MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Lara Brian,
Appellant-Plaintiff,

v.

Regional Innovation and Startup Education d/b/a RISE,
Appellee-Defendant.

November 27, 2023

Court of Appeals Case No. 23A-PL-474

Appeal from the St. Joseph Superior Court

The Honorable Cristal C. Brisco, Judge

Trial Court Cause No. 71D04-2101-PL-3

Memorandum Decision by Judge Foley
Chief Judge Altice and Judge May concur.

Foley, Judge.

[1] Lara Brian ("Brian") appeals the order granting summary judgment to her former employer, Regional Innovation and Startup Education d/b/a RISE ("RISE"), on her claim that RISE breached her written employment agreement by terminating her employment without first obtaining the approval of the Board. In concluding that RISE was entitled to summary judgment, the trial court relied on parol evidence indicating that the written contract was an unenforceable "sham" contract. This appeal presents two issues for our review:

I. Whether RISE failed to meet its burden on summary judgment because there is conflicting evidence regarding the parties' intent to be bound by the written contract; and

II. Whether RISE is entitled to an award of appellate attorneys' fees pursuant to Appellate Rule 66(E).

[2] We conclude that there is a genuine issue of material fact as to whether the parties intended to enter into a binding contract. We therefore reverse the order granting RISE's motion for summary judgment and remand for further proceedings. We also decline to award appellate attorneys' fees to RISE.

Facts and Procedural History

[3] Brian is a citizen of New Zealand who resided in Indiana and used to work for RISE, an Indiana nonprofit corporation. In early 2021, Brian filed a complaint alleging RISE breached a written employment agreement because RISE terminated Brian's employment without the approval of the Board. Several months later, RISE filed a motion for summary judgment. According to RISE, even if the parties entered a binding employment agreement, RISE did not need

to obtain the Board's approval to terminate Brian because the terms of RISE's employee handbook superseded the terms of the employment agreement and created an at-will employment relationship. The trial court denied the motion.

[4] In October 2022, Brian moved for summary judgment. She argued "[i]t is undisputed that on September 1, 2020, when [RISE executives] terminated . . . Brian's employment[,] they did not have RISE Board approval to do so," contrary to the provisions of a written agreement between RISE and Brian. Appellant's App. Vol. III p. 92. RISE filed a competing motion for summary judgment, ultimately presenting three theories for resolving summary judgment in favor of RISE. The first theory was that the alleged employment agreement was unenforceable because it was a nonbinding "sham" contract. Appellant's App. Vol. IV pp. 7–11. According to RISE, the designated evidence indicated that "the intention of the parties was not to be bound" by that writing, rather, "[t]he intention of the parties was to throw something together so that . . . Brian could get a work visa." Tr. Vol. 2 p. 16. The second theory was that, as previously asserted on summary judgment, the employment agreement "was revised and super[s]eded by the employee handbook," which called for an at-will employment relationship. *Id.* at 16–17. The third theory was that the employment agreement was valid, but RISE had complied with the agreement.

[5] The designated evidence indicated that the Executive Director at RISE, Iris Hammel ("Hammel"), interviewed Brian for a position with RISE. During the interview, Brian disclosed that she had only temporary authorization to work in the country. RISE hired Brian as a Program Director with a start date of

January 14, 2019. RISE also offered to support Brian in obtaining a work visa, paying an outside firm to help prepare and submit Brian's visa application. Hammel deferred to Brian as to the documents necessary for the application.

[6] In June 2019, Brian e-mailed Hammel and said: "For the visa to be processed, we need to submit an employment contract. Do you have a template or something we can use for this?" Appellant's App. Vol. III p. 178. Hammel reached out to an affiliate organization, which sent an employment agreement the organization had previously used. Brian later told Hammel that the document "didn't have what it needed" and that they "needed something different to make her case stronger." *Id.* at 120. Hammel and Brian worked "on the fly" and "found and edited [a document] to submit" in support of Brian's visa application. *Id.* at 119. Hammel described this process as "a little bit of a fire drill," *id.*, and "all very last minute and rushed," *id.* at 120.

[7] The submitted document was titled "Employment Agreement" ("the Agreement") and backdated to show a signing date of January 14, 2019. Brian signed on her behalf, and Hammel signed on behalf of RISE. The Agreement identified RISE as the "Employer" and Brian as the "Employee," specifying that RISE "shall employ [Brian] as the Program Director of [RISE] and [Brian] agrees to be employed as its Program Director for the term and under the conditions set forth in th[e] Agreement." *Id.* at 20. The Agreement established an employment term "beginning on January 14, 2019[,] and extending for at least three and a half years, until June 14, 2022; unless otherwise terminated or extended as authorized by this Agreement." *Id.* The Agreement contained

detailed provisions regarding Brian's salary and benefits, and the scope of her role with RISE. *See, e.g.*, *id.* at 22 (specifying that Brian was to "[m]aintain a close working relationship with representatives of RISE education partners throughout St. Joseph County, IN and Elkhart County, IN, and the region").

[8] Section 14 provided that Brian could unilaterally terminate the Agreement "on 60 days['] written notice" to RISE. *Id.* at 23. Section 13 addressed RISE's authority to unilaterally terminate the Agreement, providing as follows:

> During the term of th[e] Agreement, [Brian] may be removed from her employment for good and sufficient cause. *Such an action shall require a simple majority vote by the Board of Directors of* [*RISE*]. All statutory provisions of law, standards and regulations governing dismissal or discipline shall be applicable to any proceeding regarding termination of [Brian]. Good and sufficient cause shall include, but shall not be limited to, acts of material dishonesty, disclosure of confidential information, gross or careless misconduct, or if [Brian] unjustifiably neglects her duties under th[e] Agreement, or acts in any way that has a direct, substantial[,] and/or adverse effect upon [RISE's] reputation and/or operation."

Id. at 23 (emphasis added). The Agreement contained a merger clause specifying that the Agreement "constitute[d] the entire agreement and understanding between the parties regarding the subject matter addressed" therein. *Id.* at 24. The Agreement also stated that "[n]o modification or extensions of th[e] Agreement shall be effective *unless in writing and signed by the parties hereto*, excepting therefrom the areas of discretion reserved by [RISE] as

set forth" therein. *Id.* (emphasis added). The Agreement stated that it was to be "construed in accordance with the . . . laws of the State of Indiana." *Id.* at 23.

[9] "After the parties signed the . . . Agreement, [Hammel] prepared an employee handbook," and "presented" the document to Brian "as part of the [visa] application process." *Id.* at 181. The handbook included a form titled "Receipt of Handbook and Employment At-Will Agreement" ("Handbook Acknowledgment"). *Id*. at 176–77. Brian signed the form; RISE did not. *See id.* at 177. The Handbook Acknowledgment contained the following statement: "I . . . acknowledge that my employment with this organization is not for a specified period of time and can be terminated at any time for any reason, with or without cause or notice, by me or by the organization." *Id.* at 176.

[10] On September 1, 2020, Hammel met with Brian and the founder of RISE, Lawrence Garatoni ("Garatoni"). During the meeting (the "Termination Meeting"), Hammel told Brian: "I don't think this is going to work anymore[.] . . . It's time to part ways." *Id*. at 27. Garatoni said he perceived "a difference in teaching philosophy" between Hammel and Brian. *Id.* After Brian asked for clarification, Hammel said that the two of them had different "perception[s] of the direction" for the organization and "two very opposing operating styles." *Id.* at 27–28. Before long, Brian asked if the Board was aware of the decision to terminate her employment. Garatoni responded: "It's not a board decision. It's, basically, a decision of [Hammel] and myself[.]" *Id.* at 28.

[11] Garatoni testified that he and Hammel "discovered after terminating [Brian] that the [Agreement] indicated that it had to be approved by the [B]oard, so [they] presented the whole situation to the [B]oard in order to get either their approval or disapproval to terminate [Brian]." *Id.* at 73. On October 7, 2020, the Board passed a resolution stating that although RISE "does not recognize [the Agreement] as legally binding because of the manner by which it was obtained," *id.* at 184, the Board "approve[d] the termination of . . . Brian's employment for cause, effective immediately," *id.* at 185. The resolution incorporated by reference statements Hammel had provided, including that (1) she learned "[i]t was not necessary" for RISE "to enter into an employment contract with [Brian]" for visa purposes; (2) she signed the Agreement "without reading it," and "was surprised when [she] discovered, in September 2020, that the [document] sent by [Brian] changed her employment from being on an 'at will' basis"; and (3) she "would not have signed any employment agreement with [Brian], whether at-will or for a specific term, if [Brian] had not represented to [Hammel] that it was required" for Brian's visa application. *Id.* at 103. Although the resolution stated that the Board approved the termination "effective immediately," *id.* at 185, the resolution did not state that the Board was ratifying the September 2020 termination action by Garatoni and Hammel.

[12] The trial court held a hearing on summary judgment and later resolved the competing motions in favor of RISE. In its written order, the trial court said:

> The designated evidence of the circumstances which existed at the time the contract was made supports the conclusion that the

> parties did not intend for the Employment Agreement to constitute an enforceable contract. The sole reason Brian requested an employment contract was for "the visa to be processed." The sole reason RISE produced the Employment Agreement was for "the visa to be processed." The Court concludes that there is no material dispute of fact with respect to the reason the Employment Agreement was created, which was for the purpose of satisfying the immigration authorities as Brian sought her visa. Brian's Employment Agreement is a sham contract and is unenforceable. Accordingly, Brian was an at-will employee.

Appellant's App. Vol. II pp. 24–25. Brian now appeals, challenging the trial court's decision to grant RISE's motion for summary judgment. She does not challenge the decision to deny her competing motion for summary judgment.

Discussion and Decision

I. Summary Judgment

[13] "We review the trial court's summary judgment decision de novo." *Z.D. v. Cmty. Health Network, Inc.*, 217 N.E.3d 527, 531 (Ind. 2023). A party is entitled to summary judgment "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ind. Trial Rule 56(C). "A genuine issue of material fact exists when there is 'contrary evidence showing differing accounts of the truth,' or when 'conflicting reasonable inferences' may be drawn from the parties' consistent accounts and resolution of that conflict will affect the outcome of a claim." *Z.D.*, 217 N.E.3d at 532 (quoting *Wilkes v. Celadon Grp., Inc.*, 177 N.E.3d 786, 789 (Ind. 2021)). "In viewing the matter through the

same lens as the trial court, we construe all designated evidence and reasonable inferences therefrom in favor of the non-moving party." *Ryan v. TCI Architects/Eng'rs/Contractors, Inc.*, 72 N.E.3d 908, 912 (Ind. 2017). Moreover, although "[t]he party appealing the trial court's summary judgment determination bears the burden of persuading us the ruling was erroneous," *id.* at 913, "we carefully scrutinize that determination" to ensure that no party was "improperly prevented from having [their] day in court," *Owens Corning Fiberglass Corp. v. Cobb*, 754 N.E.2d 905, 908 (Ind. 2001). Further, "[i]f there is any doubt, the motion should be resolved in favor of the party opposing the motion." *Mullin v. Municipal City of S. Bend*, 639 N.E.2d 278, 281 (Ind. 1994).

[14] In general, matters of contract interpretation are "well-suited for summary judgment." *Ryan*, 72 N.E.3d at 913. When a contract is unambiguous, we typically "do not go beyond the four corners of the contract to investigate meaning." *Care Grp. Heart Hosp., LLC v. Sawyer*, 93 N.E.3d 745, 756 (Ind. 2018). However, in some scenarios—including when one party claims the purported contract was an unenforceable "sham contract"— the parties may introduce extrinsic evidence of their contrary intent. *See generally, e.g.*, *Wecker v. Kilmer*, 294 N.E.2d 132, 203 (Ind. 1973) (noting that, at times, "parol evidence should be permitted to determine the intent of the parties"); *Jamrosz v. Res. Benefits, Inc.*, 839 N.E.2d 746, 754–57 (Ind. Ct. App. 2005) (collecting cases involving the admission of parol evidence to prove a writing was an unenforceable "sham contract"), *trans. denied*.

[15] Here, Brian argues the trial court erred in granting RISE's motion for summary judgment because "there are issues of material fact regarding whether the parties intended the Agreement to have been enforceable," or whether they intended to create a "sham contract." Appellant's Br. p. 10.[1] In *Wallace v. Rogier*, we summarized the law surrounding "sham contracts" explaining that "[w]hen two parties enter into a sham contract, as between themselves, there is no contract and the document is thus unenforceable." 395 N.E.2d 297, 307 (Ind. Ct. App. 1979). Therein, we noted that "the cardinal rule of contract interpretation is to ascertain the intention of the parties from their expression of it[.]" *Id.* We also noted that "the intention of the parties is to be determined in . . . light of the surrounding circumstances [that] existed at the time the contract was made[.]" *Id.* at 308. In other words, a party's intent to form a binding contract is revealed by examining "the final expression found in [the party's] conduct," not "the hidden intention secreted in the [party's] heart[.]" *Id.* at 307.

[16] When there is conflicting evidence regarding the intended function of a writing, it is a fact-finder's role to weigh the conflicting evidence and "determine the true intent" of the writing. *Jamrosz*, 839 N.E.2d at 757. For example, in *Wallace*, the trial court held a bench trial and entered judgment for the defendant, implicitly determining that a written contract was not enforceable.

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[1] On appeal, "we may affirm a grant of summary judgment upon any theory supported by the evidence." *Miller v. Danz*, 36 N.E.3d 455, 456 (Ind. 2015). In defending the judgment, RISE exclusively relies on the theory that the contract was an unenforceable "sham contract." Absent briefing on any alternative theory, we address only whether the designated evidence establishes that the parties created a "sham contract."

395 N.E.2d at 307–08. In addressing a challenge to the sufficiency of the evidence supporting the judgment, we applied a deferential standard of review and ultimately affirmed the judgment, determining that—despite the existence of conflicting evidence about the parties' intent—there was "substantial evidence presented at trial" indicating that "neither party intended the document, at the time it was drafted and signed, to be a valid enforceable contract." *Id.* at 308; *cf. Jamrosz*, 839 N.E.2d at 756–57 (discussing *Wallace* and concluding the trial court did not err in allowing the jury to consider extrinsic evidence that the parties intended to create an unenforceable "sham contract").

[17] Here, the designated evidence indicates that the parties signed the Employment Agreement, which contains details about Brian's salary and job duties. The signed Employment Agreement constitutes prima facie evidence that the parties had a meeting of the minds, intending to enter into a binding contract governing their relationship. *See, e.g.*, *Sawyer*, 93 N.E.3d at 756 (noting that, in discerning the parties' intent, courts generally "do not go beyond the four corners of the contract"); *Carr v. Hoosier Photo Supplies, Inc.*, 441 N.E.2d 450, 455–56 (Ind. 1982) (discussing the "necessity of . . . [mutual] assent," noting that, when it comes to whether the parties had a meeting of the minds, "the manifestation of a party's intention" to be bound, "rather than the [party's] actual or real intention, is ordinarily controlling" (quoting 17 Am. Jur. 2d Contracts § 18 (1964))); *State v. Koorsen*, 181 N.E.3d 327, 335 (Ind. Ct. 2021) (explaining that "the relevant intent is not the parties' subjective intentions but the outward manifestations thereof"), *trans. denied*.

[18] In seeking summary judgment, RISE designated evidence indicating that the parties drafted and entered into the Employment Agreement solely for the purpose of supporting Brian's visa application and did not intend for the Agreement to be binding or control the terms of Brian's employment at RISE. RISE asserts the Employment Agreement is an unenforceable "sham contract." Relying on this designated evidence, the trial court determined that RISE was entitled to summary judgment because the evidence established that the "sole reason Brian requested an employment contract was for 'the visa to be processed'" and the "sole reason RISE produced the Employment Agreement was for 'the visa to be processed.'" Appellant's App. Vol. II pp. 24–25. Critically, however, even if the visa process was the sole reason Brian *requested* a written contract—thereby initiating the chain of events that led to the creation of the Employment Agreement—it is a separate issue whether, in assembling and signing the Employment Agreement, there was a meeting of the minds, and the parties manifested a mutual assent to enter a binding agreement governing their relationship.

[19] Ultimately where—as here—there is prima facie evidence of a binding contract, a party may obtain summary judgment on the basis that the writing was an unenforceable "sham contract" only if the designated evidence establishes that each party unequivocally disavowed the writing as a binding contract. *Cf. Z.D.*, 217 N.E.3d at 532 (noting that "[a] genuine issue of material fact exists when there is 'contrary evidence showing differing accounts of the truth,' or when 'conflicting reasonable inferences' may be drawn from the parties' consistent

accounts" (quoting *Wilkes*, 177 N.E.3d at 789)). Although RISE directs us to designated evidence indicating that RISE did not intend for the Employment Agreement to be binding, RISE failed to designate unequivocal evidence that Brian disavowed the Employment Agreement.[2] Indeed, although RISE deposed Brian and designated excerpts of that deposition in seeking summary judgment, there is no indication that RISE even asked Brian whether she believed the Agreement was binding and controlled her employment relationship with RISE. *See generally* Appellant's App. Vol. III pp. 100–10.

[20] Our review of the designated evidence ultimately indicates that RISE did not meet its burden of establishing that the Agreement was a "sham contract." Having identified a genuine issue of material fact regarding whether the parties intended to enter into a binding employment agreement, we reverse the order granting RISE's motion for summary judgment, and we remand for further proceedings on the complaint. *Cf. Hughley v. State*, 15 N.E.3d 1000, 1004 (Ind. 2014) ("Indiana consciously errs on the side of letting marginal cases proceed to trial on the merits, rather than risk short-circuiting meritorious claims.").

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[2] Along these lines, RISE misstates the parties' respective burdens when it argues that Brian could avoid summary judgment only by designating evidence "wherein . . . Brian clearly asserts she herself intended the employment agreement document to be a binding contract when the parties signed it." Appellee's Br. p. 15. As earlier discussed, because the Employment Agreement is prima facie evidence of the parties' intent, it was RISE's burden to demonstrate that there was no genuine issue of material fact as to the parties' intent.

II. Appellate Attorneys' Fees

[21] RISE requests an award of appellate attorneys' fees under Indiana Appellate Rule 66(E), which states: "The Court may assess damages if an appeal, petition, or motion, or response, is frivolous or in bad faith. Damages shall be in the Court's discretion and may include attorneys' fees." Ind. Appellate Rule 66(E). Under this rule, "[o]ur discretion to award attorney[s'] fees . . . is limited to instances when an appeal is permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay." *Randolph v. Randolph*, 210 N.E.3d 890, 902 (Ind. Ct. App. 2023) (quoting *Thacker v. Wentzel*, 797 N.E.2d 342, 346 (Ind. Ct. App. 2003)). "Additionally, while Indiana Appellate Rule 66(E) provides this Court with discretionary authority to award damages on appeal, we must use extreme restraint when exercising this power because of the potential chilling effect upon the exercise of the right to appeal." *Thacker*, 797 NE.2d at 346 (quoting *Tioga Pines Living Ctr., Inc. v. Ind. Fam. & Social Svcs. Admin.*, 760 N.E.2d 1080, 1087 (Ind. Ct. App. 2001), *trans. denied*).

[22] "Indiana appellate courts have formally categorized claims for appellate attorney[s'] fees into 'substantive' and 'procedural' bad faith claims." *Id.* A party engages in substantive bad faith when the party's "contentions and arguments are utterly devoid of all plausibility." *Staff Source, LLC v. Wallace*, 143 N.E.3d 996, 1012 (Ind. Ct. App. 2020). On the other hand, a party engages in procedural bad faith "when [the] party flagrantly disregards the form and content requirements of the rules of appellate procedure, omits and misstates relevant facts appearing in the record, and files briefs written in a manner

calculated to require the maximum expenditure of time both by the opposing party and the reviewing court." *Thacker*, 797 N.E.2d at 346–47. Moreover, this court may conclude that a party has engaged in procedural bad faith "[e]ven if the[ir] conduct falls short of that which is 'deliberate or by design[.]'" *Id.* at 347 (quoting *Boczar v. Meridian St. Found.*, 749 N.E.2d 87, 95 (Ind. Ct. App. 2001)).

[23] RISE asserts that Brian "does not have a legitimate claim for an award of damages as a result of breach of contract," and her claims "have been meritless, frivolous, and in bad faith since [the] inception of her lawsuit." Appellee's Br. p. 18. However, because we have concluded that Brian identified reversible error on appeal, we are unpersuaded that RISE is entitled to appellate damages on the asserted basis. We turn to RISE's more specific allegations, which focus on Brian's appellate assertion that it appears to be illegal to submit a fraudulent document to the federal government in connection with a visa application.

[24] RISE directs us to a portion of the Appellant's Brief where Brian argued: "Under no circumstances could the trial court have inferred that . . . Brian and RISE intended to commit fraud by submitting a sham Employment Agreement." Appellant's Br. at 10. In support of this assertion, Brian cited a federal handbook for employers. *See id.* RISE contends that Brian made "an improperly presented reference to purported authority that is irrelevant, misstated, or both." Appellee's Br. at 20. RISE asserts that the handbook "is unrelated to the visa process," *id.* at 20 n.2, and that, even if the handbook "constitute[d] authority, it is neither listed in [the] Appellant's Table of Authorities, nor is a copy included in [the] Appellant's Appendices," *id.* at 20.

RISE also points out that "Brian's brief does not reference any of the statutes or regulations about which the handbook is published." *Id.* According to RISE, "Brian's assertion that [the section of the handbook] somehow establishes the potential for fraud on the part of RISE is unsupported, and the reference or citation is not properly presented according to the Indiana Rules of Appellate Procedure." *Id.* at 21.

[25] RISE generally focuses on whether the specific section of the cited handbook provides support for Brian's assertions. Notably, however, at no point does RISE argue that submitting a "sham contract" for visa purposes carries no potential liability under federal law. Thus, it appears that RISE's allegations of bad faith relate more to the specific way Brian presented her argument rather than the essence of her argument, which was that submitting a "sham contract" for visa purposes could lead to penalties under federal law. In any case, regardless of the accuracy of this aspect of Brian's argument, RISE challenges only a small portion of the Appellant's Brief. Under the circumstances, we cannot say RISE identified procedural bad faith warranting appellate damages. *See, e.g.*, *Randolph*, 210 N.E.3d at 902 (noting that an award of attorney's fees is "limited to instances when an appeal is permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay"); *cf., e.g.*, *Posey v. Lafayette Bank & Tr. Co.*, 583 N.E.2d 149, 153 (Ind. Ct. App. 1991) ("[M]inor errors in briefing do not warrant an award of appellate attorney[s'] fees.").

Conclusion

[26] Because RISE did not designate evidence demonstrating that RISE and Brian unequivocally disavowed the Employment Agreement as a binding contract, we reverse the order granting RISE's motion for summary judgment, and we remand for further proceedings on the claim of breach. Moreover, we decline RISE's request for appellate attorneys' fees under Appellate Rule 66(E).

[27] Reversed and remanded.

Altice, C.J., and May, J., concur.