STATE OF MICHIGAN

COURT OF APPEALS

PAULA ZUEHLKE,

Plaintiff-Appellant,

v

IMPACT AUTO COLLISION, INC., and ROBERT ZUEHLKE,

Defendants-Appellees.

UNPUBLISHED
March 31, 2009

No. 281842
Genesee Circuit Court
LC No. 06-084334-CZ

Before: Saad, C.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's orders granting defendants' motions for summary disposition. Because we conclude that the trial court properly granted summary disposition to defendants on plaintiff's claim for shareholder oppression, but erred in granting summary disposition to defendants on plaintiff's breach of contract and tortious interference with a contract claims, we affirm in part, reverse in part, and remand for further proceedings.

I. Basic Facts and Procedural History

In 1989, plaintiff Paula Zuehlke (Paula) and defendant Robert Zuehlke (Robert), then a married couple, incorporated defendant Impact Auto Collision, Inc. (Impact), a collision repair shop. Paula and Robert were equal and the sole shareholders of Impact. They divorced in February 2005, and each continued to work at Impact after the divorce. However, on February 18, 2006, Robert, as president of Impact, fired Paula from her administrative position at Impact.

Paula sued Robert and Impact, asserting claims of shareholder oppression, breach of contract, and tortious interference with a contract. The trial court, holding that the amendment of MCL 450.1489 did not apply retroactively, granted summary disposition to Robert and Impact under MCR 2.116(C)(8) on Paula's claim for shareholder oppression. The trial court granted summary disposition to Robert and Impact under MCR 2.116(C)(10) on the remaining claims. The trial court held that there was no genuine issue of material fact that Paula was an at-will employee of Impact and that Impact benefited from Paula's termination.

II. Shareholder Oppression

Paula claims that the trial court erred in holding that the 2006 amendment to MCL 450.1489 did not apply retroactively. We disagree.

A

We review de novo a trial court's decision on a motion for summary disposition. *Adair v Michigan*, 470 Mich 105, 119; 680 NW2d 386 (2004). Summary disposition is proper under MCR 2.116(C)(8) if the "opposing party has failed to state a claim on which relief can be granted." A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Corley v Detroit Bd of Educ*, 470 Mich 274, 277; 681 NW2d 342 (2004).

B

Paula alleged that her termination constituted "willfully unfair and oppressive conduct" within the meaning of the shareholder oppression statute, MCL 450.1489. In February 2006, at the time of Paula's termination, MCL 450.1489 provided:

> (1) A shareholder may bring an action in the circuit court of the county in which the principal place of business or registered office of the corporation is located to establish that the acts of the directors or those in control of the corporation are illegal, fraudulent, or willfully unfair and oppressive to the corporation or to the shareholder. . . .
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> (3) As used in this section, "willfully unfair and oppressive conduct" means a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the shareholder as a shareholder. The term does not include conduct or actions that are permitted by an agreement, the articles of incorporation, the bylaws, or a consistently applied written corporate policy or procedure.

In *Franchino v Franchino*, 263 Mich App 172, 173-174, 185-186; 687 NW2d 620 (2004), this Court held that MCL 450.1489 only protects a shareholder's interest as a shareholder, and because the termination of a shareholder's employment does not affect the shareholder's interest as a shareholder, MCL 450.1489 does not allow a shareholder to recover for harm suffered as an employee.

However, in March 2006, the Legislature amended MCL 450.1489 by adding the following sentence to section 3: "Willfully unfair and oppressive conduct may include the termination of employment or limitations on employment benefits to the extent that the actions interfere with distributions or other shareholder interests disproportionately as to the affected shareholder." 2006 PA 68. "In determining whether a statute should be applied retroactively or prospectively only, the primary and overriding rule is that legislative intent governs. . . . [S]tatutes are presumed to operate prospectively unless the contrary intent is clearly manifested." *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 583; 624 NW2d 180 (2001) (quotations, internal citation, and alternation omitted).

There is nothing in the language of 2006 PA 68 suggesting a legislative intent that the amendment be applied retroactively. The amendment contains no express language regarding retroactivity. The Legislature has shown on several occasions that it knows how to make clear its intention that a statute apply retroactively. See *id.* at 584, citing MCL 141.1157 ("This act shall be applied retroactively.") and MCL 324.21301a ("The changes in liability that are provided for in the amendatory act that added this subsection shall be given retroactive application."). Hence, there is a presumption that the amendment to MCL 450.1489 operates prospectively only. *Id.* at 583.

Paula argues that, because the amendment to MCL 450.1489 is remedial and it did not create any new substantive rights, the amendment should be applied retroactively. "[S]tatutes which operate in furtherance of a remedy or mode of procedure and which neither create new rights nor destroy, enlarge, or diminish existing rights are generally held to operate retrospectively unless a contrary legislative intent is manifested." *Id.* at 584 (quotation omitted). However, contrary to Paula's argument, the amendment affected existing substantive rights. It enlarged the scope of conduct that constitutes willfully unfair and oppressive conduct. See *id.* at 584-586. Accordingly, the amendment to MCL 450.1489 cannot be applied retroactively as a remedial amendment. The trial court did not err in granting summary disposition to defendants on Paula's claim for shareholder oppression.

III. Breach of Contract and Tortious Interference with a Contract

Paula argues that the trial court erred in granting summary disposition to Robert and Impact on her claims for breach of contract and tortious interference with a contract under MCR 2.116(C)(10) because factual disputes exist as to whether she had a just-cause employment contract with Impact and whether Impact benefited from her termination. We agree.

A

Summary disposition is proper under MCR 2.116(C)(10) where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001). "There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008). We are liberal in finding a genuine issue of material fact. *Lash v Allstate Ins Co*, 210 Mich App 98, 101; 532 NW2d 869 (1995).

B

"Generally, and under Michigan law by presumption, employment relationships are terminable at the will of either party." *Lytle v Malady (On Rehearing)*, 458 Mich 153, 163; 579 NW2d 906 (1998). "The presumption of employment at will is overcome with proof of either a contract provision for a definite term of employment, *or* one that forbids discharge absent just cause." *Id.* at 164 (emphasis added). Thus, even if the employment contract is for an indefinite duration, the employee is not an at-will employee if there is a contract provision forbidding discharge absent just case. See *Rood v Gen Dynamics Corp*, 444 Mich 107, 117 n 14; 507 NW2d 591 (1993) ("Contracts for 'permanent' or 'lifetime' employment are considered contracts for an indefinite duration and therefore *presumptively* terminable at the will of either

party.") (emphasis added). Accordingly, the trial court incorrectly reasoned that, merely because it concluded that Paula's employment contract with Impact was for an indefinite duration, Paula was an at-will employee.

A plaintiff can establish a contract provision forbidding discharge absent just cause by presenting evidence of "an express agreement, either written or oral, regarding job security that is clear and unequivocal." *Lytle, supra* at 164. Below, Paula argued that the "many conversations" she and Robert had about both of them working at Impact until they retired and sold Impact created a factual dispute about the existence of an express agreement regarding her job security with Impact. When analyzing oral statements, the key question is the meaning a reasonable person would have assigned to the language under the circumstances. *Rood, supra* at 119. All relevant circumstances, including all writings, oral statements, and other conduct by which the parties manifested their intent, must be considered. *Lytle, supra* at 171.

Here, Paula and Robert formed Impact after they had been married for several years. They were equal and the sole shareholders of Impact, and both had worked at Impact since its inception. According to Paula, she believed she had a continued right to employment at Impact because of the "many conversations" she and Robert had about them working at Impact together until they retired and sold the business. Robert admitted that, before he and Paula divorced, he assumed that both of them would work at Impact until they retired or sold the business. In addition, after the divorce, Robert, in an e-mail to Paula, set forth a plan in which he and Paula would continue to work at Impact as "business owners/partners."[1] Under these unique circumstances, in which the terminated employee was one of two shareholders and the second shareholder was her ex-husband, the evidence presented by Paula creates a factual dispute regarding whether there was an express agreement that she had a just-cause employment contract with Impact. Accordingly, the trial court erred in granting summary disposition to defendants on Paula's breach of contract claims.

C

"The elements of tortious interference with a contract are (1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant." *Health Call of Detroit v Atrium Home & Health Care Services, Inc*, 268 Mich App 83, 89-90; 706 NW2d 843 (2005). A corporate agent is not liable for tortious interference with the corporation's contracts unless he acted solely for his own benefit with no benefit to the corporation. *Reed v Michigan Metro Girl Scout Council*, 201 Mich App 10, 13; 506 NW2d 231 (1993).

Robert testified that Impact's "[r]evenues were down, costs were up" and, as president of Impact, he needed to make a decision "on surviving financially." He chose to fire Paula because she was "the least productive employee at the time." According to Robert, the "company documents," which we assume is the "Statement of Revenues for the Years Ended June 30, 2006

[1] MRE 408 does not bar the admission of Robert's e-mail. The e-mail is not evidence of an offer by Robert to compromise Paula's claims for breach of employment contract.

and 2005," demonstrates that the termination of Paula resulted in savings to Impact. The Statement of Revenues does show that officer salaries dropped from $162,830 in 2005 to $49,632 in 2006. It also shows that Impact's total operating expenses dropped in 2006. However, there is no information in the record explaining how the lower amounts in officer salaries and total operating expenses can be attributed to Paula's termination.[2] In addition, more than a year after he terminated Paula, Robert increased his salary from $1,150 a week to $1,500 a week, and he was forced to hire a receptionist because Impact needed an office helper. Moreover, Paula was Robert's ex-wife, and the two had reached a point where they would not talk to each other. Under these circumstances, we cannot say that defendants are entitled to judgment as a matter of law on the basis that Impact benefited from the termination of Paula. Accordingly, the trial court erred in granting summary disposition to defendants on Paula's claim for tortious interference with a contract.

Affirmed in part, reversed in part, and remanded for further proceedings. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra

[2] We note that if the $113,198 difference in the officer salaries between 2005 and 2006 is classified as Paula's yearly salary, Paula made more than double the amount in salary than Robert earned.