distribution in the dental services plan and by breaching the terms of his tenured employment. We believe the above finding of breach obviates the need to discuss those issues since they relate solely to damages. Further, we believe the matters of private patient distribution or maximum earnings allowances in the dental service plan are relevant to the assessment of damages and appropriately may be considered on remand.

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We hold the university breached the employment contract with Jacobs and reverse the trial court judgment. We do not hold Jacobs is entitled to \$31,000 for fiscal year 1971-1972, however, since evidence on the damages portion of this bifurcated proceeding has not been introduced. Rather, on remand, the trial court should receive evidence on damages and enter an appropriate award.

Reversed and remanded.