

IN THE COURT OF APPEALS OF IOWA

No. 6-918 / 06-0118
Filed January 31, 2007

WILLIAM H. BASS,
Plaintiff-Appellant,

vs.

THE CITY OF HUXLEY,
Defendant-Appellee.

Appeal from the Iowa District Court for Story County, William J. Pattinson,
Judge.

Plaintiff appeals from district court's ruling granting defendant's motion for
summary judgment on a breach of contract claim. **AFFIRMED.**

J. Campbell Helton and Gretchen Witte Kraemer of Whitfield & Eddy,
P.L.C., Des Moines, for appellant.

James R. Wainwright of Ahlers & Cooney, P.C., Des Moines, for appellee.

Heard by Mahan, P.J., and Vaitheswaran and Eisenhauer, JJ.

MAHAN, P.J.

William H. Bass appeals from a district court ruling granting the City of Huxley's motion for summary judgment in a breach of contract action. We affirm.

I. Background Facts and Proceedings

The summary judgment record reveals the following undisputed facts: In 1985 the City enacted Ordinance No. 198, creating the office of city administrator. The ordinance is codified in sections 4.010 et seq. of the Huxley Municipal Code. Section 4.020 of the municipal code provides:

The city administrator shall be appointed by a vote of a majority of the whole number of the city council and shall serve at the pleasure of the city council and be subject to removal by a vote of a majority of the whole number of the city council.

The city administrator is "subject to the general direction of the city council" and acts "as chief administrative officer of the city." Huxley Mun. Code § 4.030. The administrator "shall participate in and supervise the city budgetary process and financial activities; shall oversee the operation of city departments; and shall perform related duties as required." *Id.*

On August 16, 2000, the City and Bass entered into an "Employment Agreement,"¹ pursuant to which Bass would serve as the city administrator for a fixed period of time. The city council passed Resolution No. 00-19 on August 16, 2000, approving the two-year employment agreement. The agreement provided for an initial term of employment "for a period of two years commencing on July 1, 2000, and ending on June 30, 2002;" and to be "automatically extended for successive two-year periods . . . unless this Agreement is amended or

¹ The Agreement was signed by Bass, then-mayor Jimmy E. Erwin, and Gina Navratil, clerk.

terminated as hereinafter provided.” On June 28, 2001, the city council passed Resolution No. 01-19, which amended Bass’s employment contract by allowing the agreement to automatically renew for successive three-year periods, rather than two-year periods. Thus, by the terms of the amended agreement, Bass’s term of employment would be automatically extended after the initial two-year term to June 30, 2005.

The agreement included termination and suspension provisions. The termination provision permitted the City to terminate Bass “for cause,” in which case no severance benefits other than accrued wages would be paid. If the City terminated Bass “without cause,” the City would be required to pay Bass severance benefits “in an amount equal to the balance of basic compensation due under this Agreement” The agreement further provided, “This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of all parties executing this agreement.”

In 2003 Bass entered into a business arrangement with third parties for the purpose of developing real estate within Huxley’s city limits. His actions were viewed by the City’s new mayor² and newly-constituted city council³ as a conflict of interest. At a city council meeting on April 15, 2004, the council voted to suspend Bass “without cause and with pay and benefits to continue to the end of his contract and that employment is terminated at that time.” The City paid Bass’s salary and benefits through June 30, 2004.

² Nels Nord was elected mayor in November 2003.

³ Only one member of the council that had passed the August 16, 2000 and June, 28, 2001 resolutions remained on the council.

Bass, believing that he was entitled to an additional year's pay, pursuant to the June 28, 2001 resolution, filed this breach of contract action against the City in district court. The City and Bass filed separate motions for summary judgment. The district court granted the City's motion for summary judgment, concluding that the August 16, 2000 Employment Agreement and the June 28, 2001 modification were unenforceable because the city council was without authority to enter into a contract with Bass for a specific period of employment. Bass appeals, arguing the district court erred in (1) finding the City did not have authority to enter into an employment contract with Bass, and (2) failing to grant summary judgment in Bass's favor.

II. Standard of Review

We review a ruling on a motion for summary judgment for correction of errors at law. Iowa R. App. P. 6.4; *Clinkscales v. Nelson Sec., Inc.*, 697 N.W.2d 836, 840-41 (Iowa 2005). Summary judgment is proper only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Iowa R. Civ. P. 1.981(3). Where the facts are undisputed and the only dispute concerns the legal consequences flowing from those facts, we must determine whether the district court correctly applied the law. *City of West Branch v. Miller*, 546 N.W.2d 598, 600 (Iowa 1996).

III. Discussion

As mentioned, Ordinance No. 198 created the office of city administrator and established that the city administrator “serves at the pleasure of the city council.” Thus, the city administrator is an at-will employee:

It is a well-established rule of law that the power to appoint to an office or position without a defined term or tenure carries with it the power of removal. It is also a maxim of the law that where the time of holding is not fixed, the tenure of the office or position is at the pleasure of the appointing power.

3 Eugene McQuillin, *The Law of Municipal Corporations* § 12.115, at 567 (3d ed. 2001). The employment agreement, adopted via resolution by the city council, purported to establish a specific term of employment for the city administrator. In doing so, the agreement attempted to amend, via resolution, the employment terms established by the ordinance. An ordinance, however “is not affected by a resolution; it is amended, repealed, or suspended only by an ordinance.” *Valley Brook Dev., Inc. v. City of Bettendorf*, 580 N.W.2d 730, 731 (Iowa 1998); see also *Vaughn v. City of Cedar Rapids*, 527 N.W.2d 411, 413-14 (Iowa Ct. App. 1994) (holding that resolution purporting to appoint executive director of civil rights commission for a fixed period of time could not change at-will employee status established by ordinance). Therefore, because the city council’s resolution approving the employment agreement constitutes an illegal attempt to amend, via resolution, the employment terms established by ordinance, the

employment agreement is invalid and unenforceable as a matter of law. The district court did not err in granting the City's motion for summary judgment.⁴

We have considered all the arguments raised on appeal, and except as discussed above, we find them waived, without merit, or unnecessary to the disposition of the case. We affirm the district court's summary judgment ruling.

AFFIRMED.

⁴ Although this was not the ground upon which the district court relied in its ruling, it was urged by the City in that court; therefore, we may uphold the district court's ruling on this ground. *DeVoss v. State*, 648 N.W.2d 56, 61 (Iowa 2002).