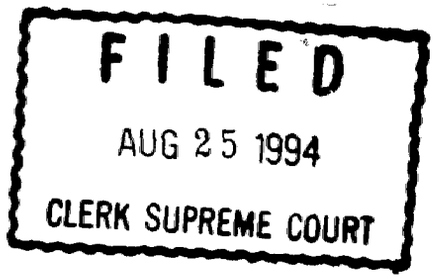
IN THE COURT OF APPEALS OF IOWA

No. 3-559 / 93-442



TODD DECKER,

Appellant,

vs.

KRAUSE GENTLE CORPORATION,

Appellee.

Appeal from the Iowa District Court for Humboldt County, Kurt L. Wilke, Judge.

Decker appeals from the district court's summary judgment order dismissing his wrongful termination action. **AFFIRMED.**

Eldon J. Winkel, Algona, for appellant.

Mark L. McManigal and Jeffrey D. Stone of Shearer, Templer, Pingel & Kaplan, P.C., West Des Moines, for appellee.

Considered by Hayden, P.J., and Sackett and Cady, JJ. Donielson, C.J., takes no part.

CADY, J.

Todd Decker (Decker) brought a wrongful termination action against his former employer Krause Gentle Corporation (Krause) alleging breach of a unilateral and an implied-in fact contract. The district court granted summary judgment for Krause and Decker appealed. We affirm.

Krause owns and operates the Kum & Go chain of convenience stores. In May 1988, Krause hired Decker as an assistant manager at a Kum & Go. When he was hired, he signed a document acknowledging that he was an employee at-will. At this time he was also given an employee handbook which stated Krause followed the employment at-will doctrine.

In May 1989 the Human Resource Director at Krause drafted and distributed a memorandum addressing the guidelines managers were to follow in disciplining employees. The guidelines involved a system of primary and secondary warnings prior to termination. The memorandum was to be included in the manual managers consulted in operating their stores. Decker was a manager at this time.

In April 1991, Decker was terminated from his employment with Krause. He subsequently filed a petition claiming wrongful discharge. Decker alleged when he was hired he was "directed to an employee's handbook or policy manual" that set forth guidelines, including a warning system, which had to be followed before an employee was terminated. Decker was unable to produce this handbook.

Krause filed a motion for summary judgment. After a telephonic hearing, the district court sustained the motion and dismissed Decker's petition.

Decker appeals. He argues that summary judgment was inappropriate because a factual dispute existed whether guidelines for termination were present in the employee handbook and whether the managers operating manual containing the termination guidelines was part of his employment contract. Decker additionally argues that Krause required unnecessary material to be included in the appendix. He seeks to have the costs of producing these portions of the appendix taxed on Krause irrespective of the final decision. See Iowa R. App. P. 15(c).

In response, Krause asserts the guidelines have never been included in an employee handbook. It also claims the mangers' operating manual was not part of Decker's employment contract. Finally, even assuming the operating manual was part of the employment contract, Krause argues the termination language is too indefinite to constitute an offer of continued employment because the termination guidelines are clearly applicable to employees and not mangers such as Decker.

I. Scope of Review

Our review of a successful motion for summary judgment is for correction of errors at law. Iowa R. App. P. 4. We, like the district court, view the record in the light most favorable to the party opposing summary judgment.

Downs v. A & H Constr. Ltd., 481 N.W.2d 520, 522 (Iowa 1992) (citing Hike v. Hall, 427 N.W.2d 158, 159 (Iowa 1988)). Summary judgment is appropriate when the entire record before the court shows there is no genuine issue of material fact in dispute and the moving party is entitled to judgment as a matter of law. Fogel v. Trustees of Iowa College, 446 N.W.2d 451, 454 (Iowa 1989); Iowa R. Civ. P. 237.

The burden rests on the moving party to show no issue of material fact exists. Id. However, the party resisting summary judgment cannot rest on the mere allegations or denials in their pleadings. Iowa R. Civ. P. 237(e). The resistance must set forth specific facts which constitute competent evidence showing a prima facie claim. Id. This achieves the main purpose of summary judgment: weeding out "paper cases and defenses in order to make way for litigation" with some substance. Fogel, 446 N.W.2d at 454; Prior v. Rathjen, 199 N.W.2d 327, 330 (Iowa 1972).

II. Employee Handbook

Decker argues summary judgment is inappropriate because the parties dispute whether the guidelines for termination were present in the employee handbook issued to Decker when his employment commenced. Krause provided affidavits indicating the handbook never contained guidelines for termination and a handbook in use when Decker was hired. In contrast, Decker was unable to produce an employee handbook including termination guidelines. He relies

solely on his affidavit stating he read a handbook with guidelines in it.

Plaintiffs must do more than merely deny sworn statements made in support of a defendants' motion for summary judgment. Willets v. City of Creston, 433 N.W.2d 58, 63 (Iowa App. 1988). A resistance to a motion for summary judgment must contain sufficient specific facts constituting admissible evidence as to put into issue elements of fact which are material to the court's determination. Id.(emphasis added); Iowa R.Civ.P. 237(e).

Decker's affidavit does not meet the requirements of Rule 237(e); it contains inadmissible facts. In his affidavit Decker attempts to prove the contents of the employment handbook without producing it. This is impermissible under the best evidence rule. The rule of best evidence "excludes testimony designed to establish the terms of a document and requires the document's production instead . . . ." Schiltz v. Cullen-Schiltz & Assoc., 228 N.W.2d 10, 20 (Iowa 1975). Thus, Decker failed to show a genuine issue of fact exists regarding the content of the employee handbook.

III. Breach of Contract

The district court found Decker was an at-will employee whose employment could be terminated at any time for any lawful reason, or for no reason at all. This doctrine of employment at-will is deeply ingrained in Iowa law. French v. Foods, Inc., 495 N.W.2d 768, 769 (Iowa 1993).

There are two narrowly carved exceptions to this general rule. Id. at 770; Fogel, 446 N.W.2d at 455. The first arises when the discharge is in violation of a "well-recognized and defined public policy of the State." Fogel, 446 N.W.2d at 455 (quoting Springer v. Weeks & Leo Co., 429 N.W.2d 558, 560 (Iowa 1988). The second is when a contract created by an employer's handbook or policy manual guarantees an employee that discharge will occur only for cause or under certain conditions. French, 495 N.W.2d at 770; Fogel, 446 N.W.2d at 455; McBride v. City of Sioux City, 444 N.W.2d 85, 90 (Iowa 1989)

Decker maintains the second exception is applicable to his case because the memorandum in the managers' operations manual issued to him created a unilateral contract. Under the second exception

> an employee handbook may create a unilateral contract if (1) the handbook is sufficiently definite in its terms to create an offer; (2) the handbook has been communicated to and accepted by the employee so as to create an acceptance; (3) the employee has continued working, so as to provide consideration.

French, 495 N.W.2d at 770 (quoting Fogel, 446 N.W.2d at 456). Except where there is ambiguity, the question of whether a written instrument such as an employee handbook binds the parties in contract is a question of law. French, 495 N.W.2d at 770. In the present case neither party argues the language is ambiguous.

As noted in McBride, claims under unilateral contract theory frequently break down because the handbook's termination or disciplinary provisions are not communicated to the employee. McBride, 444 N.W.2d at 91. Decker's unilateral contract claim fails for this reason.

Krause distributed the memorandum containing termination guidelines to Decker and the other managers for inclusion in their operations manual. The operations manual is designed to assist managers in the daily responsibilities of store operations. Likewise, the memorandum establishes guidelines for managers to use in disciplining their employees. It clearly does not set out terms for the managers employment and termination, nor would a reasonable person believe that it did. Thus, the guidelines established in the manual were not directed to Decker and axiomatically could not be accepted by him.

We conclude as a matter of law, Krause's managers' operations manual did not establish an enforceable unilateral contract giving rise to a cause of action for its breach.

IV. Implied-In-Fact Argument

In Iowa, a contract will be implied where there has been a mutual manifestation of assent by acts and deeds (rather then words) to the same terms of an agreement. Id. at 90. The substance of this contract is determined from the acts of the parties in light of the subject matter and the surrounding circumstances. Id. Thus, a contractual

obligations may be found between an employer and an employee even if it is not the employer's intention that its employee handbook confer contractual rights. French, 495 N.W.2d at 771; Cannon v. National By-Products, Inc., 422 N.W.2d 638, 640 (Iowa 1988).

The essence of Decker's argument is the memorandum created a reasonable belief that he would only be discharged after a series of written warnings or for one of the eight noninclusive reasons specified in the memorandum. An examination of the extrinsic evidence including the "acts and deeds" of the parties in relation to the document reveals no basis for Decker's claim. See McBride, 444 N.W.2d at 90.

As previously explained, the memorandum was part of a larger operations manual dealing with managers' daily operations. It was directed to managers and intended for their use in handling their employees. It makes no mention of termination procedures to be used by supervisors when dismissing managers.

Additionally, Decker's actions in relation to the memorandum indicate he did not believe it was part of the employment contract. While Decker was a manager he hired several employees. He required each of them to sign a document acknowledging they understood the employee at-will doctrine. He did not give them a copy of the memorandum nor explain a system of mandatory warnings prior to termination. He also terminated an employee without providing the warnings set out in the memorandum.

In light of Decker's actions and Krause's resistance to a modification of the employee at-will relationship, the "mutual manifestation of assent" necessary to establish an implied in fact contract is missing.

V. Cost of the Appendix

Decker objects to Krause's inclusion of the operations manual in the appendix and seeks to have the cost of producing this part of the appendix taxed to Krause. "The parties are encouraged to agree as to the contents of the appendix . . . . In designating parts of the record for inclusion in the appendix, the parties shall consider the fact that the entire record is available to the appellate courts for examination and shall not engage in unnecessary designation." Iowa R. App. P. 15(b). We agree with Decker that inclusion of the one hundred and eighty-seven page operations and personnel manual was excessive. Costs for printing these pages are taxed to Krause. All other costs of appeal are taxed to Decker.

AFFIRMED.