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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001518-MR

JANET CROPPER — APPELLANT

v.

APPEAL FROM BRACKEN CIRCUIT COURT
HONORABLE STOCKTON B. WOOD, JUDGE
ACTION NO. 13-CI-00024

SAINT AUGUSTINE SCHOOL;
REV. GREGORY BACH; AND
ROMAN CATHOLIC DIOCESE
OF COVINGTON — APPELLEES

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: ACREE, CHIEF JUDGE; CLAYTON AND KRAMER, JUDGES.

CLAYTON, JUDGE: This is an appeal from a decision of the Bracken County Circuit Court finding that the Appellees, Roman Catholic Diocese of Covington and Saint Augustine School, did not breach its contract with the Appellant, Janet

Cropper. Based upon the following, we reverse the decision of the trial court and remand this action for further proceedings.

BACKGROUND SUMMARY

Cropper was employed by the Roman Catholic Diocese of Covington (hereinafter "Diocese") to act as Principal at Saint Augustine School for the 2011-2012 academic year. Her employment was through a contract and on May 9, 2012, she accepted a contract for the following year under the same terms. On August 4, 2012, Cropper was informed by the Pastor for the Saint Augustine Parish, Father Gregory Bach, that her position had been eliminated and her employment was terminated. Cropper then filed an action with the Bracken Circuit Court asserting that the Diocese had breached its employment contract with her.

The parties submitted Motions for Summary Judgment to the trial court and the trial court found for the Diocese on the Breach of Contract claim, the Tortious Interference claim, and the unjust enrichment claim and granted, in full, their motion.[1] Cropper then filed this appeal on the breach of contract claim.

STANDARD OF REVIEW

In reviewing the granting of summary judgment by the trial court, an appellate court must determine whether the trial court correctly found "that there were no genuine issues as to any material fact and that the moving party was

[1] The court granted Cropper's motion to alter, amend, or vacate its judgment on the unjust enrichment claim; therefore, the unjust enrichment claim is not an issue on appeal. The Tortious Interference claim was also not appealed.

entitled to judgment as a matter of law." Kentucky Rules of Civil Procedure (CR) 56.03.

"[A] trial court must view the evidence in the light most favorable to the nonmoving party, and summary judgment should be granted only [when] it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor. [While] [t]he moving party bears the initial burden of [proving] that no genuine issue of material fact exists, . . . the burden shifts to the party opposing summary judgment to present 'at least some affirmative evidence showing that there is a genuine issue of material fact for trial.'" *Community Trust Bancorp, Inc. v. Mussetter*, 242 S.W.3d 690, 692 (Ky. App. 2007). With this standard in mind, we review the merits of Cropper's appeal.

Since summary judgment deals only with legal questions as there are no genuine issues of material fact, we need not defer to the trial court's decision and must review the issue *de novo*. *Lewis v. B&R Corp*., 56 S.W.3d 432, 436 (Ky. App. 2001).

DISCUSSION

Cropper asserts that the dismissal of her breach of contract claim by the trial court through summary judgment was erroneous. In order to establish a breach of contract claim, the plaintiff must show that 1) a contract existed; 2) that the contract was breached; and 3) damages resulting from the breach. *Barnett v. Mercy Health Partners-Lourdes, Inc.*, 233 S.W. 3d 723, 727 (Ky. App. 2007).

Both parties agree there was a contract. They argue over the existence of the breach.

In determining that there was no breach of contract when Cropper's employment was terminated, the trial court looked to the Diocesan Reduction in Staff Policy which provides as follows:

> Reduction in staff may be necessitated by reason of decreased enrollment, suspension of schools, subject areas or grade levels or for financial reasons. If the Superintendent of Catholic Schools and/or the local school authority deems it necessary to reduce the number of staff, they shall have the authority to make reasonable reduction.

The trial court opined that this policy does not require approval from the Superintendent of Catholic Schools before the contract is terminated nor does it provide for an appeal.

While the trial court set forth that Cropper's contract with the Diocese did not "specifically refer to the Reduction in Staff Policy or include a separate provision for employment termination based on staff reduction," it opined that various teacher contracts that Cropper submitted as evidence do contain such a clause:

> The School shall have the authority to make necessary reductions in staff due to decreased enrollment or elimination of schools, subject areas, or grade levels.

The trial court held:

> "[t]his reduction in staff provision in the teacher contracts does not specifically refer to the Diocesan Reduction in Staff Policy. Other provisions in both Cropper's Employment Contract and the various

teacher contracts contain provisions that refer to the corresponding Diocesan Policies, including salary provisions (P4530) and duties and job descriptions (P4154). Cropper testified she assumed that the Diocesan Reduction in Staff Policy only applied to teachers, although no one told her that the policy 'did not apply to principals.'"

The trial court continued as follows:

> That Plaintiff's Employment Contract does not include a provision for reduction in staff or refer to the Diocesan Reduction in Staff Policy is not itself sufficient evidence to prove that Plaintiff was not subject to the Reduction in Staff Policy. There are many other contract-related Diocesan Policies to which Plaintiff's Employment Contract is subject that are not referred to on the face of her Employment Contract, including provisions regarding contract verification (P4320, P4324), offers (P4330), signing (P4334), release (P4336), concurrent contracts (4338), and mutual termination of contracts (P4340). All of these provisions specifically apply to administrators as well as teachers, but are not referred to in Plaintiff's Employment Contract or the submitted teacher contracts. The Reduction in Staff Policy does not state whether it applies to administrators and teachers alike.
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> The Diocesan Reduction in Staff Policy is listed after the Diocesan Appeal Procedure and does not include language that provides for an appeal. That the Contract Termination Policy provides for an appeal and the Reduction in Staff Policy does not makes sense; an employee's right of appeal regarding accusations of misconduct allows the employee an opportunity to be heard and protects the employer from accusations of wrongful termination. A decision to reduce staff, however, is not a reflection on the conduct of the employee, but rather a method of reducing expenses. Allowing an employee the opportunity to be heard does not change the fact that the school does not have the money to continue to fund a particular position. Plaintiff's employment was not terminated under either

> Section 7 of her Employment Contract or the Diocesan Contract Termination Policy, and thus she is not entitled to an appeal.

"[T]he construction and interpretation of a contract, including questions regarding ambiguity, are questions of law to be decided by the court…" *Frear v. P.T.A. Industries, Inc.*, 103 S.W.3d 99, 105 (Ky. 2003)(quoting *First Commonwealth of Prestonsburg v. West*, 55 S.W.3d 829, 835 (Ky. App. 2000)). Absent an ambiguity in a contract, the court must strictly construe the contract terms and assign ordinary meaning to the terms within the four corners of the document. *Morganfield National bank v. Damien Elder & Sons*, 836 S.W.2d 893, 895 (Ky. 1992).

The trial court did not find there was an ambiguity in Cropper's contract with the Diocese. In fact, in denying Cropper's Motion to Vacate on the breach of contract claim, the trial court set forth that it "…determined only the application of the Reduction in Staff policy; it did not provide a meaning to ambiguous terms in a contract or analyze the intent of the parties. Plaintiff had notice of the Diocesan Policies when she signed her second contract for employment…even though she may have incorrectly assumed the policy did not apply to her." Trial Court Order of August 13, 2014, at p. 2.

Thus, the trial court did not find an ambiguity within the contract and should, therefore, have strictly construed its meaning. While the trial court looked to what Cropper was not, but should have been, aware of as well as the inclusion of the Reduction in Staff Policy in other contracts, these were not included in

Cropper's contract. Therefore the trial court erred in dismissing her action against the Diocese under summary judgment. The Diocese also contends that Cropper's breach of contract claim is barred by the First Amendment of the United States Constitution. Specifically, that the ministerial exception applies in this case. The trial court rejected this argument, as do we.

Under the First Amendment, only issues such as church government, membership, discipline, or theological issues are not subject to the intervention of courts. A contract claim such as the one before us is not subject to the ministerial exception. *Kant v. Lexington Theological Seminary*, 426 S.W.3d 587 (Ky. 2014). Thus, we hold the ministerial exception does not apply in this case.

Therefore, we reverse the decision of the trial court and remand for further proceedings.

KRAMER, JUDGE, CONCURS.

ACREE, CHIEF JUDGE, CONCURS IN RESULT ONLY.

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