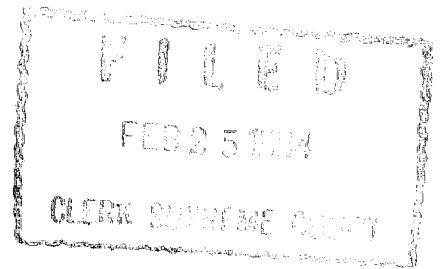


IN THE COURT OF APPEALS OF IOWA

No. 3-658 / 93-0618



MARK NELSON,

Plaintiff-Appellant,

vs.

WEST DES MOINES LIBRARY BOARD OF TRUSTEES,

Defendant-Appellee.

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

The plaintiff is the former director of the West Des Moines Library. The library's board of trustees terminated the plaintiff's employment and the plaintiff brought suit for breach of his employment contract. **AFFIRMED.**

Michael D. Huppert of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for appellant.

Hugh J. Cain and Philip H. Dorff, Jr. of Hopkins & Huebner, P.C., Des Moines, for appellee.

Heard by Sackett, P.J., Habhab, J., and Peterson, S.J.*

*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

PER CURIAM.

Plaintiff-appellant Mark Nelson was terminated as director of the West Des Moines Library. He sued defendant-appellee West Des Moines Library Board of Trustees contending he had a contract of employment which the defendant board breached. Defendant made a motion for summary judgment which the trial court sustained and this appeal followed. Nelson contends the trial court erred in finding on summary judgment that no employment contract existed and that there was no breach of an employment.

The pivotal question is whether an employee's handbook adopted after Nelson was employed by the board was evidence which would have supported a finding there was an employment contract. We agree with the trial court, it did not, and we affirm.

Summary judgment is appropriate "if the pleading, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 237(c); see Farm Bureau Mut. Ins. Co. v. Milne, 424 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of a material fact, Milne, 424 N.W.2d at 423, and the evidence must be viewed in the light most favorable to the resisting party. Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986). The procedure is functionally akin to a directed verdict, and

every legitimate inference that reasonably can be deduced from the evidence should be afforded the resisting party. Id.; Sherwood v. Nissen, 179 N.W.2d 336, 339 (Iowa 1970). A fact issue is granted if reasonable minds can differ on how the issue should be resolved, but if the conflict in the record consists only of the legal consequences flowing from undisputed facts, entry of summary judgment is proper. Milne, 424 N.W.2d at 423; Gott, 387 N.W.2d at 343. If the motion is properly supported, however, the resisting party "must set forth specific facts showing that there is a genuine issue for trial." Iowa R. Civ. P. 237(e). The language of our rule and case law are substantially similar or identical to that of rule 56 of the Federal Rules of Civil Procedure, see, e.g., Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-88, 106 S. Ct. 1348, 1355-56, 89 L. Ed. 2d 538, 551-53 (1986), from which we may draw for guidance in interpreting our own rule, Sherwood, 179 N.W.2d at 339. We now turn to the facts, all of which appear to be undisputed, as viewed in a light most favorable to the party resisting the motion for summary judgment.

There seems to be little dispute that plaintiff was originally employed as an employee at-will. The employment at-will doctrine is established in the State of Iowa. Fogel v. Trustees of Iowa College, 446 N.W.2d 451, 455 (Iowa 1989).

Iowa also recognizes under certain circumstances an employee handbook can be a unilateral contract of continuing employment. See McBride v. City of Sioux City, 444 N.W.2d 85, 91 (Iowa 1989).

The determination of whether the handbook was a contract is a question of law. French v. Foods, Inc., 495 N.W.2d 768, 770 (Iowa 1993).

The threshold question is whether the handbook is sufficiently definite to constitute an offer of continued employment. Id. The handbook here specifically says it is not an offer of continuing employment and it reserves to the Library the right to change policies wherever it chooses to change them. Nelson signed a receipt acknowledging no employment contract existed. The trial court was correct in finding as a matter of law no employment contract existed. See Fogel, 446 N.W.2d at 455-56; Palmer v. Women's Christian Ass'n, 485 N.W.2d 93, 97 (Iowa App. 1992). We affirm on this issue.

We have considered the other issue raised by plaintiff and find it to be without merit.

AFFIRMED.