[Cite as *Sylvester v. Turning Point Counseling Servs., Inc.*, 2021-Ohio-1284.]

# IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

JOSEPH A. SYLVESTER,

Plaintiff-Appellant,

v.

TURNING POINT COUNSELING SERVICES, INC.,

Defendant-Appellee.

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**OPINION AND JUDGMENT ENTRY**
**Case No. 19 MA 0134**

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Civil Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2018 CV 46

**BEFORE:**
Cheryl L. Waite, Carol Ann Robb, Judges and Judge Timothy P. Cannon, Judge of the Eleventh District Court of Appeals, Sitting by Assignment.

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**JUDGMENT:**
Affirmed.

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*Atty. Thomas J. Wilson*, Comstock, Springer & Wilson Co., L.P.A., 100 Federal Plaza East, Suite 926 Youngstown, Ohio 44503-1811, for Plaintiff-Appellant and

*Atty. Adam V. Buente*, The Law Office of Adam V. Buente, LLC, 841 Boardman-Poland Road, Suite 307, Boardman, Ohio 44512, for Defendant-Appellee.

Dated: January 28, 2021

**WAITE, J.**

**{¶1}** Appellant, Joseph Sylvester, appeals the decision of the Mahoning County Common Pleas Court to grant summary judgment in favor of Appellee, Turning Point Counseling Services, Inc. in a breach of employment contract action brought by Appellant. Based on the following, we conclude the trial court did not err in granting Appellee's motion for leave to file summary judgment nor in granting Appellee summary judgment. No genuine issue of material fact exists regarding whether Appellant's employment contract had expired or whether he executed a release of all claims against Appellee on termination. Appellant's assignments of error are overruled and the judgment of the trial court is affirmed.

Factual and Procedural History

**{¶2}** On July 1, 2012, Appellant was hired as Appellee's Executive Director. The parties executed a written employment contract. The employment contract stated that Appellant was to be employed for a term of two years, with the possibility of renewal or extension. The contract specifically provided:

> The term of this Agreement shall be for (2) years commencing on the First Day of July, 2012. If either Party requests in writing no less than sixty (60) days prior to the expiration of the contract period for a review of the terms contained herein, the Parties hereto shall review the provisions of the Agreement as requested and negotiate an Agreement of continued employment which must be mutually acceptable. If the Parties fail to give

> the notice as required, then in that event and at the expiration of the contract period, the terms and conditions of this Agreement shall be extended and continued in full force and effect for one (1) additional year.

(Motion for Summary Judgment, Exh. A-1.)

**{¶3}** The parties do not dispute that Appellant was employed as the Executive Director not only for the two-year original contract term, but also for the additional one year renewal period. Subsequently, on May 27, 2016, Appellant was asked to meet with Appellee's Board of Directors. At that meeting Appellant was informed that he was being terminated. The Board presented Appellant with a "Release and Severance Agreement" ("termination agreement") that provided Appellant with eight weeks of severance pay and eight weeks of continued health insurance. The Agreement also contained the following "Release" clause:

> Sylvester, on behalf of himself, his heirs, beneficiaries and personal representatives, hereby releases, acquits and forever discharges Turning Point, its owners, subsidiaries, affiliates, successors and assigns, together with its and their past and present directors, officers, agents, attorneys, insurers, employees, shareholders, partners and any employee benefit plans established or maintained by any such entities, together with their fiduciaries and agents, and all other persons, firms, partnerships or corporation in control of, under the direction of, or in any way presently or formerly associated with Turning Point (collectively "Turning Point Affiliates"), of and from all claims, charges, complaints, liabilities,

> obligations, promises, agreements, contracts, damages, actions, causes of action, suits, accrued benefits or other liabilities of any kind or character, whether known or hereafter discovered, arising from or in any way connected with or related to Sylvester's employment with Turning Point and/or Sylvester's termination of employment from Turning Point, including, but not limited to, allegations of wrongful termination, discrimination, retaliation, breach of contract, promissory estoppel, retaliatory discharge, any claim related to drug or alcohol testing, constructive discharge, discharge in violation of any law, statute, regulation or ordinance providing whistleblower protection, discharge in violation of public policy, intentional infliction of emotional distress, negligent infliction of emotional distress, defamation, harassment, sexual harassment, invasion of privacy, any action in tort or contract, any violation of any federal, state, or local law[.]

(Motion for Summary Judgment, Exh. A-2, ¶ 2.)

**{¶4}** The termination agreement also contained three additional clauses relevant to this appeal:

> 5. **Consideration.** Sylvester voluntarily accepts the consideration cited herein, as sufficient payment for the full, final and complete release stated herein, and agrees that no other promises or representations, including, but not limited to, the tax treatment of the severance payments have been made to Sylvester by Turning Point or any other person purporting to act on behalf of Turning Point, except as expressly stated herein.

* * *

7. **Understanding of Agreement.** Sylvester understands that this is a full, complete and final release of Turning Point and all Turning Point Affiliates, as evidenced by the signature below, Sylvester expressly promises and represents to Turning Point that he has completely read this Agreement and understands its terms, contents, conditions and effects.

* * *

9. **Other Agreements.** This Agreement will supersede any and all obligations Turning Point or any Turning Point Affiliate might otherwise owe to Sylvester for any act or omission whatsoever that took place, or should have taken place, on or before the date this Agreement is signed and executed by Sylvester. Other than the terms of the Agreement as set forth herein this Severance Agreement constitutes the entire understanding and agreement between the parties and it may only be modified or amended an assigned [sic] writing by both parties hereto.

(Motion for Summary Judgment, Exh. A-2, ¶ 5, 7, 9.)

**{¶5}** The parties do not dispute that Appellant executed this termination agreement at the May 27, 2016 Board meeting. On December 29, 2017, Appellant filed a complaint for breach of the employment contract. In his complaint, Appellant alleged that his employment contract had remained in effect, despite the stated expiration date, under the same terms and conditions as his initial employment. He also claimed that

Appellee entered into an oral agreement at the Board meeting in which he was terminated to pay accrued vacation and sick leave balances in addition to the income and health severance provided for in the written termination agreement. Appellant also claimed Appellee breached the covenant of good faith and fair dealing, alleging, among other things, Appellee failed to give him twenty-one (21) days to review the termination agreement prior to executing it, as was provided for in the language of the agreement.

**{¶6}** Appellee filed an answer on March 12, 2018, raising the affirmative defense that Appellant failed to state a claim on which relief could be based, because Appellant's employment contract had expired and was not in effect at the time of the May 27, 2016 Board meeting. Thus, Appellant was an at-will employee at the time he was terminated. Appellee also raised the defense of waiver, alleging Appellant knowingly and voluntarily entered into the termination agreement, which barred the claims alleged in the complaint. On June 13, 2018, Appellant served Appellee with interrogatories and a request for production of documents. Appellee conducted no discovery in this matter. The court ordered all dispositive motions to be filed two and one half months prior to trial. The matter was set for trial on October 1, 2019.

**{¶7}** On September 3, 2019, Appellee filed a motion seeking leave to file a motion for summary judgment instanter, along with a separately time-stamped motion for summary judgment. Appellee asserted in its summary judgment motion that Appellant's employment contract expired July 1, 2015. Hence, Appellant could not prove breach of contract because at the time of his termination he was an at-will employee. Because Appellant had no valid breach of contract claim, there was no basis for relief on Appellant's derivative breach of good faith and breach of fair dealing claim. And as

Appellant knowingly and voluntarily executed the termination agreement which contained, among other things, a release that operated to bar all claims against Appellee, Appellant's claims must fail. Appellee attached an affidavit from Scott Essad, a Board member at the time of Appellant's termination who was then the Executive Director, as well as copies of Appellant's executed employment agreement and the termination agreement.

**{¶8}** On September 5, 2019, Appellant filed a motion opposing the request to file for summary judgment, arguing that the motion was filed too close to the trial date in violation of Civ.R. 56. Appellant contended that because the civil rules provided him 28 days in which to respond to summary judgment, and this would take him beyond the date the trial was to commence, he would be prevented from having his day in court because his counsel would be forced to respond to the summary judgment motion instead of preparing for trial.

**{¶9}** On September 9, 2019, a magistrate's order was issued granting Appellee's request to file for summary judgment instanter. On September 17, 2019, Appellant filed a motion to set aside the magistrate's order. However, on September 20, 2019, the trial court denied Appellant's motion and adopted the magistrate's order. The trial court continued the pretrial and trial dates for 60 days in order to allow Appellant 28 days to respond to the summary judgment motion and for Appellee to have seven days in which to file a reply.

**{¶10}** Appellant filed a brief in opposition to summary judgment on October 16, 2019. In it, he asserted that his employment contract was still in effect at the time he was terminated, because Appellee had never informed him that he was no longer subject to the terms of his employment contract or that he was considered by the Board to be an at-

will employee. Appellant additionally claimed he was orally promised at termination that his severance would include accrued vacation and sick time, which were never paid. Lastly, Appellant maintained that the termination agreement allowed him 21 days to review its terms, but the Board informed him at the May 27 meeting he must sign by the end of May, only five days hence. Appellant attached copies of the executed employment agreement, a copy of the signed termination agreement, and his own affidavit. In his affidavit, he swore to his assumptions regarding his employment status and the oral promises he alleged Appellee made regarding payment of accrued vacation and sick time.

**{¶11}** On October 24, 2019, the trial court granted Appellee's motion for summary judgment, concluding that the evidence demonstrated Appellant could not prove a valid employment contract was in effect, defeating the first element of his breach of contract claim, because his employment contract had expired by its own terms on June 30, 2015. Because the claims for breach of the covenant of good faith and fair dealing are dependent on the existence of a valid contract, these also failed.

**{¶12}** Appellant filed this timely appeal.

ASSIGNMENT OF ERROR NO. 1

> The trial court abused its discretion in allowing Turning Point to file its motion for summary judgment after trial was set.

**{¶13}** It is well settled that a trial court has the inherent authority to manage its own proceedings and control matters on its own docket. *State ex rel. Nat. City Bank v. Maloney,* 7th Dist. No. 03 MA 139, 2003-Ohio-7010, ¶ 5. Moreover, a trial court is within

its discretion to consider a pleading that is properly attached to a motion for leave to plead instanter. *Ramos v. Khawli,* 181 Ohio App.3d 176, 2009-Ohio-798, 908 N.E.2d 495, ¶ 71 (7th Dist.). A reviewing court will not reverse a trial court's ruling on such a motion unless it finds the trial court abused its discretion. *State ex rel. Buck v. McCabe,* 140 Ohio St. 535, 537, 45 N.E.2d 763 (1942). An abuse of discretion is more than an error of judgment; it implies that the trial court's judgment was unreasonable, arbitrary, or unconscionable. *Yashphalt Seal Coating v. Giura*, 7th Dist. Mahoning No. 18 MA 0107, 2019-Ohio-4231, ¶ 14, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

**{¶14}** In this case the trial court had ordered that all dispositive motions were to be filed two and one half months prior to trial, which was set for October 1, 2019. On September 3, 2019, Appellee filed a motion for permission to file for summary judgment instanter along with the actual summary judgment motion, both separately time-stamped. A magistrate's order of September 9, 2019 granted Appellee's instanter motion despite its untimeliness. Without responding to the summary judgment motion, Appellant filed on September 17, 2019, to set aside the magistrate's order. However, three days later the trial court denied Appellant's motion and adopted the magistrate's decision. In order to provide sufficient time for Appellant's response under the Rules, the court continued all pretrial and trial matters for 60 days. Appellant filed his response to the motion for summary judgment on October 16, 2019.

**{¶15}** Appellant argues that allowing Appellee to file a summary judgment motion so close to the date of trial was unduly prejudicial to him and that the motion was merely filed in an attempt to delay his day in court. He reiterates the identical arguments raised both to the magistrate and to the trial court in this matter, contending that his trial counsel

was forced to address the summary judgment motion rather than prepare for trial. Appellant also complains that Appellee failed to conduct any discovery, appearing to believe that this somehow supports his argument that the summary judgment motion was filed solely for purposes of delaying trial.

**{¶16}** Appellant's assertions are not borne out by the record. Although the trial court allowed Appellee to file for summary judgment after the cutoff date earlier set, the pretrial and trial dates in the matter were continued in order to provide Appellant time to respond to summary judgment in accordance with Civ.R. 56(C). Appellant had ample opportunity to respond to the motion, and cannot claim prejudice under Civ.R. 56. Appellee properly asked the court for permission prior to filing, as permitted by the Rules. There appears to have been no need for discovery by Appellee, as the summary judgment motion was supported with evidence. The trial court did not abuse its discretion in this case in granting Appellee's request to file for summary judgment instanter. Appellant's first assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 2

> The trial court erred as a matter of law in granting summary judgment in favor of Turning Point.

**{¶17}** An appellate court conducts a *de novo* review of a trial court's decision to grant summary judgment, using the same standards as the trial court set forth in Civ.R. 56(C). *Grafton v. Ohio Edison Co.,* 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Before summary judgment can be granted, the trial court must determine that: (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is

entitled to judgment as a matter of law, (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most favorably in favor of the party against whom the motion for summary judgment is made, the conclusion is adverse to that party. *Temple v. Wean United, Inc.,* 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977). Whether a fact is "material" depends on the substantive law of the claim being litigated. *Hoyt, Inc. v. Gordon & Assoc., Inc*., 104 Ohio App.3d 598, 603, 662 N.E.2d 1088 (8th Dist.1995).

**{¶18}** "[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." (Emphasis deleted.) *Dresher v. Burt*, 75 Ohio St.3d 280, 296, 662 N.E.2d 264 (1996). If the moving party carries its burden, the nonmoving party has a reciprocal burden of setting forth specific facts showing that there is a genuine issue for trial. *Id.* at 293. In other words, when presented with a properly supported motion for summary judgment, the nonmoving party must produce some evidence to suggest that a reasonable factfinder could rule in that party's favor. *Brewer v. Cleveland Bd. of Edn.,* 122 Ohio App.3d 378, 386, 701 N.E.2d 1023 (8th Dist.1997).

**{¶19}** The evidentiary materials to support a motion for summary judgment are listed in Civ.R. 56(C) and include the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact that have been filed in the case. In resolving the motion, the court views the evidence in a light most favorable to the nonmoving party. *Temple*, 50 Ohio St.2d at 327.

**{¶20}** In order to prevail on a claim for breach of contract a plaintiff must establish by a preponderance of the evidence: (1) the existence of a contract; (2) performance under the contract by plaintiff; (3) breach of the contract by the defendant; and (4) damage or loss to the plaintiff. *Ballard v. Nationwide,* 7th Dist. No. 11 MA 122, 2013-Ohio-2316, ¶ 14. "There is no separate tort cause of action for breach of good faith that is separate from a breach of contract claim. Rather, 'good faith is part of a contract claim and does not stand alone.' " (Citations omitted.) *Northeast Ohio College of Massotherapy v. Burek,* 144 Ohio App.3d 196, 203, 2001-Ohio-3293, 759 N.E.2d 869 (7th Dist.2001).

**{¶21}** Issues surrounding the interpretation of a contract constitute a question of law to be determined by the court. *Leber v. Smith,* 70 Ohio St.3d 548, 639 N.E.2d 1159 (1994). The role of the court when interpreting the terms of a contract is to give effect to the intention of the parties. *Westfield Ins. v. Galatis,* 100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256, ¶ 9-11. We must examine the contract in its entirety and presume that the parties' intent is reflected in the language of the contract. *Id.* at ¶ 11. Common words in a contract will be given their ordinary meaning unless this would result in a manifest absurdity or unless some other meaning is clear from the face of the agreement. *Cincinnati Ins. Co. v. Anders,* 99 Ohio St.3d 156, 2003-Ohio-3048, 789 N.E.2d 1094, ¶ 34. If language in a contract is ambiguous, courts will interpret the ambiguity against the drafter. *Galatis,* ¶ 13.

**{¶22}** Both parties submitted an executed copy of the employment contract along with their motions. Appellee contends the language of the contract unambiguously states that its terms were to end no later than June 30, 2015. As such, Appellant was not subject to the employment contract at the time he was terminated. Instead, he was an at-will

employee. The language at issue provided that the term of employment under the Agreement was to commence July 1, 2012. It was for a two-year period, unless the parties gave notice at the end of that period they chose to renegotiate and then agreed to the result of that renegotiated contract. If no such notice was given, however, the contract provided as follows:

> If the Parties fail to give the notice as required, then in that event and at the expiration of the contract period, the terms and conditions of this Agreement shall be extended and continued in full force and effect for one (1) additional year.

(Motion for Summary Judgment, Exh. A-1.) Hence, the language of the employment contract reveals that the contract expired, by its own terms, on June 30, 2015, without a showing that it was renegotiated by mutual agreement the previous year.

**{¶23}** Appellant had the reciprocal burden of producing evidence to demonstrate a genuine issue of material fact existed regarding whether any employment contract was still in effect. Appellant did not argue that the contract was ambiguous or had been renegotiated and an extension had been agreed-to by the parties. Appellant's sworn affidavit testimony instead goes to his argument that he was never informed by the Board that he was no longer subject to the employment agreement. Appellant claims that because the Board did not tell him that his contract expired and he was considered to be an at-will employee, the parties continued to be subject to the terms and conditions of the agreement. Appellant argues, then, that the parties were subject to the terms of the

employment agreement at the time Appellant was terminated on May 27, 2016. He asserts in his affidavit:

> I understood under the terms and conditions of my Employment Agreement (Exhibit A) and the direction of the Board of Directors of Turning Point Counseling Services, Inc. that I was to continue my employment as the Executive Director of Turning Point Counseling Services, Inc. beginning July 1, 2015 under my same Employment Agreement as attached in Exhibit A.

(Appellant's Aff., ¶ 6.)

**{¶24}** Appellant does not cite to any portion of the contract requiring notification that the terms of the contract had expired. He avers only that he "understood" the contract would continue. He also does not allege that the Board collectively, or any individual Board member, said or did anything to support this "understanding." To the contrary, the language of the contract clearly sets out the contractual term. As noted above, the contract term was for two years commencing July 1, 2012. No less than sixty days prior to the end of the initial two-year term, either party could submit a written request for a renegotiation of the contract terms. If no such request was made, the contract would continue in full force or effect for one (1) additional year. This contract had the potential for a maximum term of three years: two years by its terms, with a one-year renewal if no renegotiation was requested by either party. Appellant's assertion that he was never notified of the expiration of the contract presumes that Appellee owed him a duty to notify him that the contract had expired. Such a duty could only be contained within the four

corners of the employment contract, itself. Appellant cites to no portion of the employment contract containing the requirement that Appellee inform him that his employment contract had expired and we cannot find this duty exists in our examination of the record. The unambiguous, ordinary language of the contract clearly states the contract expired by its own terms at the end of the three years from its effective date: on June 30, 2015. As on its face the contract provides a set term and this is unrebutted by Appellant. After expiration the parties were no longer bound by the terms of the contract. An employee who is not subject to an employment agreement becomes an at-will employee, and can be terminated at any time. *Henkel v. Educational Research Council of Am.,* 45 Ohio St.2d 249, 344 N.E.2d 118, syllabus (1976). A review of the unrebutted evidence in the record shows that Appellant cannot establish a prima facie case for breach of contract. The trial court properly granted summary judgment to Appellee on Appellant's breach of contract claim.

**{¶25}** In the instant matter, in addition to the breach of contract claim based on the employment contract, Appellant alleged a second cause of action for breach of the implied covenant of good faith and fair dealing based on Appellee's failure to pay accrued vacation and sick pay that Appellant claims was orally promised at his termination.

**{¶26}** "In addition to a contract's express terms, every contract imposes an implied duty of good faith and fair dealing in its performance and enforcement." *Lucarell v. Nationwide Mut. Ins. Co.,* 152 Ohio St.3d 453, 2018-Ohio-15, ¶ 42, citing Restatement of the Law 2d, Contracts, Section 205 (1981). The Supreme Court has recognized that, " '[g]ood faith' is a compact reference to an implied undertaking not to take opportunistic advantage in a way that could not have been contemplated at the time of drafting, and

which therefore was not resolved explicitly by the parties." *Ed Schory & Sons, Inc. v. Soc. Natl. Bank,* 75 Ohio St.3d 433, 443 (1996), quoting *Kham & Nate's Shoes No. 2, Inc. v. First Bank of Whiting,* 908 F.2d 1351, 1357 (7th Cir.1990). Good faith emphasizes a faithfulness to a common purpose and expectations of the other party. *Lucarell*, ¶ 43. However, the Supreme Court has noted that there is no violation of the implied duty unless there is a breach of a specific obligation imposed under a contract. Thus, there is no separate cause of action in Ohio for breach of the implied duty of good faith and fair dealing. *Lucarell,* ¶ 47.

**{¶27}** Appellee's position throughout has been that, as no valid employment contract exists in this case, no viable claim for breach of the covenant of good faith and fair dealing can be maintained as this is a derivative claim, wholly dependent on the existence of a valid, written contract. In response, Appellant seems to link his argument to the termination agreement. Appellant does not dispute that he signed the termination agreement or that this agreement lacked any provisions regarding the sick and vacation pay he seeks. He argues that he felt "forced" into signing the termination agreement immediately, even though the Agreement itself provided a 21 day period in order to review its terms. He also argues that the affidavit of Attorney Essad submitted by Appellee that he was not promised this pay creates a genuine issue of fact in this matter because he filed his own affidavit stating that this payment was promised.

**{¶28}** Appellant's claim for breach of the implied covenant of good faith and fair dealing is problematic for many reasons. Most notably, Appellant filed his complaint based on an alleged breach of his employment contract. This is the only contract on which Appellant relies in raising his derivative claim of breach of good faith and fair

dealing. However, in reality there are two contracts at issue in this matter. The first is the employment contract which, as we determined, expired by its own terms on June 30, 2015. The second contract is the agreement signed at his termination. Although Appellant raised this cause of action under the employment contract, all of his allegations regarding breach of good faith relate to his termination and alleged oral promises at the time his signed his termination agreement.

**{¶29}** Appellant asserts that at the Board meeting on the day he was terminated, oral promises were made for the payment of his accrued vacation and sick time. He concedes that the agreement he signed at termination provides for only the payment of eight weeks of pay and health care coverage. In order to prevail on a breach of good faith and fair dealing, not only must the parties have a valid contract, that contract must contain a specific obligation to perform. *Lucarell,* ¶ 47. We have already noted that no valid employment contract existed. Even if we turn to the language in the contract of the termination agreement, not only is this agreement clear that Appellant was entitled to only the eight weeks of pay and health insurance and there was no provision for payment of sick and vacation time, the termination agreement contains a Release clause prohibiting Appellant from raising any claims, including claims regarding compensation.

**{¶30}** As no contract was offered on which to base a claim for payment of sick and vacation pay, no valid contractual claim for breach of good faith and fair dealing has been raised, either. Appellant signed an actual severance contract when he entered the termination agreement. Even if the Release clause in that contract did not operate as a complete bar to any and all matters involving his employment and termination by Appellee, the existence of a contract addressing his severance pay would operate to bar

his claim that additional oral promises were made as to his severance pay. It is axiomatic that the parties' intent is contained within the confines of the written document unless the contract is ambiguous. Appellant's termination agreement is not ambiguous as to severance pay. Appellant's tangential argument that he somehow felt "forced" to sign the Agreement by the Board is equally unsupported, here. While the Agreement does provide a period of review, Appellant signed it the day it was presented by the Board. If, as he alleges, they orally allowed him only five days to review, Appellant clearly chose not to avail himself of this shortened period, either. There is absolutely no proof of coercion in this record, nor does Appellant claim coercion. Appellant appears to have freely signed the termination Agreement, which does not provide the additional benefits Appellant now seeks. There is no evidence of breach of the duty of fair dealing, here, and Appellant's claims in this regard are misplaced.

**{¶31}** Appellant's employment contract had expired at the time he was terminated. Appellee was not in breach in terminating Appellant. Appellant voluntarily signed a termination agreement at the time he was fired containing a specific provision relative to severance pay and a Release clause, barring litigation over employment and termination issues. He is thus not entitled to any additional severance. The trial court was well within its discretion in allowing the matter to be decided in summary judgment. Both of Appellant's assignments of error are without merit and the judgment of the trial court is affirmed.

Robb, J., concurs.

Cannon, J., concurs.

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For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**