IN THE COURT OF APPEALS OF IOWA

No. 2-340 / 11-1497
Filed June 27, 2012

JEAN REGENWETHER,
Plaintiff-Appellant,

vs.

CLINTON HUMANE SOCIETY,
Defendant-Appellee.

Appeal from the Iowa District Court for Clinton County, Mark J. Smith, Judge.

A discharged employee appeals the district court ruling denying her breach of an employment contract claim against her former employer. **AFFIRMED.**

Stephen N. Greenleaf of Lynch, Greenleaf & Michael, L.L.P., Iowa City, for appellant.

David M. Pillers of Pillers & Richmond, DeWitt, for appellee.

Heard by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

MULLINS, J.

Jean Regenwether appeals a district court's ruling concluding her termination from employment with the Clinton Humane Society (CHS) was "for cause." We affirm.

I. Background Facts and Proceedings.

Over twenty years ago Regenwether began volunteering for CHS walking dogs and helping with fundraising events. She eventually served a term on the CHS Board of Directors (board), but left for other interests.

In approximately 1999, Regenwether applied for and was hired as the administrator for CHS. Regenwether did not have a written employment contract. As administrator, she oversaw the daily operation of CHS's animal shelter, which included working with the animals, answering phones, staff scheduling, bookkeeping, annual reviews, handling city and county contracts, fundraising, and educational programming. After a couple of years, Regenwether resigned the position to begin her own pet-sitting and dog-training business.

Around 2002, Regenwether returned to work for CHS as its administrator. She again did not have a written employment contract, and her duties remained basically the same. Regenwether worked for CHS for two to three years before she was terminated by the board for undisclosed reasons. Following her dismissal, Regenwether returned to her pet-sitting and dog-training business, where she earned certification as a pet sitter and animal behaviorist and trainer.

Toward the end of 2007, a CHS board member approached Regenwether and requested she apply for the vacant administrator position. Because of some of her prior difficulties with the board, Regenwether was hesitant about accepting the position. Therefore, with the help of Roger Fraser, a friend who had prior experience as a union negotiator for teachers, Regenwether drafted an employment contract. The contract was titled a "Four-Year Contract," and provided for a starting annual salary of $26,500 with pay increases of three-and-a-half percent for each of the three following years. The contract further had provisions pertaining to vacation, sick leave, and bereavement leave, but did not have any provisions addressing severance or termination. Regenwether submitted the employment contract to CHS.

On January 30, 2008, CHS entered into the employment contract with Regenwether without making any additions, deletions, or modifications to the contract terms. The contract was signed by Regenwether and CHS's board officers. Regenwether testified she included a cover letter, a letter of understanding, and a comprehensive job description with the contract, but these documents are not referred to in the employment agreement, nor are they signed by any of the board officers. In addition, Regenwether's letter of understanding acknowledges "these expectations are not binding on the Board."

During her third stint with CHS, Regenwether supervised nine to eleven employees as well as about ten weekly volunteers. She continued to maintain similar job responsibilities as during her first and second tenures, which included any discipline of employees. In her third tenure Regenwether had to fire two

employees for stealing funds from CHS and sanction three others with one-day suspensions without pay for disciplinary reasons. Animal care specialist, Michele Hill, was one of the employees suspended, which occurred in 2010.

Regenwether also attended monthly board meetings. During her third tenure, she was involved in three incidents at these board meetings.

The first incident occurred in September 2009 between Regenwether and board member, Tammy Olsen. The two had a disagreement concerning the shelter's pet cemetery. This disagreement resulted in Regenwether becoming upset, storming out of the boardroom, and not returning. Olsen also left the boardroom, but returned for the remainder of the meeting. Regenwether proceeded to her office and began packing a few of her personal items. Regenwether did return to work the following day. Although Olsen wrote to the board President, Robert Hoffman, urging a sanction on Regenwether, Mary James, a fellow board member and the shelter's volunteer rescue coordinator, convinced the board not to take any disciplinary action. Regenwether admitted that following this meeting she and Olsen "didn't speak for a while."

The second incident occurred when board members expressed complaints about a monthly newsletter that had been printed showing the numbers of animals the shelter had euthanized. When one of the board members voiced concern the public perceived that as the shelter "killing" animals, Regenwether objected, became upset, and started to cry. Regenwether stood to leave the meeting, but other board members persuaded Regenwether to sit back down, and the board member apologized for the comment.

The third concerned a rescue dog named Miles who needed surgery. Regenwether started a fundraising campaign for Miles prior to receiving approval from the board. The board eventually approved the campaign, but James testified that Regenwether walked out on this meeting too.

In addition to the incidents at board meetings, Regenwether testified she had previously had heated exchanges with employees at the shelter. The incident focused on at trial occurred on May 20, 2010.

After 4:00 p.m. on that date, employees at the shelter noticed something wrong with the crematory unit used to incinerate euthanized animals. Animal care specialists Jessica Alvarez and Michele Hill had loaded the crematory unit the day before, but the unit apparently did not burn. Front office staff person, Kati McDonnell, noticed the failure when she arrived in the morning, and attempted to restart the unit, but again the unit did not burn. Late in the afternoon, Alvarez checked on the unit by touching the door. When she noticed the door was still cold, she opened the door and saw that the unit still had not burned. At this point, Alvarez went to Regenwether's office and informed her that the unit was not working. Regenwether, who was preparing for a planned three-day weekend, asked about the dials and the gas, but Alvarez was unable to answer because she had not started the machine that morning. Regenwether then went to the unit and discovered the gauges were saying the doors were "open" even though they were closed. At this point, Regenwether became upset and started yelling at Alvarez and Hill. Regenwether admitted that she stated "f___" twice during this confrontation. Regenwether testified she then left and

went to her office. When she got to her office, she informed McDonnell the crematory unit was not working and that she was going to call a service technician. Regenwether admitted she then slammed the door to her office. After making arrangements with the service technician, Regenwether testified that she exited her office and told McDonnell to "go get the F'ing bodies out of the crematory." McDonnell testified Regenwether then slammed her office door shut for a second time. Regenwether admitted at trial that it was not professional to yell at or swear in front of her staff. Following this incident, Alvarez was upset and decided to report it to James, the shelter's volunteer rescue coordinator and a board member.

James went to the shelter the following day. She testified that upon her arrival each of the employees involved in the crematory incident was "emotionally distraught" and expressed concerns for their work environment. According to James, Alvarez, Hill, and McDonnell all threatened to quit working for the shelter.

On May 24, 2010, a conference call was held between Regenwether and the executive committee for CHS. At this time, Regenwether was informed she was being suspended with pay so an investigation into concerns about a hostile work environment could be completed. The following day, the board sent a letter confirming Regenwether's placement on administrative leave of absence for sixty days pending investigation.

During the administrative leave period, James told the employees at the shelter that if they would like to write statements to do so, and she would take them to the board. Alvarez wrote two statements, and McDonnell wrote one.

Jessica Bielema, a weekend cat attendant and part-time office personnel, also wrote a letter, but not until after Regenwether had been terminated.

In early June 2010, Regenwether met with Hoffman and board members Phil Barger and Ed O'Neill at a restaurant in Clinton. According to Hoffman's deposition testimony entered at trial, the intent for the meeting was "to listen what Regenwether had to say and not make any decisions and not offer any advice at that point in time." Regenwether testified that prior to and during this meeting, she never received any reasons for her suspension. Regenwether further stated that at the meeting, Barger told her that "if [she] were to come back, [she] would have to eat crow and grovel." Regenwether admitted the crematory incident was discussed at this meeting, and it was agreed that it could have been handled differently.

During the June 21, 2010 board meeting, the ten-member board unanimously voted to terminate Regenwether's employment. Regenwether was informed of her termination in a letter dated July 12, 2010.

On August 18, 2010, Regenwether filed a breach of employment contract action against CHS. Her claim was tried to the district court on August 1, 2011. Three employees and James testified to the work environment at the shelter.

Alvarez testified that when Regenwether returned to CHS as an administrator for the third time, it initially went well. But after about a year, Regenwether began to have quick mood changes, which gradually became worse. Alvarez testified that by the time of the crematory incident, the work

environment around the shelter "had gotten very tense[, w]alking on eggshells" due to Regenwether's moods.

McDonnell testified Regenwether was "moody" and she never knew "if [she] was walking into a bad day or a good day or anything like that."

Bielema testified she observed "a lot of yelling, some swearing" by Regenwether, sometimes directly at employees as well as in front of other employees. Bielema described the shelter as "a very tense situation," and testified Regenwether's behaviors as an administrator varied:

> She had her days. Definitely when you walked into the facility you never knew what you were walking into. Definitely you were kind of, like, walking on eggshells. You never knew from one minute or the other what the mood was going to be or whether or not she would be approachable.

James testified that initially she had no problems with Regenwether. But in her last year James believed Regenwether "was very rude to several board members," and "was belittling and belligerent to the staff." During Regenwether's last six months at the shelter, James testified Regenwether was becoming increasingly rude to her and would "totally dismiss you, avoid you, or slam her door when you walked into the shelter." James also described the atmosphere of the shelter as being "very tense." James testified, "You could cut the tension with a knife. The staff were walking on eggshells." James also testified there were several incidents with Regenwether, but "[t]he crematory incident, I believe, was the straw that broke the camel's back."

On August 18, 2011, the district court denied Regenwether's claim finding her termination as administrator was "for cause." The district court stated:

> Although the Board could have invoked progressive discipline after the board meeting incidents, the court views this as inconsequential to the ultimate reason for the termination of her contract. The primary reason, as stated by the witnesses for the defendant, was that Jean Regenwether, as administrator, created a tense atmosphere at the facility during her tenure which resulted in a stressful situation for the Society's employees. The investigation conducted by certain board members revealed this unacceptable situation and viewed her continued employment as possibly resulting in key employees leaving the shelter. Jean Regenwether admitted during the meeting with the executive committee that she could have handled the crematory incident differently. Her conduct at that time was both unprofessional and inappropriate. The testimony of employee Alvarez, McDonnell, and Bielema indicate that the atmosphere at the shelter was so tense that the employees felt they were walking on eggshells during the time that they were under the supervision of Regenwether. This, coupled with the inappropriate behavior by Regenwether at board meetings, which included storming out of a meeting and clearing out her office, in the court's view justifies termination of her employment for cause.

Regenwether appeals.

II. Standard of Review.

This breach-of-contract case was pled as a law action and tried to the court. Therefore, we review for the correction of errors at law. *Van Oort Constr. Co., Inc. v. Nuckoll's Concrete Serv., Inc.*, 599 N.W.2d 684, 669 (Iowa 1999); *see also* Iowa R. App. P. 6.907. The trial court's findings of fact have the effect of a special verdict, and are binding on us if supported by substantial evidence. *Van Oort*, 599 N.W.2d at 669; *see also* Iowa Rs. App. P. 6.904(3)(a), 6.907. "Evidence is substantial for purposes of sustaining a finding of fact when a reasonable mind would accept it as adequate to reach a conclusion." *Land O'Lakes, Inc. v. Hanig*, 610 N.W.2d 518, 522 (Iowa 2000). We view the evidence

in a light most favorable to the trial court's judgment. *Van Oort*, 599 N.W.2d at 689.

III. Analysis.

It is undisputed that the parties had a contract for a definite term, and that the contract contained no written provisions stating the right of either party to terminate the contract. In these situations, our supreme court has stated:

> A contract of employment which by its express terms is for a definite time or to last until a definite day presents, of course, no problem concerning its duration and termination. The employer has the implied right to discharge the employee for cause, but otherwise the employment cannot be terminated of right during the term of its existence as expressed in the contract.

Allen v. Highway Equip. Co., 239 N.W.2d 135, 140 (Iowa 1976) (quoting 53 Am.Jur.2d *Master & Servant* § 27, at 103).

An employee under a "for cause" contract "may be terminated for reasons that relate to 'performance of his or her job and the impact of that performance on an employer's ability to attain its reasonable goals.'" *Kern v. Palmer Coll. of Chiropractic*, 757 N.W.2d 651, 658 (Iowa 2008) (quoting *Lockhart v. Cedar Rapids Cmty. Sch. Dist.*, 577 N.W.2d 845, 847 n.1 (Iowa 1998)). "'Cause' does not include 'reasons which are arbitrary, unfair, or generated out of some petty vendetta.'" *Id*. The district court determined that Regenwether was, in fact, terminated "for cause."[1] The question presented in this appeal is whether

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[1] In making this determination, the district court assumed without deciding that the *Toussaint* rule would apply to the facts and circumstances of this case. Accordingly, the district court made an independent determination as the finder of fact as to whether CHS had cause to terminate Regenwether. *Toussaint v. Blue Cross & Blue Shield of Michigan*, 292 N.W.2d 880, 895 (Mich. 1980). We too recognize that the supreme court has not definitively adopted the *Toussaint* rule in situations where the parties to the

sufficient evidence supports this determination. In our review, we note that "[w]hile there was also evidence from which the [court] could have drawn a contrary conclusion, that is not the nature of our inquiry. We only determine whether there was substantial support for the conclusion [the court] *did* reach." *Iowa Health Sys. Agency, Inc. v. Wade*, 327 N.W.2d 732, 735 (Iowa 1982).

Regenwether admitted that she used profanity towards her staff during the crematory incident, and acknowledged her conduct was unprofessional. Further, three employees testified Regenwether's inconsistent moods made the work environment at the shelter very tense, forcing them to "walk on eggshells" around her. This hostile environment is supported by Regenwether's admission that she had previously had verbal altercations with at least two other employees on other occasions. In addition, Regenwether's conduct at the board meetings raises concerns over her temperament. Although any of these incidents may not be enough by themselves, when looking at the whole picture, we conclude the record supports the district court's finding that Regenwether was terminated from CHS "for cause." *Bd. of Dirs. of Ames Cmty. Sch. Dist. v. Cullinan*, 745 N.W.2d

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contract fail to define "for cause" in their employment agreement. *See Kern*, 757 N.W.2d at 660 n.6. However, because we find sufficient evidence supports the district court's ruling that CHS terminated Regenwether "for cause" under the less-deferential-to-employers rule from *Toussaint*, we also need not and do not address whether the more deferential "objective reasonableness" standard should be applied to the facts of this case. *See id*. at 659 (setting forth the "objective reasonableness standard" as: "The judicial fact-finder's role is not to determine whether the facts underlying the employer's 'cause' determination were actually true, or to conduct de novo review of whether the facts found by the employer amounted to 'cause' for termination under the terms of the contract. Instead, the judicial fact-finder determines only whether the cause claimed by the employer for termination was "a fair and honest cause or reason, regulated by good faith on the part of the party exercising the power, based on facts supported by substantial evidence and reasonably believed by the employer to be true, and not for any arbitrary, capricious, or illegal reason.").

487, 495 (Iowa 2008) (using a "broad scope" for a just-cause inquiry). Therefore, we affirm.

AFFIRMED.