STATE OF MICHIGAN

COURT OF APPEALS

JAMES KAMMERER,
Plaintiff–Appellant,

v

MEADOWBROOK, INC. d/b/a MEADOWBROOK INSURANCE GROUP,

Defendant–Appellee.

UNPUBLISHED
March 11, 1997

No. 183261
LC No. 94-484708

Before: McDonald, P.J., and White and P. J. Conlin*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order granting defendant's motion for partial summary disposition pursuant to MCR 2.116(C)(10) in this action for breach of an employment contract. We affirm.

Plaintiff was employed in Chicago, Illinois, when defendant recruited him to work as the president of one of its divisions in 1988. Plaintiff accepted and was employed by defendant for approximately six years. On September 6, 1994, defendant summarily fired plaintiff.

Plaintiff filed claims against defendant for declaratory judgment to clarify his rights in relation to a non-compete agreement the parties entered into on October 6, 1989, and for breach of employment contract. The trial court granted defendant's motion for summary disposition as to plaintiff's claim for breach of employment contract. This appeal followed.

On appeal, an order granting summary disposition is reviewed de novo. *Jackhill Oil Co v Powell Production, Inc*, 210 Mich App 114, 117; 532 NW2d 866 (1995). A motion for summary disposition brought pursuant to MCR 2.116(C)(10) tests the factual support for a claim, and a court must determine whether, giving the benefit of any reasonable doubt to the nonmoving party, a record might be developed which might leave open an issue upon which reasonable minds could differ. *Id.*

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* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff contends the trial court erred in dismissing his breach of employment contract claim because there is a genuine issue of material fact as to whether defendant's statements of job security could be interpreted by a reasonable person as manifesting an intent to bind itself to a contract for just cause termination. We disagree.

In Michigan, employment contracts of indefinite duration are presumed to provide for employment at will. *Barber v SMH (US)*, 202 Mich App 366; 509 NW2d 791 (1993). To overcome this presumption, an employee must present sufficient proof of either a contractual provision for a definite term of employment or a provision forbidding discharge absent just cause. *Rood v General Dynamics Corp*, 444 Mich 107; 507 NW2d 591 (1993). When, as here, a plaintiff brings a wrongful discharge claim alleging the existence of an express contract forbidding termination without cause, this Court must follow an objective theory of assent and focus on how a reasonable person in the position of the promisee would have interpreted the promisor's statements or conduct.[1] *Id*. Thus, this Court must examine all the relevant circumstances surrounding the transaction, including all writings, oral statements, and other conduct by which the parties manifested their intent. *Id*.

Viewing the evidence in a light most favorable to defendant, we conclude plaintiff could not have reasonably construed defendant's statements and conduct as manifesting its intent to be bound to the terms of an employment contract limiting it to just cause termination. Although plaintiff claims he made specific inquiries about job security and received promises of such in return, he has not presented evidence that he specifically engaged in preemployment negotiations involving discussion of job security in the sense of requiring just cause for his removal. *Barnell v Taubman Co, Inc*, 203 Mich App 110; 512 NW2d 13 (1993). Similarly, plaintiff presents other evidence of oral statements which, when viewed objectively, do not support his position that defendant unequivocally agreed to be bound to a just cause employment contract.

As for other objective evidence, this Court assigns very little significance to plaintiff's failure to sign defendant's employment application, which explicitly provided for at will termination. Since defendant actively recruited plaintiff, it is not surprising plaintiff never completed an employment application. Finally, while plaintiff claims to have signed the non-compete agreement with the understanding he would not be terminated absent just cause, a mere subjective expectancy on plaintiff's part is not sufficient to establish the existence of a contract for just cause termination. *Grow v General Products, Inc*, 184 Mich App 379; 457 NW2d 167 (1990). Because plaintiff failed to establish a genuine issue of fact regarding whether he had an express employment contract providing for just cause termination, this Court affirms the decision of the trial court granting defendant's motion for summary disposition on plaintiff's claim for breach of employment contract.

Finally, plaintiff argues on appeal that the trial court prematurely granted defendant's motion for summary disposition, because virtually no discovery had taken place and he was not allowed sufficient time to develop corroborative facts. Plaintiff failed to raise this issue in the trial court, thus it is not preserved for appellate consideration, although this Court may consider it if failure to do so would result in manifest injustice. *Jishi v General Motors Corp (On Remand)*, 207 Mich App 429; 526 NW2d 24 (1994). Because further discovery does not stand a fair chance of uncovering factual support for

plaintiff's position, this Court's refusal to review this unpreserved issue will not result in manifest injustice. *Great Lakes Gas Transmission Co v MacDonald*, 193 Mich App 571; 485 NW2d 129 (1992).

Affirmed. Costs to defendant.

/s/ Gary R. McDonald
/s/ Patrick J. Conlin

[1] While plaintiff asserts that the trial court incorrectly applied case law pertinent to the legitimate expectations theory of *Toussaint v Blue Cross & Blue Shielf of Michigan*, 408 Mich 579; 292 NW2d 880 (1980), to his claim for breach of express employment contract, there is simply no indication of this in the lower court record.