STATE OF MICHIGAN

COURT OF APPEALS

RICHARD ROBINSON, SHERYL MITCHELL, and ANALINE POWERS, Plaintiffs-Appellants,	UNPUBLISHED February 24, 2004
v	No. 241748 Wayne Circuit Court
CITY OF DETROIT, Defendant-Appellee.	LC No. 99-928112-CK

Before: Donofrio, P.J., and Griffin and Jansen, JJ.

PER CURIAM.

Plaintiffs, Richard Robinson, Sheryl Mitchell, and Analine Powers appeal as of right an order granting summary disposition in favor of defendant, City of Detroit ("the city") in this employment classification case. On appeal, plaintiffs argue that summary disposition in favor of defendant was inappropriate because the trial court engaged in impermissible fact-finding, dismissed the case *sua sponte* on a basis not raised by the parties, refused to allow plaintiffs to substitute parties, and finally, failed to rule on the legal issues. We disagree and affirm.

Plaintiffs are three individuals who performed services for the city under a series of personal services contracts at various times since 1982. Plaintiffs Powers and Mitchell worked as an "appointed contract workers" on the staff of Detroit City Councilman Mel Ravitz from 1985 to 1997. Plaintiff Robinson worked for various city council members under a series of personal service contracts from 1982 apparently through 2002.

In late 1999, plaintiffs filed a complaint for declaratory and injunctive relief against the city on behalf of themselves and other similarly situated individuals. Although the claim was initially brought on behalf of other similarly situated individuals, plaintiffs' subsequent motion for class certification was never granted for the reason it was moot in light of the trial court first hearing and granting defendant's motion for summary disposition.

In their complaint, plaintiffs asserted they were actually employees of the city "for purposes of compensation and benefits." Plaintiffs sought a declaratory judgment, injunctive relief, and damages asserting they had been wrongfully denied participation in employee pension and benefit plans sponsored by defendant for its employees. Plaintiffs demanded the court order the city to classify each of plaintiffs as employees and make them "whole for all damages

occasioned by their previously improper classification as independent contractors or employees of third-party employment agencies."

The city denied plaintiffs were employees for the purposes of the receipt of its various pension, health, and other benefit plans. The city filed a motion for summary disposition pursuant to both MCR 2.116(C)(8) and (C)(10) arguing that all of plaintiffs' claims were invalid because each of plaintiffs had signed personal service contracts where each agreed, by the express terms of the contract, to receive an hourly rate that compensated them for wages, pension, and fringe benefits. The city stated that plaintiffs had absolutely no basis to argue they were entitled to receive additional benefits when they had already been compensated under the terms of their express contracts. The city also pointed to its charter where it specifically excludes "individuals whose services are compensated on a contractual or fee basis" from the city's pension and fringe benefit plans.

Plaintiffs replied stating that the legal issues raised were appropriate for summary resolution and stated that there were no materials facts in dispute. Plaintiffs argued that the city's use of the exclusionary language found in the plans undermined the fundamental purpose of the retirement and benefit systems because it allows the city to exclude everyone it chooses to compensate on a contractual basis without regard to the reality of their actual "employment" status.

After entertaining the arguments on the motion for summary disposition the court found the crux of the case was "whether or not the plaintiffs in this case are considered contractual workers or employees." The court granted the city's motion for summary disposition finding that, after reviewing the city's retirement and employee benefits plans, plaintiffs were not employees pursuant to those plans and declined to reclassify what it called "contractual individuals" to "employee" status. The court granted the city's motion for summary disposition on all counts and found the class certification motion moot. Shortly thereafter, the circuit court signed an order dismissing plaintiffs' subsequent motion to substitute class representatives because the question was moot.

On appeal, plaintiffs first argue that the court engaged in impermissible fact-finding when it found plaintiffs were not employees. A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the claim by the pleadings alone and may not be supported by documentary evidence. *Kokx v Bylenga*, 241 Mich App 655, 660; 617 NW2d 368 (2000). All factual allegations in the complaint are accepted as true, as well as reasonable inferences and conclusions that can be drawn from the facts. *Id*. The motion should be granted only when the claim is so clearly unenforceable that no factual development could justify recovery. *Id.*

By contrast, a motion for summary disposition under MCR 2.116(C)(10) tests the factual support of a claim. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). The reviewing court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the nonmoving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The court should grant the motion only if the affidavits or other documentary evidence show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id*.

In this case, it is not clear under which of the subrules the trial court determined defendant was entitled to summary disposition. However, both parties attached documentary evidence to their briefs. For this reason, we can presume the trial court's decision was reached at least in part based on the standard for summary disposition under MCR 2.116(C)(10). A trial court may not make findings of fact or weigh credibility in deciding a motion for summary disposition. *Johnson v Wayne Co*, 213 Mich App 143, 149; 540 NW2d 66 (1995); *In re Peterson*, 193 Mich App 257, 261; 483 NW2d 624 (1992).

Plaintiffs' claim that the trial court engaged in impermissible fact-finding when it determined plaintiffs were not "employees" is error. Contrary to plaintiffs' assertion that the trial court engaged in impermissible factfinding, as correctly pointed out by the city, the question of plaintiffs' employment classification was a question of law and was properly addressed and answered by the trial court. The court ruled plaintiffs were not "employees" as it related to the city's pension and employee benefit plans. The court specifically stated as part of its bench opinion, that:

> [T]he court did have a chance to review the retirement system plan and the employee benefits plan and both of those plans say that employees, or should I say people who are excluded from employees, are those who have contractual relations or fee relations.
>
> And looking at both of those plans, again, on their face and looking at them individually, the Court would conclude that none of the plaintiffs are employees pursuant to those plans. And some of the cases referred to by plaintiff talk about or present situations where there's a conflict between the contract and the benefits plan that's set up or the plan that the plaintiff is seeking to get into. And in cases where there's a conflict or there's some ambiguity, that's usually resolved in plaintiff's favor.
>
> But in this case the Court really does not see any conflict between the contract that was entered into and the plans that the plaintiffs are seeking to ultimately get into with the assistance of being called employees.

The interpretation of a contract is a question of law. *Archambo v Lawyers Title Insurance Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002). A review of the record reveals that the court reviewed the personal service contracts, the pension plan, and the employee benefits plan. The court then appropriately made a determination of law regarding, for purposes of those benefit plans, whether plaintiffs could be considered employees under the express provisions of the plans at issue. This was clearly a determination of law, and the trial court did not err.

Plaintiffs next argue that the trial court's *sua sponte* summary dismissal was based on a ground not briefed or argued by the parties was legal error. Plaintiffs argue, in conjunction with their first issue, that the trial court's decision was based on the factual question of whether plaintiffs were "employees," an issue not raised or brought before the court. We disagree.

The issue of plaintiffs' proper employment classification was the heart of the case. It was raised in the complaint and answer, was thoroughly briefed by both parties, and was argued during oral argument before the court. In fact, plaintiffs' counsel stated during oral argument:

"This case is for proper classification, reclassification of their status according to reality." To which the court questioned: "You mean from contractual PSC[1] people to employees?" And plaintiffs' counsel responded, "To employee, right. And once they were reclassified properly as they should have been all along according to their status in reality, then if the pension plan wouldn't let 'em [sic] in or says no, we're not gonna [sic] cover you, I don't care if you're an employee, then we have a different litigation maybe against the pension plan itself."

Again, the interpretation of a contract is a question of law. *Archambo, supra,* 466 Mich 408. The trial court correctly engaged in a review of the contracts involved and made a determination of law regarding whether plaintiffs could be considered employees under the express provisions of the plans at issue. This was a determination of law that was not only at issue, but was, as admitted by plaintiffs' counsel, the core issue of the case. As such the trial court did not err when it addressed the issues before it.

Plaintiffs also argue that the trial court abused its discretion when it denied plaintiffs' motion to substitute class representatives. Plaintiffs point to MCR 2.202(D) for the proposition that the trial court erred when it refused to permit the substitution of class representatives in this case. MCR 2.202(D), entitled "Substitution at Any Stage" states as follows:

> Substitution of parties under this rule *may* be ordered by the court either before or after judgment or by the Court of Appeals or Supreme Court pending appeal. If substitution is ordered, the court may require additional security to be given. [Emphasis added.]

The rule uses the term "may" meaning that the decision to allow plaintiffs to substitute parties rests squarely within the trial court's discretion. An abuse of discretion is found only in extreme cases in which the result is so palpably and grossly violative of fact and logic that it evidences perversity of will, a defiance of judgment, or the exercise of passion or bias. *Barrett v Kirtland Community College*, 245 Mich App 306, 325; 628 NW2d 63 (2001).

Our review of the record reveals that the personal service contracts at issue were essentially boiler plate contracts and were almost exactly the same aside from the variable terms of the contracts including names, dates, and amount of compensation. As was determined in the previous issues, the issues involved in the case were questions of law that would have remained constant regardless of the name of the plaintiff. As such, the trial court did not abuse its discretion when it decided not to allow plaintiffs to substitute parties in this case.

Finally, plaintiffs argue the trial court committed legal error when it failed to rule on the legal issues raised in the summary disposition motion. Plaintiffs urge this Court to remand the case for ruling on those legal issues. It is the city's position that the question of plaintiffs' employment classification was the crux of the case and was properly addressed and answered by the trial court when it granted summary disposition on all counts to the city.

---

[1] Personal Service Contract

The proper interpretation of a contract and whether its language is ambiguous are questions of law subject to de novo review. *Rossow v Brentwood Farms Development, Inc*, 251 Mich App 652, 658; 651 NW2d 458 (2002). In determining whether a contract provision is ambiguous, the language used is given its ordinary and plain meaning. *Id.* at 658. Ambiguity exists if the words may reasonably be construed in different ways. *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 496; 628 NW2d 491 (2001). "Absent an ambiguity or internal inconsistency, contractual interpretation begins and ends with the actual words of a written agreement." *Id*. When a phrase is unambiguous and no reasonable person could differ with respect to its application, summary disposition is appropriate. *Rossow, supra* at 658.

Our analysis begins with the provisions of the personal service contracts at issue. There are two relevant sections, and they are as follows:

> 3.01 The relationship of the Contractor to the Agency is to be that of an independent contractor and no liability or benefits, such as retirement benefits or liabilities, pension rights or liabilities, insurance rights or liabilities, holiday pay, sick pay, vacation pay, personal injury or property insurance rights or liabilities, or such other rights, provisions or liabilities arising out of a contract of hire or employer-employee relationship either express or implied shall arise or accrue to either party as the result of this agreement and undertaking. The Contractor shall, under no circumstances, represent himself (herself) as an employee of the Agency or the City of Detroit.
>
> ***
>
> 6.01 The Agency agrees to pay the Contractor for the services performed hereunder an hourly rate not to exceed $ ___ per hour, a daily rate not to exceed $ ___ per diem, and a maximum sum not to exceed $ ___ for the life of this contract. It is understood and agreed by the parties hereto that the compensation stated above is inclusive of any and all remuneration to which the Contractor may be entitled and that the Contractor shall not receive any fringe benefits INCLUDING BUT NOT LIMITED TO OVERTIME PAY, HOLIDAY PAY, SICK PAY, VACATION PAY, RETIREMENT BENEFITS, PENSION BENEFITS, AND INSURANCE BENEFITS in addition to or in lieu of those expressly stated herein.

Next, at issue are the applicable provisions in the city charter. "The rules governing the construction of statutes apply with equal force to the interpretation of municipal ordinances." *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998). This Court's goal in interpreting either statutes or ordinances is to give effect to the intent of the enactors. *Warren's Station v Bronson*, 241 Mich App 384, 388; 615 NW2d 759 (2000). We do so by examining the plain language used in the enactment. *Id*. This Court is directed by the Legislature that "[a]ll words and phrases shall be construed and understood according to the common and approved usage of the language." MCL 8.3a. "If the language is clear and unambiguous, the courts may only apply the language as written." *Brandon Charter Twp v Tippett*, 241 Mich App 417, 422; 616 NW2d 243 (2000), citing *Ahearn v Bloomfield Charter Twp*, 235 Mich App 486, 498; 597 NW2d 858 (1999).

Regarding the definition of "employee," the Detroit City Charter states in Title IX, Chapter VI, Art. III:

> Sec 1.2(a) "Employee" means any regular and/or permanent officer, agent, or person in the employ of the City, except as provided in paragraph (b) of this section.
>
> Sec 1.2(b) The term "employee" shall not include (1) individuals whose city services are compensated on a contractual or fee basis . . . .

And about membership in the city's retirement system, the city charter states in Title IX, Chapter VI, Art. IV:

> Sec. 1 Composition.
>
> The membership of the Retirement System shall consist of the following:
>
> (a) . . . [A]ll persons who are employees of the City shall become members of the Retirement System.

Regarding membership in the employee benefits plan, the charter states in Title IX, Chapter VIII, Sec. 1:

> The City of Detroit Employees Benefit Plan (hereinafter referred to as the plan) is hereby established for the purpose of providing hospital and surgical benefits to employees of the City and death benefits under the provisions of this Charter amendment.

It furthermore states in Title IX, Chapter VIII, Sec. 8:

> Except as herein provided, the membership of the plan shall include
>
> (1) all officers and employees of the city who were employed by the city on the day preceding the effective date of the plan and who continue in the employ of the city on and after the effective date of the plan; and (2) all individuals who become employed by the city in and after the effective date of the plan, except as herein provided.
>
> (a) *Employees not included in membership*. The following employees shall not be included in the membership of the plan:
>
> (1) Individual whose city services are compensated for on a contractual or fee basis . . . .

Our review of the language of the individual personal service contracts as well as pertinent sections of the Detroit City Charter reveal the language of both the contract and the charter are unambiguous. According the terms of the contract and the pertinent sections of the charter their plain and ordinary meaning, we find no ambiguities or inconsistencies regarding the definition of the term "employee," or which individuals may or may not be included in that

definition for purposes of both the retirement plan and the employee benefits program. In applying the language of both the personal service contracts as well as the relevant provisions of the city charter as written, the trial court correctly ruled on the legal issues of this case. Plaintiffs are contractual individuals and not employees of the city under the explicit terms of their individual personal service contracts that each agreed to and signed. After reaching this conclusion, and applying the congruent terms of the city charter, we find that plaintiffs do not fall within the group of individuals that qualify for membership in either the retirement plan or the employee benefits program. In sum, the circuit court did not err when it found plaintiffs not "employees" for the purposes of the pension and benefit plans and properly ruled on the legal issues raised in the summary disposition motion.

Because there are no ambiguities or inconsistencies, this Court must not look outside the four corners of the contract or past the clear language of the charter. With this issue resolved as such, the trial court correctly refused to reclassify plaintiffs to "employees" and properly granted summary disposition to the city on the remainder of plaintiffs' claims including breach of contract, breach of fiduciary duty, equal protection violations, and violations of public policy.

Affirmed.

/s/ Pat M. Donofrio
/s/ Richard Allen Griffin
/s/ Kathleen Jansen