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STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1205

Thomas Ellis,
Relator,

vs.

BlueSky Charter School,
Respondent.

Filed April 20, 2010
Affirmed; motion denied
Crippen, Judge[*]
Dissenting, Halbrooks, Judge

BlueSky Charter School

Marshall H. Tanick, Teresa J. Ayling, Mansfield, Tanick & Cohen, P.A., Minneapolis, Minnesota (for relator)

Mary M.L. O'Brien, Debra L. Weiss, Meagher & Geer, P.L.L.P., Minneapolis, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Kalitowski, Judge; and Crippen, Judge.

U N P U B L I S H E D O P I N I O N

CRIPPEN, Judge

Challenging his termination as director of respondent BlueSky Charter School, relator Thomas Ellis argues that the termination breached his contract with respondent.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Because the contract unambiguously established relator's position as at-will employment, we affirm.

FACTS

In November 2008, the parties signed an employment agreement providing that relator was to serve as the director of the school for the 2008-09 school year. The title of the agreement states the dates "July 01/2008-June 30/2009."

The first sentence of the agreement lists the administrative positions to which the agreement applies and states, "This is a general **at will agreement**." (Emphasis in original.) Yet the agreement provides that "[p]ositions will automatically renew for one year after one year of service unless specific actions are taken by the board before April 15th of each year." It defines the work year as 220 days from July 1 to June 30, and provides for proration in terms of a new hire within the "financial year."

Respondent terminated relator's contract at a meeting of its board of directors on May 7, 2009. The board met in a closed session to "discuss allegations" against relator, but respondent's counsel advised the board that it could simply reconvene the open meeting "and do what [it] wish[es] to do under the at-will contract." Counsel also discussed the option of granting relator a paid leave of absence to allow for negotiations. When the open meeting reconvened, counsel asked relator if he wanted to make a statement. According to the minutes, "[relator] stated that he knew his employment contract was at will, that no cause for termination need be stated, and that he wanted to

act in the best interests of the school." (Emphasis removed.)[1] The members voted for relator's immediate termination, after a failed motion by one member to place relator on a paid leave. After the meeting, relator wrote to the board secretary denying that he had stated he knew his employment could be terminated without cause. The content of his comments at the meeting was approved unaltered at the subsequent meeting.

Relator challenges his termination by writ of certiorari, claiming that respondent violated the contract and statutory requirements, and that respondent owes him certain amounts for the breach and other payments.

D E C I S I O N

Relator argues that, under his contract, because his contract was terminated after April 15, 2009, respondent was obligated to employ him for the remainder of the 2008-09 school year and through the 2009-10 school year. He seeks damages for pay he was owed as of May 2009 and thereafter through the school year ending in 2010. He also seeks future damages for lost benefits and diminution in value of retirement benefits, as well as severance pay and other amounts associated with termination.

If the contract established "at will" employment, respondent did not breach the contract by terminating relator without cause. A decision by a school board will not be overturned unless it is "fraudulent, arbitrary, unreasonable, not supported by substantial evidence on the record, not within the school board's jurisdiction, or is based on an

[1] Most of the given quotation appeared entirely in capital letters. Part of relator's subsequent objection to the minutes stated that he "do[es] not speak in capital letters." When the minutes were approved at the subsequent meeting, the approval included a motion to type relator's quoted language instead "in a normal lower case format."

erroneous theory of law." *Ganyo v. Indep. Sch. Dist. No. 832*, 311 N.W.2d 497, 500 (Minn. 1981). Interpretation of a contract is a question of law reviewed de novo. *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004).

The aim of contract interpretation is to discern the intent of the parties. *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 323 (Minn. 2003). When the intent is expressed in language that is clear and unambiguous, the plain meaning of the language controls. *Id.* "A contract is ambiguous if, based upon its language alone, it is reasonably susceptible of more than one interpretation." *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003). The courts must construe a contract so as to give meaning to all of its provisions. *Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995). Contract terms will not be construed as to lead to a harsh and absurd result. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998).

In Minnesota, an employment contract of indefinite duration is generally interpreted to be a contract for employment at will, which may be terminated at any time without cause. *Pine River State Bank v. Mettille*, 333 N.W.2d 622, 628 (Minn. 1983). Conversely, an employment agreement for a fixed term is generally interpreted as terminable only for cause. *Thomsen v. Indep. Sch. Dist. No. 91*, 309 Minn. 391, 393, 244 N.W.2d 282, 284 (1976). Express language may override these general rules of interpretation. *See Pine River State Bank*, 333 N.W.2d at 628 (discussing contractual rights of parties to expressly agree on job-security provisions); *see generally Martens v. Minnesota Mining & Mfg. Co.*, 616 N.W.2d 732, 741-42 (Minn. 2000) (discussing *Pine*

River in context of whether terms in employee handbook are "sufficiently definite" to create unilateral employment contract).

The employment agreement of the parties unambiguously declared "at will" employment. Without qualification or limitation, the first line of the agreement states that it is a "general at will agreement covering the [listed] positions." (Emphasis omitted.) The words "at will agreement" are the only terms that appear in bold type in the text of the contract. The at-will phrase is definite and overrides this general rule of construction.

Relator contends that two aspects of the contract are incompatible with at-will employment: the agreement defines a term of one year, and it includes a provision for automatic renewal.

The agreement refers to a work year from July 1, 2008 to June 30, 2009. The dates appear in the heading and in a paragraph detailing pay periods and proration of salaries. Relator argues that these references establish a fixed-term contract. Although the contract is not expressly declared an agreement for a set term, the references to start and end dates, standing alone, would likely be sufficient to establish a term contract terminable only for cause. *See Kvidera v. Rotation Eng'g & Mfg. Co.*, 705 N.W.2d 416, 421-22 (Minn. App. 2005) (interpreting similar references in employment contract). But the written contract in *Kvidera* did not include "at will" language, and had replaced a prior, unwritten, at-will contract. *Id.* at 418. The court in *Kvidera* otherwise reaffirmed that the general rule for construing indefinite contracts is overcome by express terms in a contract. *Id.* at 421. We are persuaded with the corollary to this principle. The plain

language of the "at will" phrase overrides the general rule for construing a fixed-term contact, expressly replacing any implication that might have been drawn from the reference to start and end dates.

The asserted tension between the at-will declaration and the stated dates of service does not create ambiguity. The agreement states an ending date of service yet permits one party to end the agreement before then. *See Current Tech. Concepts*, 530 N.W.2d at 543 (stating that contract must be construed to give all terms meaning). But the contract makes it evident that there may be a purpose to provide starting and ending dates without establishing a fixed term. Thus, for example, although an at-will administrator may be terminated at any time, he profits to know the longest he could possibly stay under existing terms. Similarly, the end date in this agreement serves to force annual renegotiation of important terms like salary and benefits.[2]

This construction is both reasonable and necessary to give effect to the bold language on at-will employment in the 2008 agreement. *See Reierson v. City of Hibbing*, 628 N.W.2d 201, 204, (Minn. App. 2001) (holding that language permitting employer to terminate services of employee at any time for any reason "clearly indicates" at-will employment). The parties expressly created and plainly intended an at-will position. Relator acknowledged as much in the meeting resulting in his termination. In addition, the language of the agreement reinforces the presumption of at-will employment in the

[2] The dates serve other purposes as well. For administrators in particular, where the work extends before and after the dates of the school year itself, start and end dates are practical necessities. Also, the dates facilitate provisions to calculate the pro rata segment of salary.

absence of clear language establishing some measure of job security. *See Alexandria Hous. & Redevelopment Auth., v. Rost*, 756 N.W.2d 896, 903 (Minn. App. 2008) (stating presumption for at-will contracts in absence of express language on right not to be terminated except for cause); *Gunderson v. Alliance of Computer Prof'ls, Inc.*, 628 N.W.2d 173, 182 (Minn. App. 2001) (same), *review granted* (Minn. July 24, 2001) *and appeal dismissed* (Minn. Aug. 17, 2001). This presumption coincides with common understanding by employers and employees in Minnesota of the impact of at-will employment. *See Cederstrand v. Lutheran Bhd.*, 263 Minn. 520, 532, 117 N.W.2d 213, 221 (1962) (stating that "[t]he usual employer-employee relationship is terminable at the will of either; the employer can summarily dismiss the employee, the employee is under no obligation to remain at the job").

Turning to the automatic-renewal clause of the agreement, relator suggests that respondent could elect without cause not to renew his position, but had to do so before April 15, 2009, otherwise it could not terminate his employment for the subsequent year—that in this sense the automatic renewal clause undermines the at-will provision of the agreement.

For reasons that include many already stated respecting the term of the agreement, this construction is unreasonable and produces an absurd result. The employment of relator for the 2008-09 school years was determined by the November 2008 agreement, not the renewal of a prior contract. The new contract, openly addressing the current school year, was declared at will. Employing relator's construction, termination in May 2009, which was certainly permitted, would be effective until the end of June 2009, but

relator would be reemployed for the ensuing year. Reading the provisions together, the parties could not reasonably have intended such a relationship.

Relator avoids this reasoning by arguing that employment was not at-will even for the current school year (2008-09). But this argument renders the at-will clause entirely meaningless. And relator also would avoid the unreasonable construction by arguing that the at-will phrase applies during the new-hire period established in the agreement but not thereafter. This contention also employs an untenable construction. In its ninth paragraph, the agreement gives new hires (for four months) a right to two weeks' notice (or salary for two weeks) if they are to be terminated, and the contract does not state that termination depends on good cause. But it is unreasonable to conclude that the phrase "[t]his is a general at will agreement" only refers to the new-hire provision, despite the at-will clause's placement at the beginning of the document, its bold lettering, the seven intervening paragraphs between the two provisions, and the absence of any language to otherwise explain application to new hires but not to others.

To the extent the damages relator seeks are based on a breach of his employment agreement, he is not entitled to recover because his position was at-will. Relator has also suggested in his brief that respondent owed him unpaid sums before he was terminated; because such obligations were neither presented to nor considered during the decision relator challenges, we have no occasion to address them. *See Dokmo v. Indep. Sch. Dist. No. 11*, 459 N.W.2d 671, 673 (Minn. 1990) (stating that certiorari review is limited to questions about "the order or determination [made by the administrative body] in a particular case").

Similarly, relator asks us to address his claim that respondent violated statutory requirements by not paying him wages or benefits owed upon termination, whether or not it breached the contract. *See* Minn. Stat. § 181.13, subd. (a) (2008) (stating that discharged employee, upon demand, is entitled to wages "actually earned and unpaid at the time of the discharge."). Because jurisdiction for this claim lies with the district court, we do not address it here. Minn. Stat. § 181.171, subd. 1 (2008) (permitting civil action for violation of section 181.13); *see also Willis v. County of Sherburne*, 555 N.W.2d 277, 282 (Minn. 1996) (holding that district court has jurisdiction for public employee's common law and statutory claim addressing issues distinct from grounds for his termination).

Lastly, we address a motion by respondent to strike portions of the appendix to relator's brief. The record of the decision appealed from includes relator's objection to the minutes of the meeting at which he was terminated and the subsequent approval of those minutes by the board. *See Dokmo*, 459 N.W.2d at 676 (stating that record for certiorari review must be the "proceedings" and action of the decision-making body). We deny the motion to strike with respect to pages 26 and 31 of relator's appendix. We have not found it necessary to rely on any of the other documentation provided by relator; accordingly, as it relates to the remaining documentation that relator seeks to strike, the motion is denied as moot. *See Drewitz v. Motorwerks, Inc.*, 728 N.W.2d 231, 233 n.2 (Minn. 2007) (denying motion as moot).

Affirmed; motion denied.

HALBROOKS, Judge (dissenting)

I respectfully dissent because I find this agreement to be ambiguous. The agreement would be clear but for the addition of the words "at will," and I do not think their addition to an agreement can override the internal contradiction the words create. The resulting terms are inherently in conflict and susceptible to reasonable disagreement about what the parties intended. In particular, I do not believe that an employee who signs an agreement with an automatic renewal clause reasonably intends to acquiesce in termination at will.

Even with a complete record of extrinsic evidence about the agreement, it would be difficult to discern what the "at will" clause was intended to mean. The most we have in this record is the statement that the board attributes to Ellis in its meeting minutes. Ellis, however, denies having acknowledged that his employment was at will. At the very least, I would remand to the board to create a complete record on the meaning of the agreement's terms and the parties' intent. *See Dokmo v. Indep. School Dist. No. 11*, 459 N.W.2d 671, 676 (Minn. 1990) (stating that school board has obligation "to make a sufficient record to prove its actions were justified."). Alternatively, I would apply the well-established rule that ambiguity is to be construed against the drafter. *Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995). Because it was the school that inserted the conflicting phrase—without altering other language or addressing the inherent contradictions—I would give the phrase a limiting construction and conclude that the school breached its agreement.