IN THE COURT OF APPEALS OF IOWA

No. 7-624 / 07-0281
Filed December 28, 2007

SUSAN J. DENLINGER,
Plaintiff-Appellant/Cross-Appellee,

vs.

KENWOOD RECORDS MANAGEMENT,
Defendant-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Linn County, Patrick R. Grady, Judge.

Denlinger appeals from the district court's grant of summary judgment in favor of Kenwood Records. **AFFIRMED.**

Matthew Petrzelka of Petrzelka & Breitbach, P.L.C., Cedar Rapids, for appellant.

Robert Hatala of Crawford, Sullivan, Read & Roemerman, P.C., Cedar Rapids, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

Susan Denlinger signed a contract with a temporary employment agency known as Team Staffing Solutions, Inc. (TSSI). She was assigned to work at Kenwood Records Management. Denlinger injured herself while on the job at Kenwood and sued Kenwood for negligence.

Kenwood moved for summary judgment on the ground that the claim was barred (1) by a "Legal Remedies" paragraph within the contract and (2) by Iowa Code section 85.20, making workers' compensation laws the exclusive remedy. The district court granted the motion on the first ground and denied it on the second ground. Denlinger appealed and Kenwood cross-appealed.

I. Standard of Review

Summary judgment is appropriate when the record discloses no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3).

II. Legal Remedies Paragraph

The contract Denlinger entered into with TSSI contained the following paragraph on "Legal Remedies:"

> I acknowledge and agree that even though my work related activities may be under the control and direction of the Customer, my legal remedies in the event of a work related injury will be the worker's compensation insurance [sic] and will not include any claim for damage against that Customer.

The contract also contained Denlinger's signature below the following language attesting to her understanding of the agreement:

> I HAVE READ AND FULLY UNDERSTAND THE CONTENT OF THIS EMPLOYMENT UNDERSTANDING AND AGREEMENT AND I AGREE TO THE SAME . . . . I HAVE BEEN PRESENTED

> THE OPPORTUNITY TO ASK QUESTIONS AND RECEIVE ANSWERS. I WILLINGLY AGREE TO COMPLY WITH THE CONTENTS OF THIS DOCUMENT. I UNDERSTAND A COPY OF THIS FORM IS AVAILABLE TO ME.

As a preliminary matter, we note that the "Legal Remedies" paragraph is plain and unambiguous. *Huber v. Hovey*, 501 N.W.2d 53, 56 (Iowa 1993). By its terms, it precludes "any claim for damage against the Customer," defined by the agreement as "Team Staffing's customer with whom employee may be assigned to provide temporary services."

This does not end our inquiry, because Denlinger argues that the "Legal Remedies" paragraph is unconscionable. On this question the district court ruled as follows:

> Though it was presented to Denlinger on a take it or leave it basis and was drafted by TSSI, Denlinger read and understood the agreement before she signed it. The fact that TSSI presumably had more bargaining power than Denlinger in this instance does not rise to the level of making the contract unconscionable, as Denlinger could have walked away without severe consequences and could have obtained employment elsewhere. Additionally, this Court does not find that the language of the release is substantively unconscionable given that similar releases and contracts have been upheld by our courts in the past.

Denlinger takes issue with this aspect of the ruling, essentially contending that the court did not properly apply the factors for determining whether the contract language was unconscionable. Those factors are: (1) assent, (2) unfair surprise, (3) notice, (4) disparity of bargaining power, and (5) substantive unfairness. *Gentile v. Allied Energy Prods., Inc.*, 479 N.W.2d 607, 609 (Iowa Ct. App. 1991).

With respect to the first factor, there is no question Denlinger assented to the broad terms of the contract. She specifically stated she read the contract and understood key terms within it, such as the definition of "customer." She even

conceded she read the "Legal Remedies" paragraph. She maintains, however, that she did not understand the paragraph to mean that she was precluded from filing a third-party negligence action. The problem with her argument is that her understanding of the paragraph is not a consideration in evaluating assent. In *Home Federal Sav. & Loan Ass'n of Algona v. Campney*, 357 N.W.2d 613, 619 (Iowa 1984), the court recognized that, when it comes to boilerplate language in a contract, "there is no assent at all." The court stated that the real question is whether the challenged term "alters or eviscerates" the terms of the contract to which the signer agreed. *Campney*, 357 N.W.2d at 619. Denlinger points to no authority holding that a clause limiting the employee to rights secured by the workers' compensation laws eviscerates the terms of an employment contract. Our court has in fact reached a contrary holding. *Jones v. Sheller-Globe Corp.*, 487 N.W.2d 88, 93 (Iowa Ct. App. 1992). Considering facts strikingly similar to the facts here, the court stated:

> [W]e [do not] find any public policy interest subverted by the trial court's ruling. The employee retains full workers' compensation coverage. The employer, through Manpower, provides for such coverage. Thus, any injury to the employee while acting in the course of employment is covered in the usual manner under Iowa's workers' compensation statutes.

Turning to the second factor, unfair surprise, Denlinger concedes she read the paragraph but maintains "such language was never explained to her by anybody at TSSI or Kenwood." This is immaterial. As the Iowa Supreme Court stated, "we are unwilling to impose upon plaintiff the quasi-fiduciary duty of giving notice to defendants to every provision in the mortgage that might eventually prove disadvantageous to them." *Campney*, 357 N.W.2d at 619.

Denlinger's concession that she read the "Legal Remedies" paragraph also resolves the notice factor.

This brings us to the fourth factor, disparity of bargaining power. Here, courts look to whether the contract was a contract of adhesion. *Id.* "A contract of adhesion is described as one that is 'drafted unilaterally by the dominant party and then presented on a take-it-or-leave-it basis to the weaker party who has no real opportunity to bargain about its terms.'" *Penn Life Ins. Co. v. Simoni*, 641 N.W.2d 807, 813 (Iowa 2002) (quoting Restatement (Second) of Conflict of Laws § 187 cmt. b, at 135 (Rev. 1988)); *accord Faber v. Menard, Inc.*, 267 F. Supp. 2d 961, 972 (N.D. Iowa 2003) rev.'d on other grounds, 367 F.3d 1048 (8th Cir. 2004).

Denlinger attested and Kenwood did not dispute that the contract was drafted by TSSI and presented to her on a "take-it-or-leave-it basis." *See Faber*, 267 F. Supp. 2d at 977 (finding contract of adhesion existed where employer told employee that he could sign the employment contract as it stood or be replaced); *Gentile*, 479 N.W.2d at 609 (considering whether parties were under any financial pressures). Even if this undisputed evidence points to a contract of adhesion, the evidence "does not mean [the paragraph] is automatically unconscionable." *Campney*, 357 N.W.2d at 619; *Jim Hawk Chevrolet-Buick, Inc. v. Insurance Co. of N. Am.*, 270 N.W.2d 466, 468 (Iowa 1978) (provision in insurance contract enforceable despite being part of a contract of adhesion because "no suspicious conduct" involved in attachment of the provision).

We believe the fifth factor, the absence of substantive unfairness, overrides the evidence of unequal bargaining power. *See Faber*, 367 F.3d at

1053 (holding inequality of bargaining power not sufficient to overcome policy favoring arbitration). While Denlinger suggests nothing could be more unfair than to sustain an injury for which there is no common law remedy, we reiterate that our courts have approved limitations on legal remedies such as the one in Denlinger's contract. This conclusion effectively resolves Denlinger's next argument that the "Legal Remedies" paragraph violates public policy.

Based on these factors, we conclude no genuine issue of material fact exists on the question of whether the "Legal Remedies" paragraph was unconscionable. We further conclude that the district court did not err in upholding the paragraph. In light of our conclusion, we find it unnecessary to address Kenwood's cross-appeal.

Costs of the appeal are taxed to Denlinger.

AFFIRMED.