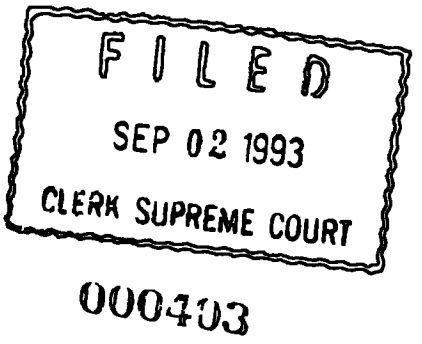
IN THE COURT OF APPEALS OF IOWA

No. 3-253 / 92-1158



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MICHAEL P. MALONEY,

Appellant,

vs.

CONTINENTAL WESTERN LIFE INSURANCE COMPANY,

Appellee.

Appeal from the Iowa District Court for Dallas County, Darrell J. Goodhue, Judge.

Plaintiff appeals a district court ruling granting the defendant's motion for a directed verdict on plaintiff's action for breach of his employment contract. **AFFIRMED.**

William B. Serangeli of Smith, Schneider, Stiles, Wimer, Hudson, Serangeli, Robinson, Mallaney, Shindler, Scalise & Sandre, P.C., Des Moines, for appellant.

Theodore T. Duffield and Michael Huppert of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for appellee.

Considered by Donielson, P.J., and Sackett and Habhab, JJ.

HABHAB, J. 000404

Plaintiff, Michael P. Maloney, appeals a district court ruling granting the defendant's motion for a directed verdict. Maloney had brought an action for breach of contract based on his termination from employment.

In 1985, Maloney accepted an offer by Vinton Nutt, president of Continental Western Life Insurance Company, to become a vice president at the company's home office. Maloney had been a regional manager for the company, running an agency business selling the company's products. Maloney claims to have obtained financial security from this business. Maloney claims that during the discussions leading to the offer of employment with Continental, Nutt indicated he had complete authority to run Continental and that the employment offer was for a position which would lead to Maloney becoming president of Continental. However, Continental by-laws indicated that the board of directors of the company would have to approve any hiring of a company official.

When Maloney became a senior vice president for Continental, Maloney's agency organization was terminated. In addition, he was forced to sell his equity interest in another insurance company because of his employment with Continental.

Nutt did submit Maloney's name along with the name of another person as a candidate to be the company president. The other person was picked to become the president of

000405

Continental upon Nutt's retirement. In December 1990, Maloney's employment with Continental as its vice president was terminated. Continental claims this decision was made on the basis of Maloney's wife's activities using living trusts which were viewed as a direct conflict of interest with the company and the conflict Maloney was having with other officers in the company.

Maloney subsequently filed a petition alleging that Continental breached a contract for permanent employment or a contract for a specified term. In addition, Maloney claimed that Continental breached an implied covenant of good faith and fair dealing. Continental denied the existence of an oral contract for permanent employment. It also denied any breach of an implied covenant of good faith and fair dealing. Continental alleged that Maloney's employment was an employment at will and that there was sufficient cause to terminate his employment.

The case proceeded to a trial. At the close of the presentation of Maloney's case, Continental filed a motion for directed verdict. The court granted the motion. Maloney appeals. We affirm.

A directed verdict is appropriate in cases where any element of the claim is not supported by substantial evidence. Oberreuter v. Orion Indus., Inc., 398 N.W.2d 206, 209 (Iowa App. 1986). A court ruling on a motion for directed verdict must view the evidence in the light most favorable to the nonmoving party. Beitz v. Horak, 271

000406

N.W.2d 755, 757 (Iowa 1978); Iowa R. App. P. 14(f)(2). The movant is considered to have admitted the truth of all evidence offered by the nonmovant and every favorable inference that may be deduced from it. B & B Asphalt Co. v. T. S. McShane Co., 242 N.W.2d 279, 284 (Iowa 1976). To overrule the motion, the court must find substantial evidence in support of each element of nonmovant's claim. Beitz, 271 N.W.2d at 757. If reasonable minds could differ, the issue is for the jury. Harvey v. Palmer College of Chiropractic, 363 N.W.2d 443, 444 (Iowa App. 1984). The trial court is vested with considerable discretion in determining whether evidence is sufficient. Hoover's Hatchery, Inc. v. Utgaard, 447 N.W.2d 684, 687 (Iowa App. 1989).

I. **Employment Contract for Permanent Employment.**

Maloney contends his employment contract with Continental was a permanent employment contract. Maloney contends the oral contract offered and accepted was for Maloney to become senior vice president of Continental and remain in that position until the retirement of Vinton Nutt at which time Maloney would become the new president and remain in that position until his retirement. Continental contends the oral employment contract was for employment at will, terminable by either party without cause.

The only evidence of a permanent or lifetime employment contract was presented in Maloney's own testimony. Maloney

testified that he and Mr. Nutt met in Omaha to discuss the possibility of Maloney coming to work for Continental's home office. Maloney testified Nutt discussed his "admiration for myself." Nutt indicated that Maloney "would be a proper successor for him." He said to "come into the home office and he would groom me to be his successor." Maloney also testified that Nutt "stated that Continental Western Life is a company that was owned by the Mormon Church and the Mormon Church had a tradition of providing employment. They did never -- as he put it, they had never laid anybody off yet."

Maloney also testified:

> A. One of the things I was very concerned about at the time was my ability to create money for retirement[.] He said that the company had a very good retirement program that I would participate in that would kind of take the place of what I felt was the security that my agency was building for me. I mentioned that I was a participant in the company's deferred compensation program. He said that even though it wasn't in the rules that he would arrange so that I wouldn't have to eliminate my deferred compensation account; that it would grow and appreciate at whatever interest rate it would have had I stayed in the field.
>
> Q. Anything else you can recall? . . . A. He relayed to me that I would have the security that I had if I come into the home office. He also suggested that the company needed me, and I cared for the company.

Maloney testified that about a week after the Omaha meeting, he and Nutt went over the terms again:

> Q. What did you go over? A. We went over the fact that I would be starting at $80,000 a year; that I would have an unlimited expense account. He said, "I don't want you to go second class, although on airplanes you can't fly first class

> because," what he said was, "the Mormons do not." And I again stressed the fact that I had built this business. What would happen to it? He indicated I could no longer participate in running a field organization if I came into the home office; that I would have to move to Des Moines as quickly as possible. I mentioned to him that I had an investment in National Heritage Life [a rival insurance company]. He told me that I would have to take care of that.

After reviewing this and the rest of the extrinsic evidence we find nothing in the record which a reasonable trier of fact could interpret as offering a lifetime or permanent employment. We affirm the trial court on this issue.

II. Employment Contract for Specified Term.

Maloney claims that if he did not have an employment contract for permanent employment, he had a contract for a specified term. Maloney relies on the same portions of his testimony as in his claim for permanent employment. After reviewing the record, especially Maloney's own testimony, we affirm the trial court's granting of defendant's motion for a directed verdict on this issue.

III. Covenant of Good Faith and Fair Dealing.

As an alternative to his other theories of recovery, Maloney urges this court to recognize a cause of action for breach of an implied covenant of good faith and fair dealing.

000709

> The doctrine stems from the implied duty of good faith and fair dealing recognized in all contracts. See Restatement (Second) of Contracts § 205 (1981). Applied in the employment context, an employee proving a prima facie case of unjust termination could shift to the employer the burden of proving good faith as a defense. The classic case invoking such a duty of good faith would be the discharge of a thirty-year employee six months before a pension vests, or the dismissal of an employee for spurning the affections of a co-worker. See generally Minda & Raab Time for an Unjust Dismissal Statute in New York, 54 Brook. L. Rev. 1137, 1147 (1989); Monge v. Beebe Rubber Co., 114 N.H. 130, 131, 316 A.2d 549, 551 (1974).

Fogel v. Trustees of Iowa College, 446 N.W.2d 451, 456 (Iowa 1989).

Only a small handful of states have adopted the doctrine in the employment context. Id. Iowa, as of yet, is not one of them. Id. at 457; Grahek v. Voluntary Hosp. Coop., 473 N.W.2d 31, 34 (Iowa 1991).

We need not decide in this case whether to join the limited number of jurisdictions that have recognized the doctrine. The facts in the record before us simply do not compel its consideration.

We affirm the district court on this issue.

IV. Conclusion.

We find the district court correctly determined a jury question was not created on any of Maloney's three theories. We therefore affirm the trial court's decision to direct a verdict for defendant.

AFFIRMED.