FILED
SEP - 6 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

NANCY A. SFERRAZZO,

Plaintiff-Appellant,

vs.

THE ESTATE OF ANTHONY SFERRAZZO, NORMA SFERRAZZO, Executrix,

Defendant-Appellee,

Filed September 6, 1984

4-295
83-1443

246

Appeal from the Iowa District Court for Polk County—George W. Bergeson, Judge.

Plaintiff appeals from a judgment for the estate of her son in her suit brought to enforce an alleged oral contract for a lifetime pension. AFFIRMED.

Charles A. Coppola, Des Moines, Iowa, for plaintiff-appellant.

Lex Hawkins, Glen L. Norris and George F. Davison, Jr., of Hawkins & Norris, Des Moines, Iowa, for defendant-appellee.

Considered by Snell, P.J., and Schlegel, and Sackett, JJ.

Nature Of The Case

Plaintiff, Nancy A. Sferrazzo, appeals from an adverse judgment in her suit to enforce an alleged oral contract for a lifetime pension. The trial court judge, the Honorable George W. Bergeson, in his Findings of Fact, Conclusions of Law and Order entered September 12, 1983, found that the plaintiff failed to prove her claim against the defendants by a preponderance of the evidence. Defendants' Motion for Directed Verdict on two counts of the plaintiff's three count[1] petition were sustained by the trial court. Plaintiff filed her Notice of Appeal on October 12, 1983, on the basis that the Judgement Order issued by the trial court was contrary to the evidence.

Facts

The plaintiff, Nancy A. Sferrazzo, was born on November 25, 1908 and at the time of trial was 74 years old. Ms. Sferrazzo was married to Francois Sferrazzo and this union produced two children. One, a son Anthony Sferrazzo (hereinafter Anthony Sferrazzo will be referred to as Tony), died on June 26, 1978. Prior to his death, Tony had maintained the position of chief executive officer (CEO) of the two defendant corporations involved in this action: Francois Salons of Iowa, Inc., and Americana Beauty Academy, Inc. Tony was the husband of Norma Sferrazzo, who is the executrix of his estate. Following the death of Tony in June, 1978, Norma assumed the duties of CEO for the two defendant corporations.

Charles A. Cashett, Jr., is a public accountant, and for many years has been employed by Americana and Francois Salons to maintain the books of account of the two corporations. Mr. Cashett is not a party to this lawsuit. As part of his duties to the corporations, Mr. Cashett prepared employee paychecks and W-2 withholding statements.

---

[1] Count 1 of the plaintiff's petition is not at issue in this appeal. Defendant's Offer to Confess Judgment was accepted by the plaintiff and has been satisfied.

In 1974, Americana was experiencing financial difficulties. A certified public accountant by the name of James Dixon was employed by both defendant corporations in order to make recommendations regarding the companies' financial problems. That same year Mr. Dixon discussed with Tony the amount of salaries paid to the employees of the two corporations and the requisite duties of the employees. Mr. Dixon also discussed the salary paid to and the duties of the plaintiff. Tony stated in this discussion that the plaintiff had no duties. In a review of the books and records of defendants Americana and Salons it was determined that the plaintiff was being paid a salary by Americana. Mr. James Dixon advised Tony that in his opinion it would be extremely difficult to justify to the Internal Revenue Service the deductions taken because of the "salary" being paid to the plaintiff, but that it might be possible to pay her a pension. Dixon suggested the pension payment be the difference between the plaintiff's present salary and the Social Security benefit she was entitled to receive. In 1974 the plaintiff attained age 65, whereby she became entitled to her full Social Security benefit. Dixon further suggested that each time there was an increase in Social Security benefits, the pension payment should be reduced, and that this transaction be recorded in the corporate minutes of Americana. Sometime during 1974, Tony and the plaintiff met, after Tony's meeting with Mr. Dixon, to discuss plaintiff's retirement from the two defendant corporations. After this meeting, Mr. Cashett was instructed by Tony to drop the plaintiff from the payroll and begin issuing her checks on a monthly basis. These payments were denominated as a "pension," and were of an amount reflected in Mr. Dixon's recommendations to Tony.

Norma Sferrazzo, after assuming the duties of CEO for both defendant corporations following Tony's death, directed that after November 1, 1979, no additional "pension" checks were to be issued by Americana to the plaintiff.

Applicable Law

In this action at law, our review is limited to correction of errors in the application of the relevant points of law. The trial court's findings of fact are binding if supported by substantial evidence. See State v. Robinson, 288 N.W.2d 337, 338 (Iowa 1980). The trial court's findings of fact have the effect of a special verdict. Iowa R. App. P. 14(f)(1). The record is reviewed in the light most favorable to the judgment; ambiguities are construed to uphold rather than defeat the judgment. Moody v. Bogue, 310 N.W.2d 655, 658 (Iowa Ct. App. 1981). There was substantial evidence to justify the verdict of the trial court and we will not alter that judgment on appeal.

A court cannot enforce a contract unless it can determine what it is. In order to be binding, an agreement must be definite and certain as to its terms to enable the court to give it an exact meaning. Although vagueness, indefiniteness, and undertainty are matters of degree, their existence as to any of the essential terms of an agreement is adequate reason for refusal to direct specific performance. Tri-State Investment Co. v. Henryson, 179 N.W.2d 362, 363 (Iowa 1970); Davis v. Davis, 261 Iowa 992, 1001, 156 N.W.2d 870, 876 (1968).

> A court cannot enforce a contract unless it can determine what it is. It is not enough that the parties think that they have made a contract; they must have expressed their intention in a manner that is capable to understanding. It is not even enough that they have actually agreed, if their expressions, when interpreted in the light of accompanying factors and circumstances, are not such that the court can determine what the terms of that agreement are. Vagueness of expression, indefiniteness, and uncertainty as to any of the essential terms of an agreement have often been held to prevent the creation of an enforceable contract.

1 A. Corbin, Contracts §95 at 394 (1963)(quoted in Palmer v. Albert, 310 N.W.2d 169, 172 (Iowa 1981). "A contract for life will be upheld only where the intention, that the contract's duration is for life, is clearly expressed in unequivocal terms." Thompson v. Miller, 100 N.W.2d 410, 412 (Iowa 1960); Lewis v. Minnesota Mutual

Life Insurance Co., 240 Iowa 1249, 1257, 37 N.W. 2d 316, 321 (Iowa 1949). Absent any consideration beyond the employee's promise to perform the duties associated with his/her position, a contract for permanent or lifetime employment is construed to be for an indefinite time, terminable at the will of either party. Holden v. Construction Machinery Co., 202 N.W.2d 348, 362 (Iowa 1972); Stauter v. Walnut Grove Products, 188 N.W.2d 305, 311 (Iowa 1971).

We acknowledge that it could possibly have been Tony Sferrazzo's intent to make monetary payments to his mother, the plaintiff, for her lifetime. We also realize that this possible intention, standing alone, does not give plaintiff an enforceable or legal right to receive these payments. The "pension" that the plaintiff alleges she is entitled to receive is nothing more than an oral agreement between herself and her son; totally unsupported by any consideration on the part of the plaintiff. The agreement was terminable at will and was justifiably done so by Norma Sferrezzo after she assumed the duties as CEO of the two defendant corporations after Tony's death.

The plaintiff goes to some length, in her argument to this court, in trying to analogize this agreement with organized pension plans. This argument is unpersuasive. There has been no evidence to suggest that this oral agreement in any way resembles a contributory pension plan. The plaintiff has paid no money into a plan whereby she would have a vested interest in payments after her retirement. Even though this is not a contributory pension plan, the plaintiff still has no enforceable right to payments because there are no conditions associated with the agreement which would act as consideration. See Castor v. Berkshire Life Insurance Co., 171 Ohio 405, ____, 171 N.E.2d 518, 521 (1960). This agreement provided for purely gratuitous payments to be made to the plaintiff. Pure gratuity payments are subject to the will of the employer. Id. In addition, it has been said that:

> ". .. Where a retirement plan is not included in a contract between employer and employee, the benefits described therein are entirely voluntary and gratuitous on the part of the employer; and the employer may condition his bounty as he sees fit. Services rendered in the past, or appreciation thereof, or a moral consideration, or a requirement that employees report at the office for the purpose of receiving their checks is not a sufficient consideration for a contract to pay employees pensions; and, where an arrangement under which pensions are paid is not supported by a valid consideration, it is revocable at the pleasure of the employer."

56 L.J.S. Master and Sevant §169, at 830 (emphasis added).

We will not conclusively speculate why these payments were made, though they could have been motivated by Tony Sferrazzo's affection for the plaintiff, moral considerations, or the appreciation for past performance at the beauty salons. In any event, the payments were gratuitous and properly terminable by Norma Sferrazzo. The judgment of the trial court is upheld.

AFFIRMED.