

IN THE COURT OF APPEALS OF IOWA

No. 3-380 / 92-1809

FILED

MAY 26 1994

CLERK SUPREME COURT

F. DOUGLAS GRIMM,

Plaintiff-Appellant,

vs.

SEDARS MOTOR CO., INC.,
and JERRY SEDARS,

Defendants-Appellees,

and

SKARLIS OLDSMOBILE, INC.,
and GUS SKARLIS,

Defendants.

Appeal from the Iowa District Court for Cerro Gordo
County, Paul W. Riffel, Judge.

Plaintiff appeals a ruling of the district court
granting the defendants' motion for summary judgment on his
claim of wrongful discharge. **AFFIRMED.**

John C. Barrett of Barrett Law Offices, Des Moines, for
appellant.

Frank B. Harty and Thomas H. Walton of Nyemaster,
Goode, McLaughlin, Voigts, West, Hansell & O'Brien, P.C.,
Des Moines, for appellees.

Considered by Hayden, P.J., and Huitink, J., and Keefe,
S.J.*

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

KEEFE, S.J.

F. Douglas Grimm, discharged from his job with the defendant Sedars Motor Company, Inc., sued the company and Jerry Sedars, holder of fifty-one percent of the stock in said company. The district court granted summary judgment for defendants and Grimm appealed.

Plaintiff Grimm started working for Sedars in January 1968. The company is an Iowa corporation with its principal place of business in Mason City, Cerro Gordo County, Iowa. Grimm was hired as a car salesman by Orvis Sedars, father of Jerry. Except for a brief period in the mid-1950's, when he served as a sales manager, he continued in that capacity until July 30, 1990, when he was fired by Jerry.

Grimm alleged that by firing him, defendants breached a unilateral contract of employment and an implied contract of employment. He also asserted various tort claims. The district court rejected all of these theories and granted summary judgment for the defendants. On appeal, the issue is whether there were disputed issues of material fact and whether the summary judgment should have been entered as a matter of law.

Sedars argued that Grimm was an at-will employee and subject to discharge at any time, for any reason or no reason at all. This is the general rule, and it is firmly ingrained in Iowa law. Fogel v. Trustees of Iowa College, 446 N.W.2d 451, 455 (Iowa 1989); Wolfe v. Graether, 389 N.W.2d 643, 652 (Iowa 1986).

To this doctrine the Iowa supreme court has allowed two recognized exceptions: (1) if the discharge is in clear violation of "well-recognized and defined public policy of the state" (Springer v. Weeks & Leo Co., Inc., 429 N.W.2d 558, 560 (Iowa 1988)); and (2) when the contract created by an employer's handbook or policy manual guarantees an employee that discharge will occur only for cause or under certain conditions (McBride v. City of Sioux City, 444 N.W.2d 85, 90 (Iowa 1989)).

As to the first exception, Grimm alleges his tortious discharge was against public policy. However, Grimm has not shown how his individual termination would carry any reasonable basis for a public policy argument. To support his allegation as to the second exception, Grimm offered a few pages of company rules that covered work hours, vacation, and employee benefits. In these documents there is no mention of any dismissal or disciplinary rules. These materials would not constitute an employee handbook or policy manual as referred to in the Fogel and McBride cases. See Fogel, 446 N.W.2d at 456; McBride, 444 N.W.2d at 91. The materials are too indefinite to support an enforceable unilateral employment contract.

As to the allegation that Grimm had an implied contract of employment, this type of contract must be based on a mutual manifestation of assent as to acts and deeds (not words) to the terms of the agreement. McBride, 444 N.W.2d at 90. The contract substance is determined from the acts

of the parties in light of the subject matter and the surrounding circumstances. Id. To support this claim, Grimm offers certain oral statements allegedly made by Orvis Sedars (deceased since 1988) that Grimm was a good salesman and would have a job as long as he made money for the company; that Orvis said he never laid off anyone or fired good workers; and that Orvis and Jerry said to all employees, "they had a job as long as they did good work and didn't screw up."

Jerry admitted Grimm had a successful sales record. However, he also stated he had been a problem employee who bullied co-workers, disrupted operations physically and verbally attacked fellow workers, and probably divulged to competitors sensitive company information. Jerry stated he had warned Grimm about these matters and particularly his frequent communications with defendant Gus Skarlis, a business competitor. Grimm admitted being financially involved with Skarlis. Skarlis had given him private loans or acted as a co-signer on a note. Jerry was then unaware of these facts. In 1986 and 1988 Grimm was either fired or threatened to be fired for conduct against fellow employees.

The incident which brought on Grimm's termination July 30, 1990, occurred July 27, 1990, at a restaurant in Mason City. Skarlis was involved in a heated argument with Randy Chesterman and told him that he had been "screwed" or cheated when he purchased an automobile from Sedars.

Skarlis stated Grimm had told him how Chesterman had been "screwed" in this transaction. The next morning, Chesterman confronted Jerry about the conversation and stated his displeasure at Grimm's discussing his automobile purchase with Skarlis. Jerry then discussed the matter with the other stockholders and the decision to terminate Grimm was made.

In McBride, the Iowa supreme court found that the oral facts alleged there, at best, were nothing more than an employee's one-sided hope for continued employment. 444 N.W.2d at 90. If Grimm's allegation contains a claim of permanent or lifetime employment, no facts are alleged that show consideration beyond a mere promise to perform. Such additional consideration is required by Albert v. Davenport Osteopathic Hospital, 385 N.W.2d 237, 238 (Iowa 1986).

Grimm also alleges that Sedars violated an implied covenant of good faith and fair dealing in his employment contract. The Iowa law recognizes that in all contracts there is an implied duty of good faith and fair dealing. Fogel, 446 N.W.2d at 456. The supreme court has not recognized a cause of action for breach of this doctrine in the employment context. Id. at 457.

Finally, Grimm alleges claims against Jerry personally for tortious interference with a contract and intentional interference with a prospective business advantage. In this case, Grimm was terminated by Jerry as president of Sedars. No claim is made that he exceeded his authority as

a corporate officer in the termination or acted outside his scope of employment.

The Iowa supreme court has recognized an action for tortious interference with an employee contract where the employee discharged another and exceeds the qualified privileges that officers of a corporation are entitled to. Hunter v. Board of Trustees, 481 N.W.2d 510, 518 (Iowa 1992). No such showing has been made here.

We have previously found in this opinion that Grimm has not shown sufficient facts to support his claim of breach of contract and tortious discharge against Sedars Motor Company. It therefore follows that sufficient facts have not been shown to support claims against Jerry personally.

A summary judgment is an appropriate remedy if the pleadings, answer to interrogatories, admissions on file with affidavits, if any, show there is no genuine issue as to any material fact and movant is entitled to a judgment as a matter of law. Iowa R. Civ. P. 237(c). In addition, since the district court ruled in this case, the Iowa supreme court has decided French v. Foods, Inc., 495 N.W.2d 768 (Iowa 1993), which is directly on point. We find no error on any grounds discussed or raised in appellant's brief.

Appellees, in their briefs, raise an issue of mootness because of the outcome of Grimm's continued action against Skarlis in the lower court. This matter is not properly before this court and will not be considered.

We affirm the decision of the district court. Costs of this appeal are assessed to plaintiff.

AFFIRMED.