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State of Minnesota
In Court of Appeals

Jeanine M. Barker, Michael T. Blum, Nancy Boogaard, Marlan Buchert, Diane M. Campbell, Dean Champine, Joan Davis, Bernard Doom, Ramona Hammer, Todd I. Hammer, Paul Henriksen, James A. Hubley, Ronald A. Krause, Richard Maes, Chad Magnussen, Mark Mather, Carol A. Oakland, Susan A. Paradis, Don Raveling, Carolyn Runholt, Douglas E. Swenson, Mark Swenson, James L. Thomasson, Steven Van Moer, Paula Van Overbeke, Tamara K. Van Overbeke, Donna Swalboski, Lorene Verstraete, Nadine Vierstraete, Michael R. Williams, Mary Jo Zimmer, and Susan Zvorak,

Appellants,

vs.

County of Lyon and the Lyon County Board of Commissioners,

Respondents.

BRIEF AND APPENDIX OF RESPONDENT COUNTY OF LYON AND RESPONDENT LYON COUNTY BOARD OF COMMISSIONERS

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE ISSUES AND MOST APPOSITE CASES

1. Did the District Court properly grant summary judgment on, and therefore dismiss, Appellants' promissory estoppel claim on the grounds that Appellants' alleged reliance on Respondents' alleged representations regarding post-retirement health care benefits was unreasonable as a matter of law?

   Johnson Bldg. Co. v. River Bluff Development Co., 374 N.W.2d 187 (Minn. App. 1985)

   Daig Corp. v. Reich, 1994 WL 284966 (Minn. App. 1994) (unpublished)

2. Does there exist sufficient other grounds upon which to affirm the District Court's grant of summary judgment against, and dismissal of, Appellants' promissory estoppel claim?

   Del Hayes & Sons, Inc. v. Mitchell, 275 N.W.2d 588 (Minn. 1975)

   Housing and Redevelopment Authority of Chisholm v. Norman, 696 N.W.2d 329 (Minn. 2005)

   Garmaker v. Sterling Elec. Const. Co., Inc., 1995 WL 606591 (Minn. App. 1995) (unpublished)

   Moga v. Shorewater Advisors, LLC, 2009 WL 982237 (Minn. App. 2009) (unpublished)

3. Did the District Court properly grant summary judgment on, and therefore dismiss, Appellants' claim for unconstitutional impairment of contract on the grounds that Appellants had no vested contract right in the post-retirement health care benefits that formed the basis of Appellants' claim?

   Housing and Redevelopment Authority of Chisholm v. Norman, 696 N.W.2d 329 (Minn. 2005)

   Halla Nursery, Inc. v. City of Chanhassen, 781 N.W.2d 880 (Minn. 2010)

4. Does there exist sufficient other grounds upon which to affirm the District Court's grant of summary judgment against, and dismissal of, Appellants' unconstitutional impairment of contract claim?

   Roberts v. Brunswick Corp., 783 N.W.2d 226 (Minn. App. 2010)

STATEMENT OF THE CASE

This is an appeal of the District Court's grant of summary judgment. Appellants and other current and former County employees who have since been dismissed from this case initiated the current lawsuit against the Respondents claiming that Respondent Lyon County Board of Commissioners ("Board" or "County Board") breached an alleged employment contract when it modified a post-retirement health insurance benefit that was found in the Lyon County Policy Manual. (Appellants' Appendix at 11-13.) The Complaint also included a claim for promissory estoppel and declaratory judgment. (*Id.*) Appellants later amended their Complaint to include a claim that the Board's modification of the post-retirement healthcare benefit also unconstitutionally impaired the alleged contract or promise. (*See id.*)

Respondents moved for summary judgment on all of Appellants' claims. (*See* App. at 371.)[1] In an Order dated August 24, 2011, the District Court granted Respondents' Motion in its entirety and dismissed each of Appellants' claims. (*See, generally,* Appellants' Addendum at 2-8, 10-16.)[2] Appellants subsequently appealed the District Court's grant of summary judgment on their promissory estoppel and unconstitutional impairment claims. (App. at 451.) Appellants did not appeal the District Court's summary judgment order as it applies to their breach of contract or declaratory judgment claims. Thus, those claims are not before the Court on appeal.

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[1] Appellants' Appendix is herein identified as "App." and Respondents' Appendix is referred to as "Resp. App."

[2] Appellants' Addendum ("Add.") inexplicably contains two copies of the District Court's Order and Memorandum.

STATEMENT OF THE FACTS

On February 3, 2009, the County Board voted to reduce the amount of a post-retirement health insurance benefit ("benefit" or "insurance benefit") contained in the Lyon County Policy Manual ("Policy Manual" or "Manual").[3] As Appellants admit, the Board's action did not affect the post-retirement health insurance benefit of any person who retired or left office before that date. (App. at 783; *see also* Appellants' Br. at 5.) Appellants are thirty-two current and former Lyon County ("County") employees and/or County elected officials who did not retire prior to February 3, 2009, and, consequently, became subject to the revised benefit provision of the Policy Manual.[4] (App. at 1-6.)

Despite Appellants' assertions to the contrary, Respondents never promised to make the insurance benefit available indefinitely. At all times relevant to Appellants' claims, the Policy Manual has reserved to the County Board the right to deviate from its terms. (*See* App. at 17 (1985 Manual); 35 (1989 Manual); 57 (1991 Manual); 79 (1995 Manual); and 121 (1999 Manual).) Moreover, since 1991, the Manual has reserved to the Board the unilateral right to alter its terms. (*See* App. at 57 (1991 Manual); 79 (1995 Manual); 121 (1999 Manual); and 171 (2007 Manual).) The County Board has repeatedly exercised this authority by increasing, limiting the availability of, and, eventually, decreasing the amount of the benefit. The Board has also repeatedly

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[3] Appellants specifically claim that they are entitled to receive post-retirement health insurance payments equal to 4% of their insurance premiums per year of service. (App. at 12.)

[4] Mary Jo Zimmer was dismissed from this lawsuit at oral argument upon Appellants' request. (App. at 457.) Thus, despite the caption on Appellants' pleadings, there are really only thirty-one Appellants.

exercised this authority by altering the Policy Manual's other terms. Appellants were aware of the Board's authority regarding, and changes to, the insurance benefit and, nevertheless, continued to work for the County after February 3, 2009. (App. at 1-6.)

I. THE POLICY MANUAL DID NOT PROMISE TO OFFER THE POST-RETIREMENT HEALTH INSURANCE BENEFIT INDEFINITELY

Appellants' Brief generally describes the various editions of and revisions to the Policy Manual at issue in this lawsuit. (Appellants' Br. at 5-8.) Relevant to this matter, the Board amended the Policy Manual in 1985, 1989, 1991, 1995, 1999, 2003, and 2007. (App. at 15 (1985 Manual); 33, 53 (1989 Manual); 54, 75 (1991 Manual); 76 (1995 Manual); 118 (1999 Manual); and 159 (2003 and 2007 Manual); *see also id.*; Resp. App. at Resp. App. at 18 (2003 Manual).) Instead of duplicating Appellants' recitation of Policy Manual's thirty year history, the County draws the Court's attention to the following salient points: (1) at all times relevant to Appellants' claims, the Policy Manual has reserved to the Board the discretion to deviate from or alter its terms; (2) the Board has repeatedly utilized this authority to amend the insurance benefit policy; (3) Appellants were aware of the Board's authority to alter the terms of the Policy Manual or deviate from its terms; and (4) Appellants continued to work for the County or hold office, even after the Board's 2009 decision to reduce the amount of the benefit.

A. The Manual Permitted the Board to Deviate From or Modify its Terms

As admitted by Appellants, each version of the Policy Manual since at least 1985 has expressly replaced all earlier Policy Manuals. (Appellants' Br. at 5-8.) As Appellants also admit, the 1985, 1989, 1991, 1995, and 1999 versions of the Policy

Manual expressly provided that "deviation from [the Policy Manual] will be recognized only on the authority of the Board of County Commissioners." (App. at 17 (1985 Manual); 35 (1989 Manual); 57 (1991 Manual); 79 (1995 Manual); and 121 (1999 Manual); *see also id.*) Subsequent versions of the Policy Manual included even stronger language.

In 1991, the County Board amended the Policy Manual to state that it is not an employment contract and to provide that the "County Board reserves the right to change any of these policies, after notice and input from employees." (App. at 57; *see also* Appellants' Br. at 6.) The 1995 and 1999 versions of the Policy Manual contained the same language. (App. at 79 (1995 Manual); and 121 (1999 Manual); *see also* Appellants' Br. at 7.) In 2003, the County Board amended the Policy Manual to remove even the minimal notice restriction on its ability to alter the terms of the Manual. Starting in 2003, the Policy Manual simply read that the "County Board may modify or revoke any of these policies at any time." (App. at 171; *see also* Appellants' Br. at 8.)

B. Appellants Were Aware of the Board's Authority to Modify the Terms of the Insurance Benefit Policy

While the pre-1991 versions of the Policy Manual permitted the Board to deviate from its terms, starting in 1991, the Policy Manual expressly reserved to the Board the right to alter the policies contained therein. (*Compare* App. at 35 (1989 Manual) and App. at 57 (1991 Manual).) All Appellants admitted having access to and receiving copies of the post-1991 Policy Manuals. (*See, e.g.,* App. at 341-343 and below.)

Twenty-six Appellants admitted to having copies of one or more of the 1991-2007 editions of the Policy Manual in response to Respondents' Requests for Admissions. (App. at 328-330 (1991 Manual); 332-334 (1995 Manual); 336-338 (1997 Manual); 339-341 (2003 Manual); 343-345 (2005 Manual); and 347-348 (2007 Manual).) Specifically, Barker, Boogaard, Buchert, Campbell, Champine, Davis, Doom, Ramona Hammer, Todd Hammer, Henriksen, Krause, Maes, Magnussen, Mather, Raveling, Swalboski, Douglas Swenson, Mark Swenson, Thomasson, Van Moer, Paula Van Overbeke, Tamara Van Overbeke, Lorene Verstraete, Williams, Zimmer, and Zvorak all admitted to receiving copies of the 1991 or later versions of the Policy Manual. (*Id.*)

Through signed acknowledgment forms, Respondents established that Blum, Hubley, Paradis, Runholt, and Nadine Vierstrate had all received one or more copies of the post-1991 Policy Manual. (*See* App. at 523, 525, 527, 530, and 535 (signed acknowledgment forms).) Similarly, deposition testimony revealed that these five Appellants had received or read various post-1991 editions of the Policy Manual. (*See* App. at 554 (Nadine Vierstrate); 580 (Runholt); 587 (Paradis); 614-615 (Hubley); and 643 (Blum).) Deposition testimony also revealed that Oakland had received copies of different versions of the Policy Manual at least a few times after she began working in the County's Highway Department in 1990. (App. at 593-594.)

C. The Board Has Repeatedly Modified the Policy Manual Provisions Regarding the Post-Retirement Health Insurance Benefit

The 1982 version of the Policy Manual did not include any post-retirement health insurance benefits. (Resp. App. at 1-17.) In 1985, the County Board amended the Policy

Manual to provide that "[a]ny employee retiring while in active service shall be entitled to three percent (3%) per year of service towards their health insurance premium." (App. at 22; *see also* Appellants' Br. at 6.) Since that time, the Board has made three separate revisions to the insurance benefit policy.

1. *The Board altered the insurance benefit policy twice before the amendment at issue in this lawsuit*

Approximately six years after originally deciding to offer a three percent per year post-retirement health insurance benefit, the Board decided to increase the amount of that benefit to four percent per year of service. (App. at 63.) This modification became part of the 1991 Policy Manual. (*Id.*) Like the Board's subsequent decision to reduce the amount of the benefit, the Board's decision to increase the benefit was based on "economic reasons."

On May 6, 1997, the Board amended the insurance benefit policy by eliminating the benefit for employees hired after May 1, 1997. (App. at 541.) At that time, the Board chose not to alter the benefit for employees hired before May 1, 1997. (*See id.*) The 1999, 2003, and 2007 versions of the Policy Manual reflect this change to the benefit policy. (App. at 130 (1999 Manual); 204 (2007 Manual).)

2. *Appellants were aware of, and participated in, the Board's 2009 modification of the post-retirement health insurance benefit policy*

The Board did not make its decision to reduce the post-retirement health insurance benefit lightly. Rather, this decision was the product of approximately six months of deliberation and public meetings. The Board held the first such meeting on August 19, 2008. (Rep. App. at 133, 137-138.) At that meeting, the Board notified its employees

and elected officials that it was considering modifying or even eliminating the post-retirement health insurance benefit. (*Id.*) Ultimately, the Board decided to wait to make a decision until it had gathered additional information. (*Id.*) Employees were notified of the proposed change and had the opportunity to retire before the change went into effect. (*See Id.*)

The Board held a second meeting to consider the post-retirement health insurance benefit issue on November 18, 2008. (Resp. App. at 142-144.) That meeting was a properly noticed special meeting with one agenda item: the post-retirement health insurance benefit. (*Id.*) At that meeting, Appellant Dean Champine presented and read a letter on behalf of all of the employees who would be affected by a change to the post-retirement health insurance benefit. (*See* App. 306-307.) Ten of the Appellants also spoke regarding the post-retirement health insurance benefit at that meeting. (Resp. App. at 143-144.) The Board held a third meeting to discuss the insurance benefit in January, 2009. (Resp. App. at 145, 147-150.)

The Board held another meeting related to this matter on February 3, 2009. At that meeting, County employees, including Appellants, submitted a retiree benefits proposal for the Board's consideration. (*Id.*) The Board rejected that proposal. (*Id.*) The Board rejected three other proposals, including eliminating the benefit altogether. (*Id.*) Ultimately, the Board enacted Resolution 04-09: RESOLUTION MODIFYING RETIREE HEALTH INSURANCE BENEFITS FOR INDIVIDUALS *NOT CURRENTLY RETIRED*. (App. at 685 (emphasis added).) In relevant part, Resolution 04-09 amended the insurance benefit policy to provide that:

> Any employee or elected official hired on a full-time basis or elected to office prior to May 01, 1997 and retiring while in active services shall be entitled to monthly contributions of a maximum amount of $330, which shall be prorated at 4% per year of service. Payments would continue for ten years (120 monthly payments), or upon death of the retiree, whichever comes first. All payments would be made to a healthcare retirement account...

(*Id.*) The Board served notice of Resolution 04-09 on Appellants and other affected employees between February 4 and March 20, 2009. (Resp. App. at 151-152.)

D. Appellants Continued to Work for the County or Hold Elected Office With the County After the Board's 2009 Amendment to the Insurance Benefit Policy

As discussed above, the Board began discussing modifications in the summer of 2008. (Resp. App. at 147-150.) At that time County Administrator Loren Stomberg had a discussion with Barker during which Stomberg told her that the only way she could be assured of receiving the insurance benefit at the four percent level was to retire before the Board changed the benefit policy. (App. at 649.) Despite this conversation, and knowledge that the Board was considering proposed changes to the benefit policy, Barker chose to remain in office until the expiration of her term as County Recorder at the end of December 2010.

Like Barker, all other Appellants were aware of the proposed changes to the benefit policy. (*See, e.g.,* Resp. App. at 147-150.) Like Barker, all other Appellants remained employed by the County or continued to hold their elected offices after February 3, 2009.[5] (*See* App. at 1-6.) Thus, despite knowledge that the benefit might be

[5] As discussed above, Zimmer is not properly a party to this appeal.

altered, or even eliminated, no Appellant took the opportunity to retire before any such change became effective.

II. APPELLANTS FAILED TO PRODUCE EVIDENCE OF DETRIMENTAL RELIANCE

In their Brief, Appellants generally assert that they "relied on" the insurance benefit by, *inter alia*, turning down more favorable work or making financial decisions. (Appellants' Br. at 11-13.) No Appellant, however, produced factual support for his or her individual claim. To the contrary, the record in this case demonstrates that no Appellant declined a more favorable position or made any specific financial decision because of the alleged promise to indefinitely make available the post-retirement health insurance benefit at the four percent level.

A. Twenty-Four Appellants did not Seek Outside Employment

During her time as an employee of the County and as a County elected official, Barker did not apply for any outside employment, or receive, or decline, any outside offer of employment. (App. at 651, 654-655.) The same is true for Blum, Buchert, Champine, Davis, Doom, Ramona Hammer, Todd Hammer, Krause, Maes, Mather, Oakland, Paradis, Raveling, Runholt, Swalboski, Douglas Swenson, Thomasson, Paula Van Overbeke, Lorene Verstraete, Nadine Vierstraete, Williams, Zimmer, and Zvorak. (App. at 361-366.) None of these individuals ever attempted to locate a different job.

B. Five Appellants did not Receive any Job Offers

Boogaard applied for two part-time jobs outside of the County to supplement but not replace her position with the County. (App. 669-670.) She was not offered either of

these positions. (*Id.*) Similarly, Campbell applied for a job with the Marshall School District but was not offered the job. (App. at 637.) Likewise, Van Moer applied for a position with the City of Marshall but admitted in his deposition that the City never actually offered him the job. (App. at 573.) He did not apply for any other jobs after starting with the County. (App. at 573-74.)

During her deposition Tamara Van Overbeke acknowledged that an informal discussion she had with the Minnesota Division of Emergency Management about a possible job did not ever result in an actual offer; there was an actual vacancy available, she never applied for any specific job, and her informal discussions did not involve any specific job. (App. at 560-561.)

Similarly, after starting work with the County, Mark Swenson interviewed for a job with Lincoln County. (App. at 663.) He was never actually offered the job. (*Id.*) Had he accepted the job, he would have taken a pay cut, had more responsibilities, worked longer hours, and have had a longer commute to work. (*Id.*) The person who was hired had a college education, something which Swenson did not possess. (*Id.*)

C. The Remaining Three Appellants did not Turn Down More Favorable Jobs Since Beginning Work with the County

While employed by the County, Henriksen turned down one job offer from the City of Sioux Falls in approximately 2003. (App. at 623-624.) That job, however, would have paid him the same or less than his job with Lyon County. (*Id.*) If hired at the same salary he was getting with Lyon County, he would have been at the maximum of the Sioux Falls' salary schedule. (*Id.*) At the time, he was not at the maximum of Lyon

County's schedule and is, in fact, currently making approximately twenty thousand dollars ($20,000) more with Lyon County. (*Id.*) Furthermore, if he had accepted the position with Sioux Falls, he would have had to relocate as the position was eighty miles away. (*Id.*) Thus, the Sioux Falls position was by no means more favorable than his job with the County.

Since becoming a County employee, Hubley applied for three external positions. (App. at 616-618.) Only one of the positions resulted in a job offer. (*Id.*) Hubley turned down the one job offer he did receive, in part, because it was a pilot project and was funded with "soft money" and Hubley was not sure the position would continue. (App. at 616-617.) In addition, the salary for the position was not higher than what the County was paying Hubley. (*Id.*)

Magnussen became employed with Lyon County in 1994. In 1996, he was interviewed for a position with Martin County. (App. at 600.) The job would have required him to relocate, and had additional duties associated with it. (*Id.*) Magnussen turned down the job for a number of different factors. (*Id.*) He did not receive any other job offers while employed by the County. (*Id.*)

D. Fifteen Appellants Began Working for the County Before it Offered any Post-Retirement Health Insurance Benefits

Appellants also contend that the County generally "enticed" them to work for the County by offering them the post-retirement insurance benefit. (Appellants' Br. at 13; *see also* Appellants' Br. at 24-26.) At least fifteen of Appellants, however, could not have been so enticed: they started working for the County before it began offering the

insurance benefit. The County hired Barker, Buchert, Davis, Doom, Krause, Raveling, Swenson, Nadine Vierstraete, Zimmer, and Zvorak before its initial adoption of the Policy Manual in 1982. (App. at 1-6.) Similarly, Boogaard, Champine, Hubley, Thomasson, and Paula Van Overbeke all began their employment with the County before the 1985 revision to the Policy Manual which first introduced the insurance benefit at issue. (*Id.*) Because they started working for the County before the benefit was offered, these Respondents could not have been "enticed" into employment.

E. Appellants Failed to Provide any Evidence of Financial Reliance

Appellants generally allege that they made financial decisions, including retirement planning decisions, in reliance on the County's alleged promise to continue to offer a four percent per year post-retirement health insurance benefit. (Appellants' Br. at 11-12, 20.) Appellants' Brief, however, only identifies two Appellants, Paradis and Zvorak, who allegedly made such decisions. (*Id.*) The remaining thirty Appellants rely on generalized, speculative assertions. (*See* App. at 38.)

In addition to failing to specify any transaction made in reliance on the benefit, no Appellant produced any evidence to corroborate any alleged financial or planning decisions allegedly made. In fact, Appellants have admitted that there are no documents to support those allegations. (App. at 366.)

ARGUMENT

I. STANDARD OF REVIEW

"On an appeal from summary judgment, the role of the reviewing court is to review the record for the purpose of answering two questions: (1) whether there are any

genuine issues of material fact to be determined, and (2) whether the trial court erred in its application of the law." *Offerdahl v. University of Minnesota Hospitals and Clinics*, 426 N.W.2d 425 (Minn. 1988). When reviewing a grant of summary judgment, the Appellate Court must take the facts in the light most favorable to the party against whom judgment was granted. *Id.* However, a reviewing court will affirm a summary judgment if it can be sustained on any ground. *Winkler v. Magnuson*, 539 N.W. 2d 821, 828 (Minn. App. 1995); *see also Brecht v. Schramm*, 266 N.W.2d 514, 520 (Minn. 1978) (holding that if "the trial court arrives at a correct decision, that decision should not be overturned regardless of the theory upon which it is based").

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. A court must grant summary judgment if the moving party is entitled to judgment as a matter of law and a reasonable fact finder could not disagree with respect to any factual issues that may exist. *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. App. 1989) (citing *Matsushita Electrical Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505 (1986)).

The party moving for summary judgment has the initial burden of proof and must show that there is no admissible evidence to support the non-moving party's case. *Celotex*, 477 U.S. at 323. This burden is not stringent. It is satisfied when the moving party explains to the court why summary judgment is appropriate and identifies those

portions of the pleadings, discovery, and affidavits, if any, which indicate that the non-moving party cannot support any central element of its claim. *Id.*

The non-moving party must then come forth with specific evidence showing that there is a genuine issue of material fact in order to defeat the motion. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). Mere denials, general assertions, and speculation are not sufficient to raise an issue of material fact. *Gutbrod v. County of Hennepin*, 529 N.W.2d 720, 723 (Minn. App. 1995). The mere existence of a factual dispute does not make summary judgment improper; however, the factual dispute must be material. *Pischke v. Kellen*, 384 N.W.2d 201, 204-205 (Minn. App. 1986). A material fact is one that, when resolved, will affect the result or outcome of the case. *Zappa v. Fahey*, 245 N.W.2d 258, 259-260 (Minn. 1976).

II. APPELLANTS' BRIEF MISREPRESENTS THE LAW AND OVERSTATES THE FACTS

Appellants' Brief contains many arguments supported only by references to cases that have dealt with claims of equitable estoppel, fraudulent representations, or fraudulent omissions. (*See, e.g.,* Appellants' Br. at 20-21, 24-27.) Appellants did not plead any of these theories before the District Court. (*See, e.g.,* Amended Complaint, App. at 11-13 (identifying causes of action).) Nor did Appellants argue the elements of these doctrines before the District Court or in their Brief to this Court.

The District Court permitted Appellants to amend their Complaint to assert a constitutional claim. (*See* App. at 1.) Had there been any facts to support a claim for fraudulent misrepresentation, fraudulent omission, or equitable estoppel, Appellants

could have included them in the Amended Complaint. It is simply too late for Appellants to include new, inapposite, legal arguments in their Brief. Thus, Appellants' citation to these cases are, at best, unavailing and, at worst, deliberately misleading.

Further, this is not a class action. Nevertheless, Appellants' Brief contains sweeping factual assertions about generally alleged reliance on the insurance benefit and other pronouncements. (*See, e.g.,* Appellants' Br. at 11-12, 20-21.) Because this is not a class action, individual Appellants cannot rely on the factual assertions unique to another Appellant. Thus, each Appellant must support his or her claims with specific facts. As discussed herein, Appellants have failed to do so.

III. THE DISTRICT COURT CORRECTLY GRANTED SUMMARY JUDGMENT ON APPELLANTS' PROMISSORY ESTOPPEL CLAIM

The District Court granted summary judgment against Appellants' promissory estoppel claim on the grounds that Appellants' alleged reliance on Respondents' supposed promise was unreasonable as a matter of law. (Add. at 5-6, 13-14.) Appellants contend that the District Court's ruling "usurped the role of the jury" by deciding the question of reasonableness. (Appellants' Br. at 33.) Appellants' arguments are without merit. The District Court correctly determined that, as a matter of law, it was unreasonable to rely on an alleged promise where the so-called promisor reserved the right to amend the terms of the promise. (Add. at 5-6, 13-14.)

In addition, Appellants have failed to establish any other element of their claim for promissory estoppel. Moreover, given the District Court's decision on the breach of contract claim, at least twenty-nine Appellants cannot maintain an action for promissory

estoppel at all. Therefore, regardless of whether Appellants' alleged reliance was "unreasonable," the Court should still affirm the District Court's grant of summary judgment on Appellants' promissory estoppel claim. *Winkler*, 539 N.W.2d at 828; *Schramm*, 266 N.W.2d at 520.

A. The Elements of Promissory Estoppel

In order to succeed on a promissory estoppel claim, plaintiffs must demonstrate: "1) a clear and definite promise was made, 2) the promisor intended to induce reliance and the promise in fact relied to his or her detriment, and 3) the promise must be enforced to prevent injustice." *Martens v. Minnesota Min. & Mfg. Co.*, 616 N.W.2d 732, 746 (Minn. 2000). Summary judgment is appropriate when a plaintiff fails to demonstrate the existence of any one of these elements. *See, e.g., Simplex Supplies, Inc. v. Abhe & Svoboda, Inc.*, 586 N.W.2d 797, 802 (Minn. App. 1998).

When the facts related to the elements of promissory estoppel are not in dispute, whether they support a claim for promissory estoppel is a question of law for the Court to decide. *Martens*, 616 N.W.2d at 746. When applying promissory estoppel in an employment case, courts follow the Minnesota Supreme Court's admonition not to transform "every utterance unto a binding obligation." *Spanier v. TCF Bank Sav.*, 495 N.W.2d 18, 20 (Minn. App. 1993).

B. Twenty-Nine Appellants Cannot Maintain a Promissory Estoppel Claim

As a threshold matter, twenty-nine Appellants' promissory estoppel claims fail as a matter of law, regardless of whether they can establish any element of that claim. The

alleged promise to pay the insurance benefit at a four percent level was part of an employment contract between those Appellants and the Respondents. In light of that contract, those twenty-nine Appellants cannot maintain a promissory estoppel claim.

The Minnesota Supreme Court has held that "promissory estoppel applies only to agreements implied in law where no contract exists in fact." *Housing and Redevelopment Authority of Chisholm v. Norman*, 696 N.W.2d 329, 337 (Minn. 2005) (internal citations and quotation marks omitted); *see also Del Hayes & Sons, Inc. v. Mitchell*, 275 N.W.2d 588, 293 (Minn. 1975). Instead, promises contained in employment contracts are "enforceable on contract grounds" alone. *Id.; see also UFE Inc. v. Methode Electronics, Inc.*, 808 F.Supp. 1407, 1415 (D. Minn. 1992) (holding that claims for promissory estoppel and breach of contract claims are "mutually exclusive as a matter of law").

In this case, the District Court held that the Policy Manual, as it applied to the twenty-nine Appellants who began tenure with the County prior to 1995, constituted a unilateral employment contract. (Add. at 4-5, 12-13.) The District Court's decision was based on its holding that prior to 1995, the Policy Manual did not contain a clear enough disclaimer of contract formation. (*Id.*) The District Court also held that the County Board had the authority to modify the unilateral contract formed by the Policy Manual, the Board properly exercised that authority when it modified the post-retirement health insurance benefit found therein, and that Appellants "accepted" the modifications to their employment contract by remaining employed or holding County office. (*Id.*) Appellants do not appeal these conclusions. In fact, Appellants positively cite the District Court's ruling for the proposition that the Policy Manual is a contract. (*Id.* at 19.) Thus, there is

no dispute that, except for Runholt, Swalboski, and Williams, Appellants were parties to a contract governing the post-retirement health insurance benefit.[6]

Therefore, as in the *Del Hayes* case, "[t]he doctrine of promissory estoppel is wholly inapplicable here for the simple reason that an actual contract existed." 275 N.W.2d at 593. The alleged promise to pay the insurance benefit at the four percent level is found in the Policy Manual. (*See, e.g.,* App. at 63 (1991 Manual).) Because twenty-nine Appellants were parties to this contract, they cannot maintain a claim for promissory estoppel. *Chisholm*, 696 N.W.2d at 337; *see also Del Hayes*, 275 N.W.2d at 593; *Banbury v. Omnitrition Intern., Inc.*, 533 N.W.2d 876, 881 (Minn. App. 1995) (holding that "promissory estoppel only applies where no contract exists").

In addition, this Court has held, the parol evidence rule prevents employees from relying on evidence of oral agreement with their employer to alter the express terms of a contract. *Jara v. Buckbee-Mears Co., St. Paul, a Unit of BMC Industries, Inc.*, 496 N.W.2d 727, 730 (Minn. App. 1991) *pet. for rev. denied* (Minn. Aug. 2, 1991). "A party cannot use the doctrine of promissory estoppel to alter a contract that is barred by the parol evidence rule." *Banbury*, 533 N.W.2d at 881. Appellants' promissory estoppel arguments are nothing more than an attempt to avoid the parol evidence rule.

The District Court found that twenty-nine Appellants were parties to a contract with the County. (Add. at 4, 12.) The District Court found that the contract reserved to the Board the discretion to modify the terms of that contract and that Appellants accepted

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[6] Runholt, Swalboski, and Williams are the three Appellants hired after 1995. (Add. at 5, 13.)

the Board's changes by remaining employed or in office. (*Id.*) Appellants now attempt to avoid this ruling by alleging that they relied on one or more "collateral promises" that modify the terms of that handbook. The parol evidence rule would have prevented Appellants from arguing that these oral representations modified their actual contract. *Jara*, 496 N.W.2d at 730. The parties' "agreement is clear and complete. The law does not permit [employees], through a promissory estoppel claim, to rely on evidence of oral agreements to alter [their] contract." *Id.* Thus, Appellants' promissory estoppel claim fails as a matter of law. *Id.*; *see also Banbury*, 533 N.W.2d at 881.

C. Appellants' Alleged Reliance on the County's So-Called Promises was, as a Matter of Law, Unreasonable

In order to prevail on their promissory estoppel claim, each Appellant must demonstrate that his or her individual reliance on Respondents' alleged promise was "reasonable." *Nicollet Restoration v. St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). The District Court dismissed Appellants' promissory estoppel claim on the grounds that their alleged reliance was unreasonable as a matter of law. (Add. at 6, 14.) On appeal, Appellants generally argue that this conclusion was erroneous because:
(1) reasonableness of reliance is a fact question for the jury; and (2) the District Court's decision ignores the existence of alleged collateral promises. Neither of these arguments has merit. The District Court properly determined that Appellants' alleged reliance was, as a matter of law, unreasonable.

1. *Reasonableness is not a fact question for the jury when Appellants fail to produce evidence of a disputed fact*

Contrary to Appellants' claim that reasonableness is a fact question, in a promissory estoppel, that where there is a failure of facts supporting the Plaintiffs' claim of reasonable reliance, as in this case, summary judgment is appropriate. Neither the *Nicollet* decision, nor the *Scally* decision cited by Appellants precludes a grant of summary judgment if a plaintiff has failed to provide any evidence of actionable reliance. Thus, the Court may affirm the District Court and dismiss the individual Appellants' promissory estoppel claims on the grounds that Appellants failed to demonstrate such individual reliance.

Appellants misleadingly cite to a fraud case for the proposition that the applicable standard for gauging the reasonableness of their alleged reliance depends on whether Respondents' alleged representations were "calculated to deceive" people of Appellants' capacity and experience. (Appellants' Br. at 23 (citing *Berg v. Xerxes-Southdale Office Bldg. Co.*, 290 N.W.2d 612, 616 (Minn. 1980).) This is not at all the appropriate standard in a promissory estoppel case.

Appellants' citation to the *Berg* case is disingenuous. The *Berg* decision dealt with fraudulent representations, not promissory estoppel. 290 N.W.2d at 616. Appellants have not alleged that the County or any County representative made any misrepresentation or fraudulent statement; nor have they pled any type of fraud. Thus, the *Berg* case is inapposite.

2. *Appellants' alleged reliance on the County's so-called promises was unreasonable as a matter of law*

Appellants allege that they have produced evidence to support their claim that their alleged reliance was reasonable. (Appellants' Br. at 23.) Tellingly, however, Appellants do not identify any such evidence. Instead, Appellants argue that the District Court improperly focused on the language of the Policy Manual as opposed to the so-called collateral promises allegedly made by the County (*Id.* at 23-29.) Appellants' arguments are unfounded. As a matter of law, Appellants' alleged reliance on any promise made by the County or County Board was unreasonable.

a. *The District Court properly found that the language of the Policy Manual rendered Appellants' alleged reliance unreasonable*

Appellants' alleged reliance on the terms of the Policy Manual itself was unreasonable as a matter of law. Federal courts have recognized that it is unreasonable as a matter of law for an employee to rely on an employee handbook that contains a disclaimer of an intent to form a contract. *See, e.g., Mahoney v. Univ. Pediatric Serv., Inc.*, 753 F.Supp.2d 839, 859 (S.D. Iowa, 2010). As the *Mahoney* court held, "no reasonable person would have relied upon representations found in a handbook that were disclaimed in the very same handbook." *Id.* at 859; *see also Chang*, 168 F.Supp.2d 1003 (dismissing a promissory estoppel claim based on an employee handbook containing an at-will contract disclaimer). While the *Mahoney* decision is not binding on this Court, it is nevertheless persuasive. It is simply unreasonable for any Appellant to rely on the existence of a insurance benefit when the Policy Manual that provides the benefit

disclaims its own representations and asserts that the County Board can deviate from, or modify, its terms at will.

Regardless, all Appellants admitted to receiving the post-1991 Policy Manual. (*See 5-6, supra.*) Appellants are adults and certainly have ability and responsibility to read the Policy Manual. Indeed, Appellants admit that they were responsible for reading its terms. (App. Br. at 10, 12.) Appellants cannot claim to have "reasonably" relied on one policy contained in the Manual while ignoring another provision of the same Manual altogether. In fact, as the Federal District Court for the District of Minnesota has recognized, the presence of a disclaimer in an employee handbook, coupled with an employee's failure to read that disclaimer, entitles the employer to summary judgment on promissory estoppel claims arising from the handbook. *Chang v. Cargill, Inc.*, 168 F.Supp.2d 1003 (D. Minn. 2001).

Apparently conceding that their alleged reliance on the Policy Manual was unreasonable, Appellants cite to inapposite theories of law for the proposition that the District Court erred by ignoring Appellants' supposed reliance on so-called collateral promises. (Appellants' Br. at 24-29.) As discussed *infra.*, there were no collateral promises. Moreover, as discussed *supra.*, Appellants' arguments related to those so-called promises violate the parol evidence rule. In any event, Appellants' alleged reliance on any such promise was, as a matter of law, unreasonable.

This Court has held that "appellant[s] could not reasonably rely upon oral representations made by respondent[s], where those representations contradicted the unambiguous terms of [their] written employment contract." *Daig Corp. v. Reich*, 1994

WL 284966, *3 (Minn. App. 1994) (unpublished). (Resp. App. at 165-169.) Similarly, in the context of a fraudulent misrepresentation claim, this Court has held that reliance on a promise is unreasonable as a matter of law if a "written contract provision explicitly stated a fact completely contradictory to the [claimed misrepresentation]." *Johnson Bldg. Co. v. River Bluff Development Co.*, 374 N.W.2d 187, 194 (Minn. App. 1985).

While Appellants fail to identify a specific statement to this effect, the gist of their argument is that the County "promised" that they would receive the post-retirement health insurance benefit at the four percent level identified in the Policy Manual when and if they retired at some indefinite future date. (*See* Amended Complaint, App. at 12.) The Manual, however, expressly reserves the Board's right to alter, revoke, and/or deviate from its terms. (*See, e.g.,* App. at 57 (1991 Manual); 171 (2007 Manual).) Thus, Appellants belief that there is a "promise" that the post-retirement health insurance benefit is irrevocable or unchangeable is directly at odds with the express written terms of the Manual. Therefore, even assuming, *arguendo*, that the County made one or more collateral promises, Appellants' alleged reliance on any such promise was, as a matter of law, unreasonable. *River Bluff*, 374 N.W.2d at 194.

As a matter of law, Appellants' alleged reliance on any supposed promise was unreasonable. Other than their veiled and unsupported allegation that the County should be "equitably estopped" from denying Appellants the insurance benefit, Appellants have presented no evidence that would allow a jury to conclude that their alleged reliance was reasonable. Thus, the Court should affirm the District Court's dismissal of Appellants' promissory estoppel claim. *Nicollet*, 533 N.W.2d at 848.

D. Appellants Have Failed to Demonstrate any Other Element of Their Claim for Promissory Estoppel

The District Court entered summary judgment solely on the grounds that Appellants' alleged reliance on Respondents' alleged promise was not reasonable. (Add. at 5-6, 13-14.) Despite the narrow basis for the District Court's holding, Appellants' Brief addresses every element of promissory estoppel. (*See, generally,* Appellants' Br. at 17-30.) While many of Appellants' arguments are not germane to the District Court's ruling, the Court may affirm the District Court's decision on any grounds. *See, e.g., Schramm*, 266 N.W.2d at 520. As Appellants failed to demonstrate the existence of any element of their claim for promissory estoppel, the District Court's decision should be so affirmed.

1. *Respondents did not make any enforceable promise to Appellants*

The first element of promissory estoppel is the existence of a promise. *Martens*, 616 N.W.2d at 746. The alleged promise must be "clear and definite." *Faimon v. Winona State Univ.*, 540 N.W.2d 879, 882 (Minn. App. 1997). If the Court determines that there was no such promise, the inquiry ends and it must affirm the District Court's entry of summary judgment on Appellants' promissory estoppel claim. *See, e.g., Ruud v. Great Plains Supply, Inc.*, 526 N.W.2d 369, 372, n. 4 (Minn. 1995). There was no such promise in this case.

Appellants' promissory estoppel claim rests upon four alleged promises: (1) the language of the Policy Manual; (2) the County Board's 1997 resolution which restricted the insurance benefit; (3) statements allegedly made by individual County Board

members; and (4) the fact that the County paid retirees the benefit that was contained in the Policy Manual at the time of their retirement. (Appellants' Br. at 17-18.) None of these actions constitutes an enforceable promise.

a. *The Policy Manual does not contain an enforceable promise*

As a threshold matter, the Policy Manual cannot form the basis of the promissory estoppel claims asserted by Runholt, Swalboski, or Williams. The District Court found that, because of the disclaimer language that was in place before the County hired those three Appellants, the Policy Manual did not create an employment contract between them and Respondents. (Add. at 5, 13.) This Court has clearly stated that "if [an employer's] promise was not sufficient to support an employment contract, the promise is also insufficient to support a claim for promissory estoppel." *Aberman v. Malden Hills Industries, Inc.*, 414 N.W.2d 769, 772-73 (Minn. App. 1987); *see also Ruud*, 526 N.W.2d at 372. Thus, because the Policy Manual was not sufficient to create a contract between Respondents and Runholt, Swalboski, or Williams, the Policy Manual cannot form the basis of their promissory estoppel claims. *Id.*

Citing the *Aberman* and *Ruud* cases, Appellants argue that, because the Policy Manual was found to be an employment contract, it also contains an enforceable promise. (Appellants' Br. at 19.)[7] Appellants' argument misrepresents the holdings in those cases. Neither of those cases stands for the proposition that, because an employee handbook constitutes a unilateral contract, its specific provisions are also enforceable "promises."

In the *Ruud* case, the court considered the impact oral statements made by the plaintiff's employer. 526 N.W.2d at 369-371. These statements were along the lines of "good employees are taken care of." *Id.* The *Ruud* court determined that the defendants' statements were not sufficient to create a unilateral offer of permanent employment. 526 N.W.2d at 372. Applying a similar analysis, the court found that the same statements were "simply not clear and definite enough to support a claim for promissory estoppel." *Id.* (internal quotation marks omitted). The *Ruud* court did not consider whether a statement that created a unilateral contract would have been "clear and definite enough" to support the promissory estoppel claim. In fact, given the Minnesota Supreme Court's prior rulings that promissory estoppel is inapplicable when there is an existing contract, it could not have reached such a decision without overturning its past decisions. This, the *Ruud* court did not do.

Likewise, the *Aberman* court found that certain oral statements made by an employer were insufficient to create a unilateral employment contract. 414 N.W.2d at 772. One such alleged statement was very specific: "we are offering you security and you will always have the security that you're going to have Malden Mills to represent." *Id.* at 770. The court found that, in addition to not creating a unilateral employment contract, this type of statement was insufficiently clear or definite to support a claim for promissory estoppel. *Id.* at 772-73.

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[7] While not stated in their Brief, Respondents assume that Appellants' argument is limited to the twenty-nine Appellants for whom the District Court determined that the Policy Manual constituted a contract.

The *Ruud* and *Aberman* cases stand for the proposition that an employer's statement which is not clear and definite enough to form a unilateral employment contract is not an enforceable promise. *See, e.g., id.* Appellants cite the *Ruud* and *Aberman* cases for the inverse of that proposition. There is nothing in either the *Ruud* or *Aberman* decisions that supports Appellants' claims.

Similarly, Appellants mis-cite the *Martens* case for the proposition that the provisions of an employee handbook may constitute an enforceable promise if they are sufficiently definite to allow the court to analyze the employer's conduct to determine "if there has been a breach." (Appellants' Br. at 18 (internal citation omitted).) The portion of the *Martens* decision cited by Appellants, however, pertains to the creation of a unilateral employment contract, not an enforceable promise. *See Martens*, 616 N.W.2d at 742. Contrary to Appellants' interpretation, the *Martens* court simply stated that, in order to be enforceable, a promise must be "clear and definite." *Id.* at 746. With respect to the statement at issue in *Martens*, the court stated that it was a "general framework" and, therefore, not "sufficiently clear and definite to be enforceable." *Id.* at 746.

Like the statements at issue in *Martens*, the terms of the Policy Manual are not "sufficiently clear and definite" to form an enforceable promise. To the contrary, for as long as it has contained the insurance benefit, the Manual has permitted the Board to deviate from its terms. (*See, e.g.,* App. at 17 (1995 Manual).) Such language is inconsistent with a "clear and definite promise" to pay a particular insurance benefit identified in that Manual. Moreover, from 1991 onward, the Manual has expressly

reserved the Board the authority to modify its terms and disclaimed the existence of any contract. (*See, e.g.,* App. at 57 (1991 Manual).)

In a very similar case, this Court rejected claims for breach of contract and promissory estoppel that were based on an employee handbook that reserved to the employer the right to modify its terms and disclaimed the existence of a contract. *Garmaker v. Sterling Elec. Const. Co., Inc.*, 1995 WL 606591, *3 (Minn. App. 1995) (unpublished) (App. at 721-722). While the *Garmaker* case is not precedential, it is nevertheless instructive. In that case, the Court held that, by reserving the authority to modify its terms and disclaiming the existence of a contract, an employee handbook, such as the Policy Manual, "plainly indicate[s] the employer's intent to neither create an obligation, nor to guarantee the availability of future benefits." Without any intent to "guarantee" future benefits, there is no "clear and definite" promise to provide such benefits. *See id.*

Like the handbook in *Garmaker*, the Policy Manual here reserved to the employer the right to deviate from or modify its terms. (*See* App. at 57 (1991 Manual).) Later editions of the Manual also disclaimed the existence of a contract. (*See id.; see also* App. at 79 (1995 Manual); and 121 (1999 Manual); *see also* Appellants' Br. at 7).) Thus, like the employer in *Garmaker*, the Manual does not contain any "clear and definite" promise to guarantee the future availability of the insurance benefit. Consequently, it cannot form the basis of Appellants' promissory estoppel claim.

In addition to the fact that the Policy Manual does not contain any "clear and definite" promise to indefinitely offer a post-retirement health insurance benefit,

Appellants ignore the fact that the Policy Manual did not originally provide for any retiree health insurance benefits at all. (Resp. App. at1-17.) The benefit was added in 1985 at a rate of three percent per year. (App. at 22.) Appellants cannot claim that a policy that initially did not provide any retiree health insurance benefit, and then provided a three percent per year benefit, "clearly and definitely" promised a four percent per year benefit that could not be modified. This is particularly true in light of the fact that for twenty years, beginning with the 1991 modification increasing the amount of the benefit to four percent, the Manual also disclaimed a contract and expressly reserved the Board's right to modify or revoke any policy contained therein. As the *Garmaker* court observed, that reservation of rights "plainly" demonstrated that Respondents did not intend to "guarantee the availability of future benefits." *Garmaker*, 1995 WL 606591, *3.

Appellants' argument that the Policy Manual constitutes an enforceable promise is nothing more than an attempt to pick and choose the provisions of the Manual that they feel should apply to them. They want the benefit that was added in 1991, but ignore the fact that, in adding the benefit, the Board also reserved the authority to revoke or modify it at a later time. Despite Appellants' claims to the contrary, the Policy Manual is not a "promise" to guarantee the availability of future benefits.

b. *The Board's 1997 Resolution was not a promise to any current employee or elected official*

Appellants next assert that the Board's decision to limit the availability of the benefit to those employees hired before May 1, 1997, constitutes an enforceable "promise" to continue to offer the benefit to such employees indefinitely. (Appellants'

Br. at 8, 19.) Tellingly, Appellants' Brief does not contain any argument as to why the Board's May 6, 1997, Resolution constitutes an alleged promise. Any such argument would be unavailing.

The 1997 Resolution modifying the policy in the Policy Manual did not promise to indefinitely offer a four percent per year benefit to employees hired before May 1, 1997. (App. at 541.) Thus, the Resolution merely demonstrates that the Board did not, at that time, choose to modify the benefit for current employees. A statement that, as of May 6, 1997, the Board was continuing to offer a four percent per year post-retirement health insurance benefit to current employees does not amount to a promise, much less a "clear and definite" promise, to indefinitely offer that amount or any specific amount. This is especially true in light of the Board's reservation of its right to change the Policy Manual and various Appellants' admission that the Board never promised to indefinitely offer the same level of benefits. (*See, e.g.,* App. at 659 (Barker admitting that the Board never passed a resolution promising never to reduce the insurance benefit); 562 (Tamara Van Overbeke admitting that the Board can change the policies).) There was no clear and definite collateral promise of anything.

Indeed, if the Court is to consider the Board's conduct in amending its policies as an indicator of a "promise," that conduct unequivocally indicates that no promise was made. Since 1982, the Board has made numerous changes to the Policy Manual. (*See, e.g.,* App. at 57 (1991 Manual).) One of the most significant areas of change in the Manual is that, as time progressed, the Board retained more and more discretion to modify, revoke, or deviate from the policies. (*Compare id.* (1991 Manual) and App. at

171 (2007 Manual).) A promise which contains reservations of rights is not sufficiently "clear and definite" to form the basis of a claim for promissory estoppel. *See, e.g., Ruud*, 526 N.W.2d at 372; *see also Garmaker*, 1995 WL 606591, *3.

Appellants' citation to the minutes of the 1997 Board meeting wherein the Resolution was adopted is similarly unavailing. (Appellants' Br. at 8.) The Board's meeting minutes only reflect its discussion of options, financial constraints, and other policy level considerations that went into the Board's decision to refrain from offering the benefit for employees hired after May 1, 1997. (App. at 692.) As this Court has recognized, such "meeting minutes do not constitute an official action or binding act of [the County] beyond the acknowledgment that the minutes accurately reflect what occurred at the meetings." *Minnesota Cent. R. Co. v. MCI Telecommunications Corp.*, 595 N.W.2d 533, 537 (Minn. App. 1999). As the "meeting minutes do not indicate that [the County], by vote or resolution," promised that the County would indefinitely offer the four percent post-retirement health insurance benefit, they do not independently create any promise to pay that benefit.

c. *Statements by individual Board members are not binding on the County or the County Board as a whole*

Appellants also argue that certain statements regarding the benefit that were allegedly made by individual Board members, sitting on the Board at different points in time, constitute an enforceable promise to pay the four percent per year benefit. (Appellants' Br. at 16, 18, and 24-27.) Appellants' argument is without merit. The

County Board is a government entity that can only be bound by its official actions, i.e. passing resolutions, not the offhand comments of individual Board members.

"The powers of the county as a body politic and corporate shall only be exercised by the county board or in pursuance of a resolution adopted by the county board." Minn. Stat. § 373.02 (2011). In other words, the County as a "governmental entity can only act through the official action of its board." *MCI*, 595 N.W.2d at 537. This Court has previously held that counties cannot be bound by the promises of county employees, even when such employees have the apparent authority to make such promises on the county's behalf. *See, e.g., Morris v. Perpich*, 421 N.W.2d 333, 336 (Minn. App. 1988) (holding that county administrator's promise to pay attorneys' fees was not binding on the county in absence of a resolution by county board). Therefore, the only alleged promises that can be relevant to Appellants' claims are those found in an official action of the Board, contained in a Board resolution. As Barker admitted, the Board never "pass[ed] a resolution saying we will never reduce any benefits in the personnel policy." (App. at 659.) Thus, any statements allegedly made by Board members in their individual capacities are simply irrelevant to Appellants' promissory estoppel claim.

In an effort to avoid this conclusion, Appellants cite the *Mesaba Aviation Div. of Halvorson of Duluth v. Cnty of Itasca*, 258 N.W.2d 877 (Minn. 1977), and the *Williams v. Smith*, 2011 WL 4905629 (Minn. App. 2011) (unpublished) (App. at 743), decisions for the proposition that representations allegedly made by County employees are binding promises by the County, despite the plain language of Minn. Stat. § 373.02 and binding

judicial precedent to the contrary. (Appellants' Br. at 24-27.)[8] Appellants' argument is legally unfounded, and a misrepresentation of legal doctrines.

The *Mesaba* case was not about a "promise." It did not involve promissory estoppel at all. It involved tax advice given by a county attorney. 258 N.W.2d at 878-9. The *Mesaba* court applied the doctrine of equitable estoppel, not promissory estoppel, to holding that the county could not renege on the county attorney's earlier opinion. *Id.* at 880-81. Equitable estoppel is a separate and distinct legal doctrine from promissory estoppel. *See, e.g., Del Hayes & Sons, Inc. v. Mitchell*, 230 N.W.2d 588, 593 (Minn. 1975). Unlike promissory estoppel, equitable estoppel requires a showing of "wrongful conduct on the part of an authorized government agent." *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 25 (Minn. 2011) (internal quotation marks and citations omitted). Appellants did not plead equitable estoppel in their Complaint. (App. at 12-13.) Nor have Appellants argued that any County representative engaged in "wrongful conduct" when discussing the post-retirement health insurance benefit with them. Thus, the doctrine of equitable estoppel is completely inapplicable in this case. Appellants' attempt to drum up an enforceable promise by relying on cases that only involve equitable estoppel is, therefore, at best, unavailing and, at worst, deliberately misleading.

Similarly, the *Williams* case does not address the issue currently before the Court. Citing to past precedent, the *Williams* court held that a government entity acting as a

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[8] Appellants' arguments are directed at showing that their alleged reliance on the County's supposed representations was reasonable. Appellants' arguments presuppose, however, that those representations are enforceable promises. As discussed *infra.*, "reasonableness" of reliance does not depend on the source of the alleged promise.

"private enterprise" is held to the same standards as other private enterprises. *Williams*, 2011 WL 4905629, *6. Specifically, the *Williams* court found that, by operating a profitable basketball team, the University of Minnesota was acting like a "for profit" private enterprise. *Id.* There is absolutely no similarity between the profit-making activities of the University of Minnesota's basketball team and the governmental functions performed by Appellants as employees and elected officials of Lyon County. (*See, e.g.,* App. at 1-6, identifying Appellants' job duties.) Thus, the "century-old law of *Jewel Belting*," that "a party contracting with the government is conclusively presumed to know the extent of authority possessed by the officers with whom they are dealing" is applicable to this case. *Williams*, 2011 WL 4905629, *5-6.

Moreover, the only evidence of alleged promises by County Board Members is ambiguous hearsay statements, which are not clear and definite. (*See, e.g.,* Appellants' Br. at 11-13.) Hearsay statements cannot defeat a motion for summary judgment. *Blackwell v. Eckman*, 410 N.W.2d 390, 391 (Minn. App. 1987).

Finally, despite their sweeping assertion that various County representatives made promises to Appellants as a group, they have failed to identify a specific promise made by the County Board to any individual Appellant that the insurance benefit would not be changed. In fact, Barker admitted that the County Board did not make any such promise. (App. at 659.) Further, even assuming *arguendo*, that such a statement had been made, Appellants failed to identify any Appellant who relied on any such statement. Thus, even if the Court were to disregard statutory and judicial precedent, the Court must disregard any alleged promises.

d. *Payments to previously retired employees do not constitute a promise to employees who have not yet retired*

The fourth alleged promise identified in Appellants' Brief is the County's practice of paying retirees the post-retirement health insurance benefit that was contained in the Policy Manual at their time of retirement. (Appellants' Br. at 18.) Again, Appellants do not even attempt to argue how these payments to particular retirees constitute "promises" to individuals who have not yet retired. Frankly, Appellants' contention is preposterous.

The payment of a benefit to a particular employee while a policy was effective is irrelevant to the payment of a different benefit to another employee who retires when a different policy is in effect. Appellants do not cite any law or fact in support of this theory. Nor do they even attempt to argue that the County's past payment of benefits represents a "clear and definite" promise to offer the same benefit to non-retired employees. Their argument that because one group of people received a benefit other people are entitled to rely on it and receive the same benefit is wholly unreasonable.

2. *Appellants did not rely on any alleged promise to their detriment*

In order for their promissory estoppel claim to survive summary judgment, each Plaintiff must individually identify concrete evidence to support the claim that they relied on the County's alleged promise to never reduce or revoke the post-retirement health insurance benefit contained in the Policy Manual. *See, e.g., Martens*, 616 N.W.2d at 746 (listing elements of promissory estoppel). To make this showing, Appellants assert that they relied on the County's alleged promise by: (1) making certain financial decisions; and (2) making certain "professional decisions," including refraining from seeking other

employment and turning down other jobs. (*See, e.g.*, Appellants' Br. at 20-21.) Citing the Court's decision in *Hoyt. Props., Inc. v. Prod. Res. Grp., L.L.C.*, 716 N.W.2d 366 (Minn. App. 2006), Appellants allege that their alleged reliance on the County's supposed promises is a question for the jury. (Appellants' Br. at 20.)

Appellants overstate the *Hoyt* court's holding and ignore both fact and law to make this assertion. The *Hoyt* case involved a claim of fraudulent misrepresentation, not promissory estoppel. 716 N.W.2d at 372-375. The portion of the *Hoyt* case quoted in Appellants' Brief relates to the question of the "reasonableness" of the *Hoyt* plaintiff's reliance on the allegedly fraudulent statement. *Id.* at 375. Here, there was no fraudulent statement, nor have Appellants alleged that a fraudulent statement was made. Moreover, actual evidence was brought forward in the *Hoyt* case which raised a fact question. *Id.* In contrast, as discussed herein, Appellants have produced no such evidence.

a. *Appellants failed to demonstrate that they made any financial decisions in reliance on the County's alleged promise*

Appellants broadly allege that they made financial decisions, including retirement planning decisions, in reliance on the County's alleged promise to continue to offer the insurance benefit at the four percent level. (Appellants' Br. at 11-12, 20.) As discussed, *supra.*, Appellants have failed to produce any evidence to support this assertion, or even identify specific transactions or financial decisions that were allegedly made in reliance of that so-called promise. Instead, Appellants generally speculate that Paradis and Zvorak would have saved more or spent differently had they known the benefit policy was subject to change by the Board. (Appellants' Br. at 12.) The other thirty Appellants

continue to rely on their Answers to Respondents' Interrogatories for the vague assertion that they made various, unidentified financial planning decisions in reliance of the benefit. (App. at 360-366.) Moreover, not a single Appellant produced any evidence to support the existence of any alleged financial decision. (*See* App. at 366.) As Appellants admit, there are no documents to support these alleged acts of reliance. (*Id.*)

This Court has specifically held that "plaintiff must allege specific, affirmative evidence and may not rely on unsupported allegations of fact" to establish the reliance element of a promissory estoppel claim. *See, e.g., Moga v. Shorewater Advisors, LLC*, 2009 WL 982237 (Minn. App. 2009) (unpublished) (Resp. App. at 153-161); *see also Simplex Supplies*, 586 N.W.2d at 802 (affirming summary judgment on promissory estoppel claim where plaintiff failed to establish reliance element). Thus, Appellants' general, speculative, and unsupported allegations of alleged financial reliance could not have defeated a grant of summary judgment. *DLH*, 566 N.W.2d at 69; *see also Gutbrod*, 529 N.W.2d at 723.

In an effort to distract attention from their failure to provide any evidence of actual financial reliance, Appellants cite to *Mower County* for the proposition that "Courts have found that this type of reliance is sufficient to support a claim for promissory estoppel." (Appellants' Br. at 21.) Appellants' reliance on *Mower County* is completely misplaced.

As admitted by Appellants, the *Mower County* decision involved a collective bargaining agreement, not a claim for promissory estoppel. (Appellants' Br. at 21.) Moreover, the plaintiffs in *Mower County* had already retired. 483 N.W.2d at 701. Upon their retirement, the Mower County represented to those plaintiffs that they had "satisfied

the eligibility conditions for insurance benefits." *Id.* Thus, the court concluded that "the County of Mower is estopped from denying that the collectively bargained agreement in force at the time of the retirement of Baker and other similarly situated *retirees* provides insurance benefits..." *Id.* (emphasis added).

In the instant case, the insurance benefit policy provides that payments will be made "upon retirement." (*See, e.g.,* App. 63 (1991 Manual).) Unlike the *Mower County* plaintiffs, no Appellant retired prior to the February 3, 2009, change to the insurance benefit policy. Thus, unlike the *Mower County* plaintiffs, Appellants have not "satisfied the eligibility requirements" for receiving that benefit. The *Mower County* case, therefore, cannot support Appellants' arguments. Appellants' continued reliance on the *Mower County* is both factually and legally inaccurate.

b. *Appellants did not provide any evidence to support their claim that their so-called professional decisions constitute detrimental reliance*

Appellants generally claim that they made "professional decisions" based on the alleged promise. (Appellants' Br. at 12-15, 20.) These "professional decisions" included not seeking out new employment, or turning down other jobs. (*Id.*) This is not a class action. Each Appellant must demonstrate that their individual alleged "professional decisions" constitute detrimental reliance. None of the Appellants have made this showing.

As discussed *supra.*, the only "professional decisions" allegedly made by twenty-four Appellants was their continued employment with the County. (page 10, *supra.*) As this Court has held, these twenty-four Appellants' so-called professional

reliance is not actionable as a matter of law. *Dumas v. Kessler & Maguire Funeral Home*, 380 N.W.2d 544, 548 (Minn. App. 1986). Indeed, "where an at-will employee merely continues to work and does not claim to have turned down any offers of employment based upon an employer's representations, no reliance will be found." *Hanks v. Hubbard Broad, Inc.*, 493 N.W.2d 302, 309 (Minn. App. 1992). In *Dumas*, an employee claimed he was promised that he would only be terminated for good cause, and that he relied upon this promise to his detriment by continuing to work for his employer. 380 N.W.2d at 548. This Court rejected this contention, stating that the employee failed to demonstrate detrimental reliance since he "merely continued to work" for the employer. *Id.*

Like the plaintiffs in the *Dumas* and *Hanks* cases, Appellants generally contend that they relied on the County's alleged promise by continuing to remain employed, and/or not seeking other jobs while employed by the County. To the extent that their promissory estoppel claims are based on this alleged reliance, they fail as a matter of law. *Id.; see also Hanks*, 493 N.W.2d at 309.

Appellants attempt to circumvent this conclusion by citing to the cases of *Faimon v. Winona State University*, 540 N.W.2d 879 (Minn. App. 1995) and *Williams v. Heins, Mills & Olson, PLC.*, 2010 WL 3305017 (Minn. App. 2010). (Appellants' Br. at 20-21.) Appellants' argument is based on a misreading of these two cases.

In *Faimon*, the Court found that the failure to look for outside employment in light of promises related to a *specific* job during a *specific* time period "may" support a promissory estoppel claim. The case did not address the sufficiency of the plaintiff's

alleged reliance. 540 N.W.2d at 882. In multiple other cases, however, this Court has unequivocally held that simply continuing to work for an employer does not constitute sufficient reliance to support a claim for promissory estoppel. *Dumas v. Kessler & Maguire Funeral Home*, 380 N.W.2d 544, 548 (Minn. App. 1986); *see also Hanks*, 493 N.W.2d at 309; *Heins*, 2010 WL 3305017; *Erickson v. Cannon Valley Co-op*, 1999 WL 262124, *2 (Minn. App. 1999) (unpublished). (Resp. App. at 162-164.) Thus, Appellants' decision not to explore other employment options does not constitute actionable reliance. *Id.* Instead, each Appellant must demonstrate that he or she turned down a concrete offer for employment. *Hanks*, 493 N.W.2d at 309.

Similarly, Appellants' citation to the *Heins* case is misleading. While the *Heins* plaintiff had originally pled promissory estoppel, the only claim on appeal was his misrepresentation-by-omission claim. *Heins*, 2010 WL 3305017 at *3. Moreover, the *Heins* case involved an appeal of a motion for judgment as a matter of law, not summary judgment. The standard of review was thus substantially different in the *Heins* case than the instant action. *See, e.g., id.* (identifying standard of review).

Further, the *Heins* court did not overturn the *Hanks* decision. Instead, the court found that plaintiff's actions of turning down another job, and increasing his own job efforts at personal expense constituted sufficient evidence of reliance to support a jury verdict. *Id.* at *5. Thus, despite Appellants' citation to the contrary, the *Heins* case does not stand for the proposition that merely remaining employed is sufficient to assert a claim for detrimental reliance.

Finally, those three Appellants who actually turned down a job offer did not submit any evidence to show that such a decision was "detrimental" or made in reliance on the existence of the post-retirement health insurance benefit. (*See* 10-12, *supra.*) Each of these Appellants testified that the jobs in question would have paid less money, required relocation, had questionable prospects, or otherwise was actually inferior to their job with the County, even without taking into consideration the insurance benefit. (*Id.*) Moreover, these offers were remote in time and had uncertain job security, making any claim of detriment reliance speculative. *(Id).* Even assuming for the sake of argument that these three particular Appellants did establish that they relied on an alleged promise to their detriment, such reliance does not form a basis for the claims asserted by the other thirty Appellants. This is not a class action, each Appellant must demonstrate his or her own unique "detrimental reliance."

c. *Appellants' subjective perception of the alleged promise is not detrimental reliance*

In their Brief, Appellants claim that they felt that they are entitled to the insurance benefit at the four percent rate and that they relied on it because they thought that they had "earned" it. (*See, e.g.,* Appellants' Br. at 14-15.) Appellants' subjective belief as to the nature or availability of the benefit, however, is not reliance. Moreover, such belief is directly contrary to the language of the Policy Manual. The Policy Manual does not refer anywhere to the insurance benefit as earned by employees. (*See, e.g.,* App. at 63 (1991 Manual).)

The employees in *Roberts v. Brunswick Corp.* also argued that their employer could not retroactively affect vacation benefits which they had already "earned," despite the language in the applicable Policy Manual that clearly told the employees that the policy could be changed. *Roberts v. Brunswick Corp.*, 783 N.W.2d 226, 229-30 (Minn. App. 2010). This Court soundly rejected that argument.

Like the vacation benefit in *Roberts*, the perception of certain Appellants that they had been "promised" that the Board would not change the amount of the insurance benefit does not constitute reliance. It does not demonstrate any action or omission made based upon a clear and definite promise.

Appellants have failed to produce any evidence of any actual reliance, detrimental or otherwise, to support their allegations that they detrimentally relied on any alleged promise made by the County. Appellants, therefore, failed to refute Respondents' summary judgment motion by demonstrating a genuine issue of material fact on the reliance question. *See DLH*, 566 N.W.2d at 69; *see also Gutbrod*, 529 N.W.2d at 723. Because there is no fact question for the jury to consider on this point, the Court may affirm the District Court's grant of summary judgment on the grounds that Appellants failed to demonstrate reliance. *Simplex Supplies*, 586 N.W.2d at 802.

3. *Enforcing the alleged promise will not prevent injustice*

Finally, Appellants assert that the Court must enforce the alleged promise to prevent injustice. (Appellants' Br. at 29-30.) Appellants cite the *Christensen* decision in support of that contention. Appellants' reliance on *Christensen* is misplaced.

In *Christensen*, the Legislature changed a statute related to retirement age for pensions. Christensen had already retired. The Minnesota Supreme Court found that for employees like Christensen who had "already left city employment" and retired, promissory estoppel would be applied. The Supreme Court expressly limited its holding to those employees who had already retired at the time the statute was changed. *Christensen* at 751.

Unlike *Christensen*, none of the Appellants had retired at the time the insurance benefit policy was changed in February 2009. In fact, the Appellants had been aware of the prospective change to the insurance benefit policy for months; as demonstrated by the public meetings, statements by the Board of Commissioners that it was considering changing the policy and some Appellants' alternate proposals in the record. Despite this, the Appellants chose not to retire and take advantage of the existing four percent insurance benefit before the February 3, 2009, change to three percent went into effect. (Resp. App. at 137-138, 143-144, 147-150.) Thus, unlike the *Christensen* plaintiffs, Appellants will not suffer any injustice if the change to the Policy remains in effect.

Moreover, as the District Court held, Appellants "accepted" the modification to the insurance benefit by remaining employed. (Add. at 5, 13.) Appellants received the Policy Manual which reserved to the Board the right to change its terms, knew that the Board had altered the terms of the benefit policy in the past, and remained employed after the Board altered the post-retirement health insurance benefit. (5-6, *supra.*) No injustice results from holding Appellants to the terms which they accepted.

IV. RESPONDENTS WERE ENTITLED TO SUMMARY JUDGMENT ON APPELLANTS' IMPAIRMENT OF CONTRACT CLAIM

In relevant part, the Minnesota Constitution provides that "[n]o bill of attainder, ex post facto law, or any law impairing the obligation of contracts shall be passed, and no conviction shall work corruption of blood or forfeiture of estate." Minn. Const. Art. 1, § 11. "The initial question [in evaluating Contract Clause claims] is whether the state law has, in fact, operated as a substantial impairment of a contractual obligation." *In re Individual 35W Bridge Litigation*, 787 N.W.2d 643, 652 (Minn. App. 2010) *aff'd* 2011 WL 5964496 (Minn. November 30, 2011) (quoting *Christensen*, 331 N.W.2d at 750-51). Finding that Appellants had no "contract" or "vested" rights to the insurance benefit, the District Court dismissed Appellants' constitutional claim at this threshold step. (Add. at 7-8, 15-16.)

Appellants contend that the District Court's decision was erroneous for three reasons: (1) Appellants have quasi-contract rights which the District Court ignored; (2) Appellants had a vested right to the four percent per year benefit; and (3) there are material fact questions that prevent summary judgment. (Appellants' Br. at 30-33.) None of these arguments has merit. The District Court properly dismissed Appellants' unconstitutional impairment claim.

A. Regardless of their Alleged Source, Appellants did not Possess any Rights to the Insurance Benefit

As Appellants argue, courts have found that the contracts clause applies to quasi-contracts created by the doctrine of promissory estoppel as well as traditional contracts. *Christensen*, 331 N.W.2d at 750. The District Court, however, dismissed

Appellants' breach of contract claims and promissory estoppel claims. (*See, generally,* Add.) In effect, the Court found that Appellants had no rights, of any type, upon which to base their constitutional claim. Appellants have not appealed the Court's dismissal of their breach of contract claims. Thus, if the Court affirms the District Court's dismissal of the promissory estoppel claims, it need not address the constitutional claim in any detail as there will be no rights upon which to base said claim. *See, e.g., In re Individual 35W Bridge Litigation*, 787 N.W.2d at 652.

In addition, prior to their response to Respondents' Summary Judgment Motion, Appellants did not plead or assert that constitutional claim was based on their alleged quasi-contract rights. It was too late to make this assertion during the summary judgment process. *See, e.g., Willis v. Citizens State Bank of Silver Lake*, 399 N.W.2d 626, 628 (Minn. App. 1987). Thus, the District Court should not have even considered Appellants' alleged quasi-contract rights in connection with their breach of contract claims.

Contrary to Appellants' position, the District Court did, however, consider their alleged quasi-contract rights with regard to the constitutional claim. The District Court simply found that, regardless of their source, all of Appellants' supposed rights had not "vested" as of February 3, 2009. (Add. at 7-8, 15-16.) Thus, regardless of their source, Appellants' alleged rights did not support their constitutional claim. (*Id.*) As discussed below, the District Court's conclusion is correct.

B. Appellants' Alleged Rights to the Insurance Benefit Were not "Vested"

As the District Court recognized, "[i]t has long been the law in Minnesota that a public employee has no "contract right" nor does such employee have any "vested" right to pension or similar benefits until the date that employee retires." (Add. at 7, 15(citations omitted).) The District Court's decision is directly in line with binding precedent. *See, e.g., Chisholm*, 696 N.W.2d at 338; *see also Mower County*, 483 N.W.2d at 701; *Christensen*, 331 N.W.2d at 749; *Sherman v. Whirlpool Corp.*, 386 N.W.2d 221, 225 (Minn. 1986) (recognizing that "no constitutional concerns arise" when plaintiff's alleged contract rights had not yet vested as of statutory amendment); *Lincoln Ben. Life Co. v. Heitz*, 468 F.Supp.2d 1062, 1067 (D. Minn. 2007) (holding that "[t]o establish a contractual relationship subject to the [United States Constitution's] Contract Clause, a party must first demonstrate that the contract gave her a vested interest, not merely an expectation interest").

Appellants argue that, unlike the cases in which the Minnesota Supreme Court has found that post-insurance benefits vest only upon retirement, "the amount of the benefit is determined each year." (Appellants' Br. at 30.) Appellants' argument is devoid of relevant citation to fact or law, and is directly contrary to both the language of the alleged promise that they claim forms the basis of a "quasi-contract" and the apposite cases.

As the Minnesota Supreme Court recently held, contract rights "vest" once the "liabilities under that right have been so far determined that *nothing remains to be done by the party asserting it*." *Halla Nursery, Inc. v. City of Chanhassen*, 781 N.W.2d 880, 886 (Minn. 2010) (emphasis added). Even ignoring the Supreme Court's decisions that

specifically invalidate Appellants' claim that their alleged contract benefits had vested, Appellants have failed to satisfy this general test. Thus, the Court must conclude that any interest they may have had in the insurance benefit was not vested.

In this case, the (pre-2009) benefit Policy states that "any employee or elected official hired on a full-time basis or elected to office prior to May 01, 1997 and *retiring while in active service* shall be entitled to four percent (4%) per year of service towards their health insurance premium..." (App. at 204 (2007 Manual) (emphasis added).) Thus, in order to be entitled to the benefit, an employee must "retir[e] while in active service." This is an "all or nothing" proposition. If an employee retires while in active service, he or she gets the full amount of the benefit. If the employee does not retire, he or she gets nothing. Until such an employee retires something "remains to be done." Thus, until the employee retires, the right to the four percent benefit has not vested, regardless of whether the employee or employer may be able to ascertain the amount of the benefit that the employee would likely receive upon retirement. Indeed, even Appellants have characterized the alleged promise as a "promise to [Appellants] that, *upon their retirement*, Lyon County would pay 4% of their health insurance premiums for every year that each [Appellant] worked for the County." (App. at 12 (emphasis added).)

Like the insurance benefits at issue in *Mower County*, *Christensen*, and *Chisholm*, County employees and elected officials must actually retire to obtain any post-retirement health insurance benefit. Appellants did not retire prior to the Board's modification of the insurance benefit policy. Thus, Appellants' alleged right to the four percent post-retirement health insurance benefit had not vested as of that date. The County's

method of calculating the amount of that benefit simply does not change that conclusion; nor have Appellants offered any argument as to why it should. The District Court properly dismissed Appellants' constitutional claim for lack of a vested right.

C. There Were No Material Fact Questions

Appellants contend that the District Court improperly granted summary judgment on their constitutional claim because the second and third prongs of the judicial balancing test for such claims are "questions of fact inappropriate for summary judgment." (Appellants' Br. at 32.) Appellants' argument fails because the District Court dismissed their constitutional claim for failure to identify any "vested" right. (Add. at 7-8, 15-16.) There were no rights on which it could apply the balancing test identified by Appellants. Thus, the outcome of the alleged fact questions identified in Appellants' Brief were immaterial and would not have impacted the District Court's decision. *Sayer v. Minn. Dept. of Transp.*, 790 N.W.2d 151, 162 (Minn. 2010).

D. The Court May Affirm the District Court's Dismissal of the Constitutional Claims on Different Grounds

Even if it disagrees with the District Court's determination that Appellants did not possess vested rights to the insurance benefit, the Court may still affirm the District Court's dismissal of the constitutional claim if it concludes that the District Court reached the right outcome. *See, e.g., Schramm*, 266 N.W.2d at 520. In this case, the County presented the District Court with two alternative arguments that it did not discuss in its decision. (*See* App. at 410-412 (Respondents' Summary Judgment Brief); *see also* App.

at 448-450 (Respondents' Reply Brief).) The Court could affirm the District Court's decision on either of these bases.

First, the Contract Clause applies only to "laws." Minn. Const. Art. 1, § 11. While this Court found that the Board's action amending the insurance benefit policy was "quasi-legislative," rather than "quasi-judicial," the amendment itself was simply not a "law" within the meaning of the Contract Clause. Because it did not enact any "law" when the Board amended the insurance benefit policy, Appellants' constitutional claim must fail.

Second, Appellants remained employed by the County, or else continued to hold County office, after the Board's February 3, 2009, modification to the insurance benefit policy became effective. By staying employed, Appellants assented to the modification of their alleged contract rights. *See, e.g., Roberts v. Brunswick Corp.*, 783 N.W.2d 226, 231, 233 (Minn. App. 2010) *review denied* (Minn. 24 Aug. 2010). It "is elementary that where all parties to a contract mutually agree, by conduct or express words, to amend, rescind, or abrogate a contract, in whole or in part, such mutual action does not impair the obligation of contract." *Minneapolis Gas Co. v. Zimmerman*, 91 N.W.2d 642, 656 (Minn. 1958). Because Appellants assented to the Board's February 3, 2009, modification of the insurance benefit policy, the Board's changes to that policy cannot constitute an impairment of contract. *Id.*

CONCLUSION

Appellants' claims are factually unsupported and legally unfounded. In an effort to make up for these failings, Appellants make misleading citations to inapposite law and

sweeping, generalized, factual assertions. The District Court properly dismissed all of Appellants' claims. For the foregoing reasons, Lyon County and the Lyon County Board of Directors respectfully request that the Court affirm the District Court's award of summary judgment on all counts.

Respectfully submitted,

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