IN THE COURT OF APPEALS OF IOWA

No. 0-651 / 90-443

FILED
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CLERK SUPREME COURT

JANICE BADGETT,

Appellee,

vs.

THE VISITING NURSE ASSOCIATION OF COUNCIL BLUFFS, IOWA, A Non-Profit Corporation,

Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Keith E. Burgett, Judge.

Employer appeals a district court judgment entered after jury awarded plaintiff $10,000 on her wrongful discharge claim. **AFFIRMED.**

Jack W. Peters of Stuart, Tinley, Peters, Thorn, Smits, French & Hughes, Council Bluffs, for appellant.

Stephen A. Rubes and David E. Richter, Council Bluffs, for appellee.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

OXBERGER, C.J.

The defendant Visiting Nurse Association (VNA) discharged the plaintiff, Janice Badgett, from employment in August 1987. During her employment with VNA, Ms. Badgett signed Agreements of Employment annually with slight variations occurring in the length of time between signings. The agreements referred to the fact that the signing employee had been given a copy of VNA's personnel policies. The Personnel Policy Manual provided an employee would be subject to immediate dismissal only for serious reasons. Serious reasons were defined as refusal to carry out the reasonable directions of supervisors, or misconduct. The manual also provided for dismissal if an employee did not perform satisfactorily.

Ms. Badgett filed this suit alleging her discharge was for impermissible reasons under the Personnel Policy Manual and therefore wrongful. She argued the Agreements of Employment, together with the Personnel Policy Manual created a contract of employment. The case was tried to a jury, which returned a verdict awarding Ms. Badgett $10,000. The district court entered judgment on the verdict. VNA appeals.

VNA contends the district court should have granted its motion for directed verdict because of a lack of sufficient evidence to support a contract for continuing employment. VNA claims the Agreements of Employment did

not specify a term of employment and therefore Ms. Badgett's claim must fail.

We review this case for correction of errors at law. Iowa R. App. P. 4.

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 N.W.2d 755, 757 (Iowa 1978); Iowa R. App. P. 14(f)(2). A movant is considered to have admitted the truth of all evidence offered by a nonmovant and every favorable inference that may be deduced from it. B & B Asphalt Co. v. T. S. McShane Co., 242 N.W.2d 27, 284 (Iowa 1976). To overrule the motion the court must find substantial evidence supporting each element of the nonmovant's claim. Beitz, 271 N.W.2d at 757. If reasonable minds could differ, an issue is for the jury. Harvey v. Palmer College of Chiropractic, 363 N.W.2d 443, 444 (Iowa App. 1984).

Under the employment at-will doctrine an employee is subject to discharge for any reason or for no reason at all. Cannon v. National By-Products, Inc., 422 N.W.2d 638, 639 (Iowa 1988). Currently, the Iowa courts have carved out only two narrow exceptions to the employment at-will doctrine. These exceptions are: (1) when the discharge is in clear violation of a "well-recognized and defined public policy of the State" and (2) where 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. Fogel v. Trustees of Iowa College, 446 N.W.2d 451, 455 (Iowa 1989)(citations omitted).

Both parties argue Fogel supports their respective positions. Fogel compiled the Iowa law to date on the second exception to the employment at-will doctrine. An employee policy manual may create an unilateral contract if (1) sufficiently definite in its terms to create an offer; (2) it has been communicated to and accepted by the employee so as to create an acceptance; and (3) the employee continues working, so as to provide consideration. Id. at 456 (emphasis in original). Fogel also requires the policy manual's language "be sufficiently definite in its offer of continued employment that a fact finder is not left adjudicating the alleged breach of a 'contract' for which the fact finder has supplied its own terms." Id.

VNA contends the Agreement and Policy Manual read in combination lacked sufficiently definite terms so as to create a contract for continuing employment. VNA then asserts that as a matter of law the Agreement and Policy Manual fail to create an enforceable unilateral contract giving rise to a cause of action for its breach.

Ms. Badgett contends the yearly Employment Agreements served to provide the definite term for continued employment, or in other words, that after signing an

Agreement, she could rely on her continued employment for the next year contingent on the nonoccurrence of any of the "for cause" reasons for discharge.

The "for cause" reasons for discharge were delineated in the Personnel Manual which provided:

> Immediate Dismissal
> This is an immediate termination for serious reasons imposed by authority of the Executive Director. There are two general conditions that can subject an employee to dismissal. The first is refusal to carry out the reasonable directions of supervisors; the second is misconduct.
> Dismissal
> The Executive Director will terminate employment when the employee does not perform satisfactorily.

VNA counters Ms. Badgett's contention citing to the language "The conditions of this Agreement shall not be construed as a guarantee of employment, employment status, or number of hours of employment during a particular period of time." which was included in the last three Employment Agreements Ms. Badgett signed. VNA contends this language in the Employment Agreement clearly conveys that no employment contract was created at all.

Because the precise intentions of parties to an employment agreement are often left unexpressed, contractual obligations may be enforced based upon the reasonable expectations of the parties. Young v. Cedar County Work Activity Center, Inc., 418 N.W.2d 844, 847 (Iowa 1987). In Wolfe v. Graether, 389 N.W.2d 643, 653-54 (Iowa 1986), the court, in evaluating whether a lifetime

contract of employment existed, concluded:

> [B]oth of them [the employer and the employee] may understand that the hiring is for a definite period. The circumstances may be evidential of such an understanding, even though the express words, standing alone, would not bear such an interpretation.... [O]ne of the parties (usually the employee) may have had in mind a definite period of employment and the other party had not. Here there is no actual "meeting of the minds"; and yet there may be a valid contract. Interpreting the elliptical expressions of the parties, the court may find that the expressions, interpreted in the light of the surrounding facts, made the understanding of one of the parties reasonable and made it unreasonable for the other party not to know that such would be the first party's understanding. In such a case, there is a contract in accordance with that understanding.

(quoting 3A A. Corbin, Contracts §684, at 224 (1960)).

If a question of interpretation of an integrated agreement depends on the credibility of extrinsic evidence or a choice of reasonable inferences drawn from extrinsic evidence, the trier of fact should determine the interpretation. Otherwise questions of interpretation of integrated agreements are determined as questions of law. Young v. Cedar County Work Activity Center, Inc., 418 N.W.2d at 848.

"Ordinarily, whether a particular writing has been adopted as an integrated agreement is 'a question of fact to be determined in accordance with all relevant evidence'". Id. at 848 (quoting Restatement (Second) of Contracts § 209 comment c (1981)).

We find that a reasonable inference drawn from the extrinsic evidence was that Ms. Badgett was employed under

a yearly employment contract. Even though VNA added limiting language to the last few Employment Agreements, the parties continued to sign the Agreements annually and the Agreements continued to state that a copy of the Personnel Policy Manual had been provided to Ms. Badgett.

The limiting language cited by VNA ("The conditions of this Agreement shall not be construed as a guarantee of employment, employment status, or number of hours of employment during a particular period of time.") when read in light of the parties continued practice of signing yearly Employment Agreements providing Ms. Badgett with salary increases on January 1 of the upcoming year, is not clearly inconsistent with Ms. Badgett's claim that she had a one year employment contract with VNA.

Ms. Badgett's claim is not based on an unconditional guarantee of employment. Rather, her claim is based on a one year, conditional nonguaranteed contract of employment. The conditions are set forth by the Personnel Manual which provides the specific reasons justifying dismissal. Ms. Badgett's claim also does not rest on an assertion that her contract of employment guaranteed a certain number of hours of employment during a particular period of time. Again, the Personnel Manual limited her hours of employment.

Since the facts support the finding that Ms. Badgett was employed under a yearly employment contract, the trial

court correctly denied VNA's motion for a directed verdict and submitted Ms. Badgett's case to the jury.

AFFIRMED.

Schlegel, J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I dissent. I would have directed a verdict for defendant.