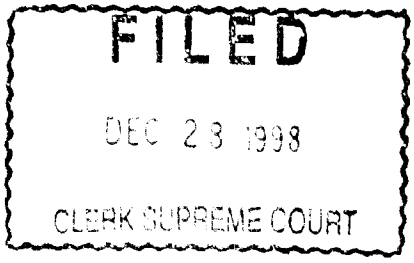
IN THE COURT OF APPEALS OF IOWA

No. 8-526 / 97-1263
Filed December 28, 1998



JOHN C. SARTORI,
Appellee,

vs.

UNIVERSITY OF OSTEOPATHIC MEDICINE & HEALTH SCIENCES,
Appellant.

Appeal from the Iowa District Court for Polk County, Glenn Pille, Judge.

Defendant appeals the district court judgment entered on a verdict in favor of plaintiff on his claim that defendant breached the parties' contract by constructively discharging him. **REVERSED.**

Thomas D. Hanson and Lu Ann White of Hanson, Bjork & Russell, L.L.P., Des Moines, for appellant.

Dorothy K. Goodman of Barnhill & Goodman, P.C., West Des Moines, for appellee.

Heard by Streit, P.J., and Vogel and Mahan, JJ.

VOGEL, J.

Defendant University of Osteopathic Medicine & Health Sciences (University) appeals the district court judgment entered on a verdict in favor of plaintiff John C. Sartori's claim that the defendant breached the parties' contract by constructively discharging him. As the evidence is insufficient to support the finding of constructive discharge, we find the trial court erred in failing to grant a judgment notwithstanding the verdict. Reversed.

Background facts. Sartori, an osteopathic physician, was hired by the University in 1982 as an associate professor of radiology. His duties included teaching and supervising the radiology services at the University's clinic. In 1985, Sartori was granted tenure with respect to his faculty position. Beginning in 1988, Sartori claims his working conditions and, particularly, his relationship with University president Dr. Leonard Azneer, began to deteriorate. Sartori claims that Dr. Azneer's demonstrated lack of respect toward him, the consistent denial of new equipment, and a competency evaluation conducted in 1991 are among several incidents which support that the University was trying to get rid of him.

Near the end of Azneer's term in 1992, the University began to recognize that the entire clinic system had operating losses in the millions and became concerned about the quality of care and quality of education. These problems and possible remedial action were studied over the next two years by the administration under interim president Dr. Myron Magen, and later by Dr. David Marker, who was

appointed as president of the University in December of 1993. The future of the various clinics was uncertain during this time. Sartori claims that, in the spring of 1993, he was told by Dr. Magen that the radiology clinic would be closed within a year.

In January of 1994, Sartori was allowed to take an extended leave by combining vacation and continuing education time. Unbeknownst to the University, Sartori took this opportunity to sell his home, move his family to Oklahoma and rejoin a paid residency program in psychiatry that he had begun years ago. The University expected Sartori to return on March 4, 1994, to resume his teaching obligations. Sartori did not return on that date, but instead called Dr. Marker on March 7th to tell him that he would be detained for a few days and to inquire about his long term future with University. In a follow-up conversation on March 9th, Dr. Marker told him that he could not guarantee that his clinical position would continue three or four years in the future and that the University had to be flexible with regard to the clinic situation.

Sartori decided to stay in Oklahoma and resigned from the University effective March 14, 1994. Sartori subsequently filed an action seeking damages on several grounds from the University and Dr. Marker. The defendants filed motions to dismiss and motions for summary judgment which were denied by the district court. On the day before trial, Sartori dismissed all claims against Dr. Marker. The remaining claims against the University were breach of contract due to constructive discharge and fraudulent misrepresentation. The jury returned a verdict finding in favor of

and fraudulent misrepresentation. The jury returned a verdict finding in favor of Sartori on the constructive discharge claim, and in favor of the University on the fraudulent discharge claim. The jury awarded Sartori $72,375.00 for lost wages and $5,871.00 for tail insurance. The trial court denied the University's motions for a judgment notwithstanding the verdict and for a new trial, except for vacating the tail insurance award, as the court found it was not a proper item of damage and should not have been submitted to the jury. The University now appeals.

I. Constructive discharge. The University contends the district court erred in denying its motion for new trial or judgment notwithstanding the verdict because there was insufficient evidence to submit the claim of constructive discharge and to support the verdict.

Our review of the grant or denial of a motion for new trial based on the sufficiency of the evidence is for abuse of discretion. *See Magnusson Agency v. Public Entity*, 560 N.W.2d 20, 30 (Iowa 1997). Review of the district court's denial or grant of a motion for judgment notwithstanding the verdict is for correction of errors at law. Iowa R. App. P. 4. The inquiry is whether there was sufficient evidence to justify submitting the case to the jury. *See Id.* at 25. In making this assessment, we view the evidence in the light most favorable to the party against whom the motion was made, taking into consideration every legitimate inference that may fairly and reasonably be made. *See Wieseler v. Sisters of Mercy Health Corp.*,

540 N.W.2d 445, 448 (Iowa 1995). The motion should be denied if there is substantial evidence to support each element of the plaintiff's claims. *Id.* at 448-49.

"Constructive discharge exists when the employer deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation." *First Judicial Dist. Dep't v. Iowa Civil Rights Comm'n*, 315 N.W.2d 83, 87 (Iowa 1982). The test for constructive discharge is objective. *See Haberer v. Woodbury County*, 560 N.W.2d 571, 575 (Iowa 1997). Sartori has the burden to prove that a reasonable person in his position would have felt compelled to resign. *See First Judicial*, 315 N.W.2d at 88.

The University contends that Sartori failed to show that his working conditions were so intolerable he had no choice but to resign, and that the intolerable conditions were deliberately created by the University to force him to resign.

Sartori makes much of the allegedly harassing conduct by previous administrators, but admitted that the most recent president, Dr. Marker, had not harassed him. Sartori's main criticism of Dr. Marker is that, in the March 7th phone call, Marker told him that his job could not be guaranteed after July 1, 1994. However, even this claim is untenable. Not only did Dr. Marker deny the comment, but Sartori admitted at trial that, due to his tenured faculty position, he knew the University could not simply fire him. Sartori also admitted that he did not want to return to the University. The fact remains that at the time of Sartori's resignation, both his teaching and clinical positions remained intact. We therefore do not find that

at the time of the resignation, Sartori's working conditions were so intolerable that he was forced to quit. *See generally Steiner v. Showboat Operating Co.*, 25 F.3d 1459, 1465 (9th Cir. 1994) (finding no constructive discharge where harassing supervisor had been fired two and a half months prior to plaintiff's resignation); *Brady v. Elixir Industries*, 196 Cal. App. 3d 1299, 1306, 242 Cal. Rptr. 324, 328 (Cal. App. 4 Dist. 1987) (in order to constitute constructive discharge, harassment must be intolerable "at the time of the employee's resignation"), *overruled on other grounds by Turner v. Anheuser-Busch, Inc.*, 876 P.2d 1022, 1028 (Cal. 1994); *Mennen v. Easter Stores*, 951 F. Supp. 838, 858 (N.D. Iowa 1997) ("[T]o act reasonably, an employee has an obligation not to assume the worst and not to jump to conclusions too quickly.") (quoting *West v. Marion Merrell Dow, Inc.*, 53 F.3d 493, 498 (8th Cir. 1995)).

Clearly, Sartori forecast the elimination of his clinical position and did not want to continue to work for the University under those circumstances. However, the record does not support Sartori's claim that he was the only clinical department head facing a reduction or elimination of a clinical position; several clinic departments were facing the same fate. Sartori therefore does not show that the "intolerable conditions" were deliberately created by the University to force his resignation. The University had an obligation to deal with the problems with the various clinics, including radiology.

The proper focus of a constructive discharge claim is "whether the resignation was coerced, not whether it was simply one rational option for the employee." *See*

Haberer, 560 N.W.2d at 575 (quoting *Turner*, 876 P.2d at 1026-27). We believe the evidence does not support constructive discharge through coercion by the University, but rather that Sartori's resignation was by choice, albeit in an atmosphere of some uncertainty with regard to the future of his clinical position. However, "an employee may not be unreasonably sensitive to his or her working environment . . . . Every job has its frustrations, challenges, and disappointments; these inhere in the nature of work . . . ." *Haberer*, 560 N.W.2d at 576 (citing *Turner*, 876 P.2d at 1026-27). We therefore find that the University's motion for judgment notwithstanding the verdict should have been granted.

Due to our finding on this issue, we need not address the University's other claims. We vacate the judgment and damages awarded to Sartori on the constructive discharge claim and enter judgment in favor of the University.

REVERSED.