

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001427-MR

KATHLEEN IMHOFF

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. TRAVIS, JUDGE
ACTION NO. 10-CI-04069

LEXINGTON PUBLIC LIBRARY
BOARD OF TRUSTEES

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: LAMBERT AND MAZE, JUDGES; HENRY,¹ SPECIAL JUDGE.

MAZE, JUDGE: Kathleen R.T. Imhoff appeals the Fayette Circuit Court's order granting summary judgment in favor of Lexington Public Library Board of Trustees (the Library Board). The trial court found that Imhoff's breach of

¹ Special Judge Michael L. Henry sitting by assignment of the Chief Justice pursuant to section 110(5)(b) of the Kentucky Constitution.

contract claim against the Library Board was barred by the doctrine of sovereign immunity. In the alternative, the trial court found that the Library Board did not breach the unambiguous terms of Imhoff's employment contract. For reasons set forth below, we agree with the trial court's interpretation of the employment contract. Accordingly, we affirm the award of summary judgment in the Library Board's favor without addressing whether Imhoff's claims were barred by the doctrine of sovereign immunity.

I. Factual and Procedural Background

In 2003, Imhoff signed a three-year employment contract to serve as Chief Executive Officer of Lexington Public Library. In 2007, the parties executed a second employment contract for a four-year term. The employment contract contained the following provision:

2.1 The term of Executive Director/CEO's employment hereunder shall be from July 1, 2007 through and including June 30, 2011 (the "Term") unless terminated prior thereto with an option to renew the contract for an additional three (3) years.

2.2 (a) The Library may, at any time and in its sole discretion, terminate the employment of the Executive Director/CEO hereunder for Cause Separate and apart from termination for cause, this Agreement may be terminated for any reason by either party by providing thirty (30) days written notice.

The employment contract also contained an arbitration provision. On July 15, 2009, Imhoff received a letter from the Library Board notifying her that it was

terminating her employment without cause, effective thirty days from the date of the letter. There is no dispute that the Library Board provided Imhoff with proper notice and all the salary and benefits she was owed during the notice period.

Imhoff then filed a complaint against the Library Board in the Fayette Circuit Court for breach of contract, defamation, and discrimination. The complaint alleged Imhoff was owed salary and benefits for the twenty-two months remaining on her employment contract. The trial court ultimately granted summary judgment on Imhoff's defamation and discrimination claims, and she did not appeal. However, it stayed litigation on her contract claim pending arbitration.

The arbitrator awarded Imhoff lost salary and benefits for the remainder of the employment contract, as well consequential damages and interest. She then moved to enforce the award before the trial court. The trial court affirmed the award of lost salary but concluded the rest of the award was barred by sovereign immunity. Both parties appealed to this Court. A different panel of this Court then vacated the entire arbitration award, holding Imhoff had waived her right to arbitrate by filing suit in Circuit Court. *Imhoff v. Lexington Public Library Board of Trustees*, 2014-CA-000385-MR, 2016 WL 192017 (Ky. App. Jan. 15, 2016). The panel remanded the case to the trial court "to set aside its earlier order compelling arbitration to void the arbitration proceedings in their entirety, and to

proceed with the litigation of this case in the judicial forum that Imhoff herself had elected.” *Id.* at *6.

On remand, the Library Board moved for summary judgment on Imhoff’s breach of contract claim. The trial court initially denied the motion, finding the employment contract was ambiguous as to the benefits Imhoff was owed if she was fired without cause prior to the expiration of the four-year term. However, the trial court subsequently found the Library Board was entitled to sovereign immunity on Imhoff’s breach of contract claim. The trial court also reconsidered its prior ruling that the employment contract was ambiguous. It found that the only reasonable interpretation of the employment contract was that the Library Board could terminate Imhoff’s employment without cause as long as it provided thirty days’ notice and paid Imhoff’s salary and benefits during the notice period. This appeal follows.

II. Analysis

“The proper function of summary judgment is to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor.” *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show 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.” CR² 56.03. The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor. *Steelvest*, 807 S.W.2d at 480.

An unambiguous contract will be interpreted strictly according to its terms. *Frear v. P.T.A. Industries, Inc.*, 103 S.W.3d 99, 106 (Ky. 2003). When no ambiguity exists in a contract, an appellate court looks only to the four corners of the document to interpret the parties’ intentions. *Kentucky Shakespeare Festival, Inc. v. Dunaway*, 490 S.W.3d 691, 695 (Ky. 2016). A contract is ambiguous only “if a reasonable person would find it susceptible to different or inconsistent interpretations.” *Hazard Coal Corporation v. Knight*, 325 S.W.3d 290, 298 (Ky. 2010) (quoting *Cantrell Supply Inc. v. Liberty Mut. Ins. Co.*, 94 S.W.3d 381, 385 (Ky. App. 2002)). “The fact that one party may have intended different results, however, is insufficient to construe a contract at variance with its plain and unambiguous terms.” *Abney v. Nationwide Mutual Insurance Company*, 215 S.W.3d 699, 703 (Ky. 2006) (quoting *Cantrell Supply Inc.*, 94 S.W.3d at 385).

Imhoff contends her employment contract can reasonably be interpreted as requiring the Library Board to pay her the salary and benefits she would have received had she served the full four-year term. We disagree. The law

² Kentucky Rules of Civil Procedure.

in Kentucky is that “[w]here by its terms a contract of employment may be terminated at any time upon giving a specified notice, the damages for a wrongful discharge can be no more than the wages which would have accrued under the contract after the notice, had one been given.” *Bryant & Stratton Business College v. Walker*, 155 Ky. 707, 160 S.W. 241, 242 (1913). Even when proper notice is not given, the employee is entitled only to the salary and benefits they would have earned during the required notice period. *Id.* Kentucky’s position is consistent with the weight of authority nationwide. *Duncan v. Greater Brownsburg Chamber of Commerce, Inc.*, 967 N.E.2d 55, 58 (Ind. App. 2012). As the Indiana Court of Appeals explained, a contrary position would entitle to an employee “to what could only be called the windfall of being compensated for the remainder of the contract term—for services he did not provide—as though he had never been terminated.” *Id.*

We also agree with the Library Board’s argument that Imhoff’s proposed interpretation of the employment contract would render superfluous the provision permitting either party to terminate the contract without cause. “Any contract or agreement must be construed as a whole, giving effect to all parts and every word in it if possible.” *City of Louisa v. Newland*, 705 S.W.2d 916, 919 (Ky. 1986). Thus, we hold the parties’ employment contract permitted the Library Board to terminate Imhoff’s employment without cause provided it gave her thirty

days' notice. Upon doing so, the Board was required to provide Imhoff with the salary and benefits owed until the thirty-day notice period expired. Because there is no dispute the Board did so, Imhoff can not prevail on her breach of contract claim as a matter of law and summary judgment was properly granted.

Imhoff also complains that the trial court *sua sponte* reconsidered its prior order finding the employment contract ambiguous. An order denying summary judgment is interlocutory and is subject to revision at any time before the entry of judgment. CR 54.02. A trial court's decision to reconsider an earlier order denying summary judgment is reviewed for an abuse of discretion. *Davidson v. Castner-Knott Dry Goods Co., Inc.*, 202 S.W.3d 597, 602 (Ky. App. 2006). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Id.* (quoting *Sexton v. Sexton*, 125 S.W.3d 258, 272 (Ky. 2004)). Imhoff was given an opportunity to argue her interpretation of the employment contract to the trial court and she has not alleged any new argument she would have raised or discovery she could have conducted had the trial court proceeded differently. Under these circumstances, the trial court's decision to reconsider was not an abuse of discretion.

Finally, we note the Library Board's request that we hold that it is not merely immune from tort liability, as is the case for entities protected by

governmental immunity, but absolutely immune from suit. It relies on opinions from the Kentucky Supreme Court using the phrase “sovereign immunity” in cases dealing with quasi-governmental agencies. *See, e.g., Comair, Inc. v. Lexington-Fayette Urban County Airport Corp.*, 295 S.W.3d 91 (Ky. 2009). Such a holding would seemingly conflict with prior precedent cloaking similar entities in only governmental immunity. *Autry v. Western Kentucky University*, 219 S.W.3d 713 (Ky. 2007). We would have had to resolve this issue had the Library Board exercised its right to appeal an interlocutory order denying it immunity. But its failure to do so, and our interpretation of the employment contract, make it unnecessary to address the immunity question. Thus, we resolve this appeal on the narrowest grounds possible.

III. Conclusion

The order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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