[Cite as *NetJets, Inc. v. Binning,* 2005-Ohio-3934.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

NetJets, Inc.,	:	
Plaintiff-Appellee,	:	
		No. 04AP-1257
v.	:	(M.C. No. 2003 CVF-015175)
Michael Binning,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

O P I N I O N

Rendered on August 2, 2005

Jerrold W. Schwarz, for appellee.

G.R. Ambro, for appellant.

APPEAL from the Franklin County Municipal Court.

BRYANT, J.

{¶1} Defendant-appellant, Michael Binning, appeals from a judgment of the Franklin County Municipal Court awarding plaintiff-appellee, NetJets, Inc. ("NetJets"), damages in the amount of $14,914 on NetJets' breach of contract claim against defendant. Because a valid contract existed between defendant and NetJets, and because defendant voluntarily resigned his employment, triggering his obligation to reimburse NetJets for training costs, we affirm.

{¶2} Defendant was hired as a pilot for NetJets in September 2001. On September 24, 2001, defendant signed a conditional offer of employment and agreement to reimburse NetJets for training costs if he voluntarily ceased employment with NetJets within 24 months. Defendant resigned from NetJets on July 5, 2002. In response, NetJets sued defendant to recover their costs of training defendant to fly a Hawker 1000 jet. In a trial to the bench, the trial court concluded that a valid contract existed between defendant and NetJets. The trial court further found that because defendant voluntarily terminated his employment with NetJets within 24 months of commencing employment with NetJets, defendant was responsible to reimburse NetJets in the amount of $14,914 for the training NetJets provided him, in accordance with the contract.

{¶3} Defendant appeals, assigning the following errors:

> First Assignment of Error
>
> The trial court erred in finding that Defendant-Appellant voluntarily terminated his employment and is therefore liable for the expense of his training.
>
> Second Assignment of Error
>
> The trial court lacked personal jurisdiction over Defendant Michael Binning.

{¶4} Because the second assignment of error deals with the trial court's authority to decide NetJets' action against defendant, we address it first. Personal jurisdiction is the authority of a particular forum to enter judgment constitutionally binding on a particular defendant. *McBride v. Coble Express, Inc.* (1993), 92 Ohio App.3d 505. Unlike subject matter jurisdiction, personal jurisdiction is an affirmative defense that may be waived. Civ.R. 12(H); *In re Burton S.* (1999), 136 Ohio App.3d 386; *State Farm Fire & Casualty*

Co. v. Kupanoff Imports, Inc. (1992), 83 Ohio App.3d 278. Civ.R. 12(B) requires that a defense of lack of personal jurisdiction be presented in the defendant's answer or by motion prior to the filing of the answer. Id.; Civ.R. 12(B) and (H). If it is not raised "by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(A)," the defense is waived. Civ.R. 12(H)(1); *Weiss, Inc. v. Pascal*, Cuyahoga App. No. 82565, 2003-Ohio-5824. A defendant's answer generally denying paragraphs in the complaint that allege jurisdiction is insufficient to assert the affirmative defense. *Brevoort v. Internatl. Financial Resources, Inc.* (Dec. 30, 1993), Franklin App. No. 93AP-977.

{¶5} Here, defendant did not plead lack of personal jurisdiction in his answer or amended answer, and defendant did not move for dismissal at any time for lack of personal jurisdiction. Defendant also failed to raise the issue at trial. Because defendant failed to timely assert the defense, it is considered waived. Although defendant entered general denials in his answer to the paragraphs of plaintiff's complaint referring to jurisdiction, those denials are insufficient. Civ.R. 12(B) and (H)(1); *Brevoort*, supra.

{¶6} Participation in the case can also waive any defect in personal jurisdiction. *McBride*, supra. Defendant hired local counsel, conducted discovery, and appeared and testified at trial. Accordingly, defendant submitted to the court's jurisdiction and waived any defense based on lack of personal jurisdiction by his continued participation in the case. *McBride*, supra; *State v. Young*, Lorain App. No. 04CA008446, 2004-Ohio-4328 (concluding defendant waived defense of lack of personal jurisdiction by entering a voluntary appearance and remaining in the action to defend). Accordingly, defendant’s second assignment of error is overruled.

{¶7} Defendant's first assignment of error claims the trial court erred in finding (1) a valid contract between defendant and NetJets, and (2) defendant "voluntarily" terminated his employment. Questions regarding the existence of a contact and its meaning are questions of law subject to de novo review. *Hocking Valley Comm. Hosp. v. Community Health Plan of Ohio*, Hocking App. No. 02CA28, 2003-Ohio-4243.

{¶8} A contract is a promise or set of promises for the breach of which the law gives a remedy, or the performance of which the law recognizes as a duty. *Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations* (1991), 61 Ohio St.3d 366, overruled on other grounds. In order for a party to be bound, the party must consent to its terms, the contract must be certain and definite, and there must be a meeting of the minds. Id. The meeting of the minds is generally manifested by an offer and acceptance. *Dalicandro v. Morrison Road Dev. Co., Inc.* (Apr. 17, 2001), Franklin App. No. 00AP-619. "Thus, the signing of an agreement and acquiescence in its effect generally demonstrates the existence of a 'meeting of the minds.' " Id., citing *Cuyahoga Cty. Hospitals v. Price* (1989), 64 Ohio App.3d 410.

{¶9} In this case, NetJets offered employment to defendant to work as a pilot on the Hawker 1000. Defendant signed the "conditional offer of employment letter and reimbursement for training agreement" on September 24, 2001, thereby accepting the terms of the offer. The letter is certain and definite, referencing the date defendant would become an employee, the Hawker 1000 defendant would be flying, and the necessary training required to fly the Hawker 1000. Defendant was enlisted on NetJets' payroll effective September 30, 2001 and completed the necessary training at NetJets' expense. Defendant then served as a pilot with NetJets until July 5, 2002. Although on appeal

defendant asserts his agreement with NetJets is less than clear, defendant testified that he agreed to and understood the terms of the agreement, and his conduct under the contract supports his testimony, demonstrating the meeting of the minds necessary to form a contract. *Dalicandro*, supra.

{¶10} Defendant nonetheless contends no valid contract was formed because he initially was unaware he was required to lift, carry, and stow passenger luggage. Defendant, however, knew the crew for the Hawker 1000 consisted of only two pilots and no flight attendant. When defendant had his first passenger flight, he realized that he and the other pilot were expected to handle the passengers' luggage and stow it in the luggage compartment located near the back of the plane. Defendant testified that once he realized the need to handle luggage, he "accepted it" as part of his job. Defendant never complained to anyone in the company about the luggage requirement, but instead fulfilled the requirement for the next eight and one-half months of his employment.

{¶11} Given the foregoing, we are compelled to conclude that, even if defendant initially did not understand the luggage handling to be part of his contract with NetJets, he, by his conduct, came to so understand and ratified his employment agreement. *Campbell v. Hospitality Motor Inns, Inc.* (1986), 24 Ohio St.3d 54 (holding that ratification of a contract may occur by acceptance and retention of the benefits, acquiescence in the contract or failing to repudiate the contract within a reasonable time). Defendant accepted and retained the benefits of his employment with NetJets, admitted he accepted luggage duties as part of his job, and never complained to anyone. Having ratified this term and condition of employment, defendant cannot argue persuasively that luggage handling was not part of his contract with NetJets.

{¶12} Defendant also contends that even if a contract existed, he did not voluntarily terminate his employment with NetJets. Per the reimbursement agreement, if defendant "voluntarily" terminated his employment with NetJets within 24 months of September 30, 2001, defendant was responsible to pay 100 percent of the costs of flight training NetJets provided to him. NetJets in fact provided defendant flight training for the Hawker 1000 at SimuFlite in Dallas, Texas. Although defendant admits NetJets provided the necessary training, he contends he was forced to leave because of back problems arising from the required luggage handling.

{¶13} Prior to conducting his first flight, Dr. Michael Baehr, a NetJets doctor, examined defendant and certified him to begin work as a pilot; defendant did not present any complaints regarding his back. In April 2002, however, defendant injured his back in a nonwork-related activity. Up to that time, or for the approximately initial six months of his employment with NetJets, defendant handled luggage with no problem.

{¶14} Defendant saw several doctors about his back problems, none of which imposed any restrictions concerning defendant's lifting or carrying luggage or any other physical activity. Defendant testified he did not necessarily tell the doctors the extent of trouble he was having at work because he did not want to lose his job. Defendant eventually determined he could no longer perform his job duties and began seeking other employment. On July 5, 2002, defendant sent NetJets a letter of resignation stating it was impossible for him, due to medical reasons, to perform the heavy lifting required for the job. Defendant, however, testified he was able to do the job at the time of resignation, but he resigned in anticipation of having further and potentially worse back trouble. Defendant admitted that, prior to seeking other employment, he did not tell any appropriate company

representative he was having problems. Indeed, no company records exist documenting his condition.

{¶15} In essence, defendant claims that, due to his back condition, he had no choice but to seek and retain other employment, and thus he did not "voluntarily" terminate his employment. In support of his contention, defendant testified regarding the extent of his back pain and submitted Dr. William Adrion's opinion. Dr. Adrion, who has conducted medical examinations for NetJets pilots in the past, testified that defendant's medical condition "justifies his resignation from his duties at NetJet[s]." (Tr. 72-73.) Dr. Adrion opined that based on his review of defendant's medical records, he would not have qualified defendant to either begin or continue employment with NetJets. Dr. Adrion acknowledged that he was not aware of defendant's back condition at the start of his employment.

{¶16} The term "voluntarily" is not defined in the contract, but its meaning is a matter of law for the court. *Hocking Valley,* supra; *Morris Novak Realty Co. v. Gibbons* (May 27, 1993), Cuyahoga App. No. 62654. Undefined terms in a contract are to be interpreted according to their plain, ordinary meaning unless doing so would create an absurd result. *Daniel E. Terreri & Sons, Inc. v. Mahoning Cty. Bd. of Commrs.*, 152 Ohio App.3d 95, 2003-Ohio-1277; *Alexander v. Buckeye Pipeline* (1978), 53 Ohio St.2d 241 (stating that simple words in a contract are to be given their plain and ordinary meaning unless to do so would create an absurd result).

{¶17} In Black's Law Dictionary, voluntarily is defined as "[d]one by design or intention, intentional, proposed, intended, or not accidental. Intentionally and without coercion." Black's Law Dictionary (6 Ed.1990). A related term, "voluntary," is defined as

"[u]nconstrained by interference, unimpelled by another's influence; spontaneous, acting of oneself. * * * Proceeding from the free and unrestrained will of the person. Produced in or by an act of choice."

{¶18} Whether defendant's conduct meets the definition of "voluntarily" is a question of fact. We will not disturb a trial court's factual findings where the record contains competent, credible evidence to support such findings. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279. Arguably, but for his back condition, defendant would not have terminated his employment with NetJets. Instead, according to defendant, he was constrained by his condition and felt his only option was to resign, despite liking his job with NetJets and being treated well.

{¶19} Had NetJets terminated defendant’s employment, defendant correctly could claim he was involuntarily terminated and was not required to reimburse NetJets for the costs of the training it provided to him. Had he informed NetJets of his back problem, and it could not or would not accommodate him, his leaving arguably would have been involuntary, again relieving defendant of the obligation to reimburse NetJets. Here, however, without advising NetJets of his condition or his trouble with luggage, and without giving NetJets the opportunity to accommodate him, defendant voluntarily weighed his options and chose to leave due to back pain. Under those circumstances, we cannot say defendant was involuntarily terminated from employment.

{¶20} We note that although the trial court concluded defendant was unable to perform his job duties, defendant testified he left NetJets' employ not because he could not perform the job, but because he felt that further luggage lifting and handling would aggravate his back problems. Any inconsistency on that aspect of the trial court's opinion

is of no consequence, since the trial court ultimately determined defendant's termination was voluntary, and competent, credible evidence supports that determination. While defendant's situation is most unfortunate, he is bound by the terms of his agreement with NetJets and must reimburse NetJets in the amount of $14,914. Accordingly, defendant's first assignment of error is overruled.

{¶21} Having overruled defendant's first and second assignments of error, we affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

BROWN, P.J., and KLATT, J., concur.

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