

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT

WILLIAM CAUGHEY,

Plaintiff-Appellant,

vs.

**GRINNELL MUTUAL REINSURANCE
COMPANY,**

Defendant-Appellee.

Filed April 22, 1987

7-32
86-755

Appeal from the Iowa District Court for Poweshiek County (24697-62-51),
James D. Jenkins, Judge.

Plaintiff appeals a directed verdict granted to defendant on a breach
of contract action. **REVERSED AND REMANDED.**

Gail E. Boliver, Marshalltown, for plaintiff-appellant.

Ronald M. Rankin and Theodore T. Duffield of Patterson, Lorentzen,
Duffield, Timmons, Irish, Becker & Ordway, Des Moines; and Charles M. Manly
of the Manly Law Firm, Grinnell; for defendant-appellee.

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

SCHLEGEL, J.

The plaintiff appeals a directed verdict granted to defendant on a breach of contract action. We reverse and remand for a new trial.

William Caughey was an employee and corporate officer of the Grinnell Mutual Reinsurance Company from 1960 until he was fired in 1973.

In 1969 Grinnell Mutual instituted a group annuity pension plan for its employees. This plan provided that a person who left Grinnell Mutual's employment before retirement could be entitled to pension benefits only if he or she had at least ten years of "credited service" with Grinnell Mutual before leaving.

Upon reaching retirement age, William Caughey applied for pension benefits under the Grinnell Mutual group annuity plan. Grinnell Mutual refused to pay benefits to Caughey on the ground he did not have ten years of "credited service" under the plan at the time he was fired in 1973. Grinnell Mutual took the position that "credited service" only included time served after the pension plan's adoption in 1969. Therefore, under Grinnell Mutual's interpretation, Caughey only had about four years of "credited service," even though his total period of employment covered more than ten years.

After Grinnell Mutual refused to pay retirement benefits to Caughey, Caughey filed the present breach of contract action against Grinnell Mutual. The suit went to trial before a jury. However, at the close of the plaintiff's evidence the district court granted Grinnell Mutual a directed verdict on the ground the evidence permitted only one conclusion about the term "credited service" and about Caughey's entitlement to pension benefits. The district court held that the term "credited service" meant only service since the pension plan's 1969 adoption, that Caughey therefore had less than ten years of "credited service," and that Caughey was not entitled to pension benefits.

Caughey has appealed from judgment upon the directed verdict in favor of Grinnell Mutual. Caughey contends the district court erred by holding the evidence required a conclusion that the term "credited service" meant only service since the pension plan's 1969 adoption. Caughey also contends the district court erred by excluding certain parol evidence he offered on the subject of the meaning of the term "credited service." Caughey argues that his parol evidence was admissible because the pension plan was ambiguous and required interpretation with the help of extrinsic evidence.

Our scope of review is for correction of errors at law. Iowa R. App. P. 4.

In considering the propriety of a motion for directed verdict the court views the evidence in the light most favorable to the party against whom the motion was made. Iowa R. App. P. 14(f)(2). In considering a motion for directed verdict, if reasonable minds could differ on the issue under the evidence presented, it should be submitted to the jury. Kurth v. VanHorn, 380 N.W.2d 693, 695 (Iowa 1986). Even when the facts are undisputed, if reasonable minds might draw different inferences from them, a jury question is engendered. Bandstra v. International Harvester Co., 367 N.W.2d 282, 285 (Iowa App. 1985). At the end of plaintiff's evidence in this case, the court ruled on defendant's motion for directed verdict:

The plaintiff's action is brought for a claimed breach of contract. Plaintiff claims that the defendant breached a pension contract which had been entered into for his benefit, and he seeks to have the Court require that the defendant pay in accordance with that contract which has been received in evidence both as Exhibits P-2 and D-2.

The Court finds that plaintiff has failed to sustain his burden to show that there has been any breach of contract. To the contrary, the Court finds that the defendant has performed exactly as provided by the contract Exhibits P-2 and D-2. The Court finds that the words "credited service" as used in the plan mean service performed under the plan. There is no other possible fair construction that can be given to the words reading the contract as a whole.

The Court finds that reasonable minds could not differ. The Court finds that plaintiff's service was terminated in 1973. At the time of his termination, he did not have ten years in the pension plan after its adoption in January of 1969.

Viewing the evidence in the light most favorable to the plaintiff, the Court finds that no jury submissible issues have been generated by the plaintiff's proof. Plaintiff has shown no breach of contract. Plaintiff's action must, therefore, be dismissed at the cost of the plaintiff.

We disagree with the trial court in that we determine reasonable minds could differ on the issue of the meaning of "credited service" under the 1969 group annuity plan. In the construction of written contracts, the cardinal principle is that the intent of the parties must control; and except in cases of ambiguity, this is determined by what the contract itself says. Iowa R. App. P. 14(f)(14). The parties dispute the meaning of the crucial term "credited service" for on the definition of this term hinges the respective rights of the parties. A definition of this term does not appear in the group annuity plan. It is true that the construction of a contract, the process of determining its legal effect, is a matter of law to be resolved by the court. Farm Bureau Mutual Insurance Company v. Sandbulte, 302 N.W.2d 104, 107 (Iowa 1981). Interpretation, the process of determining the meaning of words used, is also a matter for the court as a matter of law unless it depends upon extrinsic evidence. Id. at 107-08. When a question of interpretation of an integrated agreement arises, that issue is to be decided by the trier of fact when the question depends on the credibility of extrinsic evidence or on a choice among reasonable inferences to be drawn from extrinsic evidence. Wolfe v. Graether, 389 N.W.2d 643, 655 (Iowa 1986). An ambiguity may be said to appear when, after the application of pertinent rules of interpretation to the face of the instrument, a genuine uncertainty results as to which one of two or more meanings is the proper one. Gendler Store Products Co. v. Laub, 179 N.W.2d 628, 631 (Iowa 1970); Morris Plan Co.

v. Bingham Farm & Grain Co., 259 Iowa 404, 415, 143 N.W.2d 404, 412 (1966). When an ambiguity exists, parol evidence is admissible to assist in determining the meaning of the parties within the context of the transaction. Wolfe v. Graether, 389 N.W.2d at 655.

We believe there is an ambiguity in the term "credited service" and, therefore, parol evidence should have been admitted by the trial court and the jury as trier of fact should have been allowed to make a choice between the reasonable inferences to be drawn from the extrinsic evidence. Initially, we note that it seems unlikely that a senior officer in a company who started work for the company in 1960 at approximately age 40 would readily agree to a retirement plan in 1969 which would not vest until 1979 and thereby run the risk that if he quit or was dismissed at any time during that period he would not benefit under that program. Plaintiff attempted to introduce extrinsic evidence through Mr. Sawyers, Mr. Eaton, and Mr. Caughey, all officers of the corporation, all with some knowledge of the intentions of the parties, all with something to offer on the interpretation of the term "credited service." The court did not permit the jury to hear this evidence. The record made of the offers of proof suggests to us that these witnesses had a genuine contribution to make in clarifying the ambiguity over the term "credited service." Since the term "credited service" was not defined in the contract and since a reading of the entire instrument does not provide a definite meaning of the term, an ambiguity exists. Relevant extrinsic evidence should have been admitted to enable the jury to draw a reasonable inference concerning the meaning of the term.

It is true that we are obligated to affirm an appeal where any proper basis appears for the trial court's ruling, even though it is not one upon which the trial court based its holding. Fankell v. Schober, 350 N.W.2d 219, 223 (Iowa

App. 1984). However, we find no merit in the other bases offered by appellant on which to affirm the trial court.

The appellee asserts that the Employment Retirement Income Security Act (ERISA), 29 U.S.C.S. sections 1001 et seq. applies to this case and therefore all state law is preempted with respect to vesting and participation under the pension plan. Without addressing the general applicability of ERISA to cases all of whose operative facts occurred before January 1, 1975 (the effective date of ERISA) but whose application for and denial of pension occurs after that date, we do find that ERISA is not applicable to this particular cause of action. We do not believe it is the purpose of this federal law to deprive parties of contract benefits bargained for under the regulatory powers of the states. See Bacon v. Wong, 445 F. Supp. 1189, 1192 (N.D. Cal. 1978) (courts permitted to apply state law even if causes of action accrue after January 1, 1975, in cases where such application most fairly accommodates the interests of all the affected parties). We agree with the court in Shaw v. Kruidenier, 470 F.Supp. 1375, 1382 (S.D. Iowa 1979), when it analyzed the decisions relating to the pre-emption provisions of ERISA: "Congress did not intend to render prior law irrelevant where it fairly accommodates the interests of the parties and is not inconsistent with ERISA's purposes." We believe that the application of state contract law to this cause of action best accommodates the interests of the parties, most fairly allocates to each the benefits bargained for, and is not inconsistent with ERISA's purposes.

Appellee also contends that even if ERISA does not apply, review of the pension committee's decision should be limited to an arbitrary and capricious standard. In the particular circumstances of this case, we cannot agree that that is the correct standard of review. Powers v. Fisher Controls Co., Inc., 246 N.W.2d 279, 282 (Iowa 1976), said that where parties had agreed to grant

a pension board the authority to make final decisions, the board's decision should be overturned only upon a showing of fraud, bad faith, or arbitrary actions. The court in Powers said, "The interjection of a court into a situation where the parties have agreed to be bound by the action of the board can do little but create uncertainty and confusion." Id. In the case at bar, there was no agreement by the parties to be bound by the pension committee. Apparently, no pension committee was established for the plan in this case until well after defendant had been fired from his job. Iowa courts have said that where it was clear under the contract that employees were covered by a pension plan but never were so covered, a breach of contract results. Yager v. Farmers' Mutual Telephone Co., 323 N.W.2d 245, 248 (Iowa 1982). Shaw v. Kruidenier, 470 F. Supp. at 1387, suggests that enforceable contract rights arise from a pension plan where the employee has complied with all the conditions of the plan. In the present case, the contractual relationship was entered into many years prior to the establishment of the pension committee and therefore there was no agreement to be bound by the committee's decisions. An alleged breach of this original contract should, therefore, be analyzed in light of relevant contract law; in these circumstances, the court should not be governed by the arbitrary and capricious standard. As the court in Melin v. Northwestern Bell Telephone Co., 266 N.W.2d 183, 186 (Minn. 1978), concluded: "Since the benefits are contractual obligations, a trial court may properly address any underlying factual disputes between the parties in determining whether an employee decision to deny benefits is a breach of contract."

Finally, appellee asks that we affirm the district court on a third party beneficiary theory. Appellee contends that the plaintiff was not an original party to the contract and therefore he has no standing to ask for a reformation of the contract based on his understanding of the term "credited service"

Appellee claims that plaintiffs only right is to enforce the contract and obtain any benefits due him under the contract as originally written. Assuming, without deciding, that plaintiff is a third party to the contract in issue, we view this lawsuit as an attempt to enforce the contract, not to reform it. A contract between two parties may be enforced by a third party for whose benefit it was made. Iowa Home Mutual Casualty Co., 247 Iowa 183, 187, 73 N.W.2d 22, 24-25 (1955). This is true even when the third party beneficiary is not expressly named or identified, or even known when the contract is made. Id. at 25. We think that the facts of this case suggest that the pension plan was made for the employees of the business, one of whom was the plaintiff. It is true that the original parties may modify the original contract before the third party has acquired rights under it. Id. However, the dispute here revolves precisely around the issue whether the term "credited service" should be resolved in such a way so as to vest plaintiff's rights in the contract as of his tenth anniversary with the company. The general rule is that for a third party beneficiary to enforce a contract the third party must know of the contract and, by conduct or otherwise, assent to it. See Coen & Conway v. Scott County Savings Bank, 205 Iowa 483, 490, 218 N.W. 325, 328 (1928); 17A C.J.S. Contracts § 519 h(c) (1963). The plaintiff is asking the jury to determine what the parties "knew" and agreed to concerning the contract, not to determine plaintiff's rights to reform the contract. Such a determination must be made before examining the ability of the original contractors to modify or terminate the contract.

We therefore reverse the decision of the district court and remand the action for a new trial consistent with our findings in this opinion.

REVERSED AND REMANDED.