

IN THE COURT OF APPEALS OF IOWA

No. 7-760 / 07-0271
Filed December 28, 2007

AZIZ HAFFAR,
Plaintiff-Appellant,

vs.

SIMPSON COLLEGE,
Defendant-Appellee.

Appeal from the Iowa District Court for Warren County, Peter A. Keller,
Judge.

Appeal from the district court's grant of summary judgment. **REVERSED
AND REMANDED.**

Steven DeVolder of the DeVolder Law Firm, Norwalk, for appellant.

Thomas Cunningham and Anna Wholey of Nyemaster, Goode, West,
Hansell & O'Brien, P.C., Des Moines, for appellee.

Heard by Sackett, C.J., and Vaitheswaran and Baker, JJ.

SACKETT, C.J.

Plaintiff-appellant, Aziz Haffar, appeals from the district court's grant of summary judgment in favor of defendant-appellee, Simpson College, in plaintiff's suit for breach of employment contract and breach of Iowa Wage Payment Collection Law.¹ He contends the court erred in granting defendant's motion for summary judgment and in denying his cross-motion for summary judgment. We reverse and remand.

I. Background

Plaintiff was employed by defendant in 1995 as the head soccer coach. His employment was governed by a succession of annual written employment contracts that issued around March 1 of each year for the succeeding academic year. The administrative contract at issue was dated March 1, 2004, and offered employment "for the 2004-05 fiscal year ending May 31, 2005." It was "[c]ontingent upon plaintiff's agreement to coach soccer exclusively for Simpson College." At the time, plaintiff also was head soccer coach at Valley High School in West Des Moines. The contract further provided:

Should either the college or the administrator wish to terminate the employment relationship at the end of the fiscal year, written notice should be provided by March 1, 2005. The college reserves the right to terminate the contract at any time according to the policies and procedures defined in the administrative section of the Employee Handbook. Notice of termination will be given in writing 30 days prior to the last day of employment under such circumstances, or payment in lieu of notice may be given, in which case termination shall be effective immediately.

The employee handbook contained a section on "contractual policies for exempt positions" such as plaintiff's position. In relevant part, it provides:

¹ Iowa Code chapter 91A (2003).

Contracts are considered to be instruments of good faith. Under normal conditions, each party is expected to honor an agreement extended over a period of time. There may be exceptions to this rule. An employee may be offered unusual professional advancement that necessitates breach of contract. In such a circumstance, a thirty-day notice to the College is considered to be minimal. The College likewise reserves the right to terminate a contract with a thirty-day notice.

The employee handbook also contained provisions for dismissal for cause. The parties dispute whether the dismissal-for-cause provisions are relevant to this case. The handbook defined the contractual year for all exempt employees, such as plaintiff, as beginning on June 1 and ending on May 31. The salary year was set as beginning September 1 and ending on August 31.

Haffar did not terminate his employment as head soccer coach at Valley High School. In a letter dated March 1, 2005, the college provided "written notice of termination."

This written notice of termination is given pursuant to the terms of your 2004-2005 administrative contract dated March 1, 2004, as amended² by a letter to you dated September 15, 2004. Pursuant to the terms of your contract, you are hereby notified that your employment with Simpson College is terminated effective immediately. Thirty days' pay is enclosed herewith in lieu of a 30-day notice of termination.

We regret we were unable to arrive at a mutually acceptable resolution with respect to your departure.

Plaintiff made unsuccessful demand on defendant for payment of what he claimed was due him under the contract in salary and benefits. On September 30, 2005, plaintiff filed suit against defendant alleging (1) breach of an employment contract, and (2) breach of the wage payment collection law.

² The amendment specified the salary for 2004-05, (effective September 1, 2004), which was set at \$46,848, an increase from the 2003-04 salary of \$41,600. It did not amend any other provisions of the March 1, 2004 administrative employment contract.

Defendant answered and counterclaimed for breach of contract. Defendant later dismissed its counterclaim.

II. Scope of Review

We review rulings on motions for summary judgment for correction of errors at law. *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827 (Iowa 2007). Summary judgment is proper only when the entire record reveals no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Carr v. Bankers Trust Co.*, 546 N.W.2d 901, 903 (Iowa 1996). The record on summary judgment includes the pleadings, depositions, affidavits, and exhibits presented. *Id.* We review the evidence in the light most favorable to the nonmoving party. *Mason v. Vision Iowa Bd.*, 700 N.W.2d 349, 353 (Iowa 2005). The nonmoving party, however, may not rest upon the mere allegations of his pleading but must set forth specific facts showing the existence of a genuine issue for trial. Iowa R. Civ. P. 1.981(5); *Hlubek v. Pelecky*, 701 N.W.2d 93, 95 (Iowa 2005). A fact question exists if reasonable minds could differ on how an issue should be resolved. *Grinnell Mut. Reins. Co. v. Jungling*, 654 N.W.2d 530, 535 (Iowa 2002). No fact question exists if the only conflict concerns the legal consequences flowing from undisputed facts. *Id.*

III. Analysis

Breach of Contract. Haffar contends the court erred in granting the college's motion for summary judgment and in denying his cross-motion for summary judgment. He first argues the written employment contract and employee manual "unambiguously establish a one-year term employment agreement." The college argued, and the district court found the language in the

contract and employee handbook, taken as a whole make it apparent “that the College can terminate an exempt administrative employee at any time without cause upon 30 days notice (or payment in lieu thereof).” The court did not find Haffar’s arguments to the contrary persuasive.

“Employment relationships in Iowa are presumed to be at-will.” *Phipps v. IASD Health Servs. Corp.*, 558 N.W.2d 198, 202 (Iowa 1997). If an employment contract “is for a definite time or to last until a definite day, the employer may not discharge the employee before that time unless cause is shown or there is some reason for discharge provided for in the contract.” *Kabe’s Rest., Ltd. v. Kintner*, 538 N.W.2d 281, 283 (Iowa 1995). Haffar’s contract with the college was for the fiscal year, but expressly reserved to the college the right to terminate the contract upon thirty-day notice or immediately with payment in lieu of notice.

The employment contract expressly referred to the employee handbook. In addition to the language quoted above that is specifically directed at exempt employees, the handbook begins with this disclaimer:

THIS HANDBOOK IS NOT A CONTRACT NOR IS IT INTENDED TO BE A CONTRACT. SIMPSON COLLEGE ADHERES TO THE EMPLOYMENT AT WILL DOCTRINE. THIS MEANS BOTH SIMPSON COLLEGE AND AN EMPLOYEE CAN TERMINATE THE EMPLOYMENT RELATIONSHIP AT ANY TIME, WITH OR WITHOUT PRIOR NOTICE, FOR ANY REASON (NOT OTHERWISE UNLAWFUL) OR FOR NO REASON ABSENT A WRITTEN AGREEMENT TO THE CONTRARY. Nothing in this handbook or in any other employment policies of Simpson College is intended to create any promise or representation of continued employment or other terms or conditions of employment.

(Emphasis in original.) This language unambiguously sets forth the intent that both parties to any employment relationship have the ability to end that

relationship at any time. The language specifically directed at exempt positions expressly reserves the right to terminate a contract with notice:

An employee may be offered unusual professional advancement that necessitates breach of contract. In such a circumstance, a thirty-day notice to the College is considered to be minimal. The College likewise reserves the right to terminate a contract with a thirty-day notice.

Haffar argues the use of the word “breach” means an exempt employee who chooses to terminate his employment prior to the end of the contract is subject to legal action for breach of contract. He further argues the word “likewise” relates back to “breach” so that the college is subject to legal action for breach of contract if it terminates a contract pursuant to this language.

The district court, having reviewed the employment contract and the employee handbook, determined:

It is clear from looking at the contract in its entirety that the language referencing a breach of contract should not be construed in the legal sense. This paragraph is simply addressing the situation where either the employee or the employer wants to terminate a contract prior to its expiration. Ideally, the employee remains employed until the end of the fiscal year, but Simpson is acknowledging what realistically occurs from time to time and that conduct will not be actionable.

The district court did not find any ambiguity in the language of the written employment contract or the language of the employee handbook and thus decided there was no need to interpret the language. We disagree.

The parties had a contract; however, there remain disputed factual issues as to the end date of the contract, the actual damages if any that plaintiff suffered, and whether he is entitled to make a claim under Iowa Code chapter 91A. Summary judgment is inappropriate. See Iowa R. Civ. P. 1.981.

REVERSED AND REMANDED.