IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Janice A. Wilson,	:	
Appellant	:	
	:	
v.	:	
	:	No. 2463 C.D. 2010
County of Montgomery	:	Submitted: October 18, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI FILED: November 17, 2011

Janice A. Wilson (Wilson) appeals from an order of the Court of Common Pleas of Montgomery County (trial court) granting the motion for summary judgment filed by the County of Montgomery (County) finding that Wilson was an at-will employee and could not challenge her termination. Finding no error in the trial court's opinion, we affirm.

Wilson was employed by the County from 1990 until her termination on August 30, 2007. At the time her employment was terminated, Wilson was working as the administrative assistant to the Support Conciliators of the County's Domestic Relations Section. Bernadette Grib (Grib) was also employed by the County at the front desk of the Conciliators Office and Wilson and Grib frequently interacted with each other. The working relationship between Wilson and Grib

deteriorated over the last five years of Wilson's employment due to Grib's attendance issues, poor performance and Wilson's attempts to cover Grib's duties. In December of 2005, Wilson and Grib were encouraged to resolve their difficulties, but were unable to do so. Each woman's supervisor eventually became involved and on August 1, 2006, Wilson and Grib were required to attend a "mediation" to resolve their difficulties. At the conclusion of the mediation, a written agreement or memorandum (the Memorandum) was drafted covering all aspects of Wilson's employment relationship with Grib. The Memorandum stated that the women had 30 days to improve their working relationship or face termination, with "no exceptions or excuses. This is their final notice." (Memorandum at ¶28). Both women signed the Memorandum which stated "I agree to the terms listed in this memo and understand that any violation or incident will result in termination of my employment." (Memorandum at ¶28). One year later, Wilson and Grib were involved in another work incident and were subsequently called into a meeting with several supervisors and the County EEO coordinator on August 30, 2007. Both women were able to present their versions of events during this meeting, after which both Wilson and Grib's employment was terminated. The following day Wilson's medical benefits were terminated.

On September 28, 2007, Wilson filed a complaint and petition for preliminary injunction with the trial court. She filed a second amended complaint on March 10, 2008, which asserted claims for breach of express contract for employment, breach of collateral contract for employment, promissory estoppel, and equitable estoppel, and sought preliminary and permanent injunctive relief. Wilson alleged that the Memorandum was an express contract for employment

with the County because both parties bargained for and supplied consideration for the new employment agreement. She also argued that the Memorandum contained an implied for-cause termination provision covering all aspects of her working relationship with Grib. According to Wilson, she did not violate the terms of the Memorandum; rather, the County breached the employment contract by terminating her employment without cause. Wilson relied upon the Memorandum and the alleged changes in the material terms of her employment that it brought about, and the County knew or had reason to know of her reliance. Wilson alleged that she suffered physical harm and injury due to the actions of the County because her medical benefits were terminated and she was unable to continue treatment for her multiple sclerosis and cerebral meningioma.

The County filed preliminary objections claiming, *inter alia*, that the second amended complaint must be dismissed because the County could not contract away an employee's at-will status, the Supreme Court of Pennsylvania had rejected equitable estoppel as an exception to the at-will employment rule, and there was no cause of action under Pennsylvania law for "breach of a collateral contract." The trial court sustained the preliminary objections as to the breach of collateral contract claim, which was dismissed with prejudice, and overruled all remaining preliminary objections. After a hearing, the trial court denied Wilson's request for a preliminary injunction. The County then filed a motion for summary judgment, which Wilson opposed.

The trial court granted the County's motion for summary judgment and dismissed the second amended complaint with prejudice. The trial court noted

that in Pennsylvania, public employees were typically employees-at-will and could be dismissed for a good reason, bad reason or no reason at all, unless the legislature had explicitly conferred tenure. *See Stumpp v. Stroudsburg Municipal Authority*, 540 Pa. 391, 658 A.2d 333 (1995); *Bolduc v. Board of Supervisors of Lower Paxton Township*, 618 A.2d 1188 (Pa. Cmwlth. 1992). In addition, public employers did not have the power to enter into an employment contract exempting their employees from at-will status unless this power had been specifically conferred by statute. The County had not been granted the authority to enter into such employment contracts and contract away at-will status. Therefore, the Memorandum was not a valid enforceable employment contract, Wilson was an at-will employee and she could not maintain an action for breach of contract. Even if the County had intended the Memorandum to be an employment contract, the trial court noted that it would be void and unenforceable as an *ultra vires* action. Finally, the trial court stated that promissory and equitable estoppel claims had been rejected by Pennsylvania courts as exceptions to the at-will doctrine. *See Stumpp*; *Paul v. Lankenau Hospital*, 524 Pa. 90, 95, 569 A.2d 346, 348 (1990). Consequently, these claims by Wilson failed as a matter of law. Wilson then appealed to this Court.[1]

On appeal, Wilson first argues that under the principles of contract law, there was an implied for-cause termination provision in the Memorandum

[1] Our review of a trial court order granting summary judgment is limited to determining whether the trial court abused its discretion or committed an error of law. *Manley v. Fitzgerald*, 997 A.2d 1235, 1238 n.2 (Pa. Cmwlth. 2010). Summary judgment may only be granted when, after examining the record in the light most favorable to the non-moving party, the record clearly demonstrates that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

which was sufficient to remove her employment from the presumption of at-will status and which created a binding employment contract between Wilson and the County. Wilson argues that the purpose of the mediation session which she and Grib attended was to set up an express agreement regarding their working relationship. The Memorandum which resulted was intended to be enforceable and covered all aspects of Wilson's working relationship with Grib. According to Wilson, because she did not violate any provisions of the Memorandum, she could not be terminated for any reason relating to the workplace situation with Grib, and the County breached the contract when it terminated her without cause.

Despite Wilson's assertions, the law in Pennsylvania regarding the status of public employees is clear.[2] As a general rule, public employees are employees-at-will and subject to summary dismissal, meaning that their employment may be terminated for any reason or no reason at all, unless the legislature has explicitly conferred tenure. *Bolduc v. Board of Supervisors of Lower Paxton Township*, 618 A.2d 1188, 1190 (Pa. Cmwlth. 1992) (citing *Scott v. Philadelphia Parking Authority*, 402 Pa. 151, 166 A.2d 278 (1960)). *See also Stumpp v. Stroudsburg Municipal Authority*, 540 Pa. 391, 394-95, 658 A.2d 333, 334 (1995). "Tenure in public employment, in the sense of having a claim to employment which precludes dismissal on a summary basis is, where it exists, a matter of legislative grace." *Scott*, 402 Pa. at 154, 166 A.2d at 281. Especially pertinent is the fact that public employers such as the County are not authorized to

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[2] The cases upon which Wilson bases her arguments are inapplicable because they involve professionals specifically hired to perform special services pursuant to a contract, explicit employment contracts offered by private sector employers, civil service employees or collective bargaining agreements.

enter into employment contracts which would exempt their employees from at-will status unless this power has been expressly conferred by statute. *Id.*; *Stumpp*, 540 Pa. at 395, 658 A.2d at 335; *Bolduc*, 618 A.2d at 1190.

In this case, Wilson failed to plead and this Court cannot find any statute or express authority which grants the County such power. Even if the Memorandum Wilson signed could be construed as an employment contract, the County acted beyond its powers by entering into such an agreement, making it void and unenforceable as an *ultra vires* act of the County. *See Clairton Slag, Inc. v. Department of General Services*, 2 A.3d 765, 782 (Pa. Cmwlth. 2010); *Bolduc*, 618 A.2d at 1190. Because Wilson cannot maintain a breach of contract claim pursuant to the Memorandum, the trial court properly granted the County's motion for summary judgment.

Wilson also argues that the trial court erred in dismissing her promissory and equitable estoppel claims. However, the Supreme Court of Pennsylvania has specifically stated:

> More importantly, equitable estoppel has been affirmatively rejected by this Court as an exception to the at-will rule. In *Paul v. Lankenau Hospital*, 524 Pa. 90, 569 A.2d 346 (1990), we held that "the doctrine of equitable estoppel is not an exception to the employment at-will doctrine. An employee may be discharged with or without cause, and our law does not prohibit firing an employee for relying on an employer's promise." *Id.* at 95, 569 A.2d at 348. Thus, the issue of whether Appellee detrimentally relied on any promises of the [employer] is simply not relevant in determining whether Appellee has a protectable property interest in his employment.

Stumpp, 540 Pa. at 397, 658 A.2d at 336.

In addition, in order to make a claim for promissory estoppel, Wilson would have to show the following: (1) that the County made a promise that it should have reasonably expected to induce action or forbearance on the part of Wilson; (2) Wilson actually took action or refrained from taking action in reliance on this promise; and (3) injustice could be avoided only by enforcing the County's promise. *Crouse v. Cyclops Industries*, 560 Pa. 394, 403, 745 A.2d 606, 610 (2000). However, our Supreme Court has definitively stated that detrimental reliance on an employer's promise is not relevant in the context of at-will employment and that firing an employee for relying upon an employer's promise is not prohibited. Such language clearly precludes a claim for promissory estoppel because an employee cannot meet all of the required elements to establish a claim. In addition, "exceptions to [the at-will] rule have been recognized in only the most limited of circumstances where discharges of at-will employees would threaten clear mandates of public policy." *Paul*, 524 Pa. at 95, 569 A.2d at 348. Therefore, the trial court properly rejected the theory of promissory estoppel as an exception to the at-will employment rule.

Accordingly, the order of the trial court is affirmed.

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DAN PELLEGRINI, Judge

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<u>O R D E R</u>

AND NOW, this 17th day of November, 2011, the order of the Court of Common Pleas of Montgomery County, dated October 19, 2010, is affirmed.

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DAN PELLEGRINI, Judge