STATE OF MICHIGAN

COURT OF APPEALS

DEBORAH HUNTER-HARVILL,

Plaintiff-Appellee,

v

SCHOOLS OF THE 21ST CENTURY and TERESSA V. STATEN,

Defendants-Appellants.

UNPUBLISHED
February 19, 2002

No. 226786
Wayne Circuit Court
LC No. 99-914552-CZ

Before: Neff, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Defendants appeal by leave granted an order of the trial court denying their motion for summary disposition of plaintiff's claim of breach of contract following her dismissal from employment. We reverse.

I

In August 1997, plaintiff was hired as deputy director of defendant Schools of the 21st Century ("21st Century"). Plaintiff did not sign a written contract of employment when she was hired. Subsequently, on October 27, 1999, plaintiff signed a Letter of Agreement/Understanding, stating that she had had a "one on one" conference with defendant Teressa Staten ("Staten"), executive director of 21st Century, had accepted the position of deputy director at a pay rate of $88,000, and understood the terms and conditions of employment. Staten was plaintiff's immediate supervisor. Plaintiff also signed an Acknowledgement stating that she had received an employee handbook and understood and agreed that the handbook did not create a contract.

Over the course of the next year, difficulties arose between Staten and plaintiff. In August 1998, plaintiff's job title was changed to Senior Director, and she again signed a Letter of Agreement/Understanding and an Acknowledgement. In April 1999, Staten terminated plaintiff's employment. Plaintiff filed an action against defendants claiming breach of contract and tortious interference with a contractual relationship. Defendants moved for summary disposition, and following a hearing, the tortious interference claim was dismissed. The trial court denied summary disposition of the breach of contract claim, concluding that plaintiff had established a prima facie case based on an oral contract, and the issue of breach was a question of fact for the jury.

II

We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the claim. A trial court must consider the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, in the light most favorable to the party opposing the motion. Summary disposition is proper where the proffered evidence fails to establish a genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999).[1]

III

Defendants contend that plaintiff's employment was at will, and thus the trial court erred in denying summary disposition of plaintiff's breach of contract claim. When an employment agreement is silent regarding the type of employment relationship, it is presumed that employment is terminable at will by either party. *Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627, 636-637; 473 NW2d 268 (1991) (Riley, J., joined by Brickley and Griffin, JJ.) 664 (Boyle, J.); *Franzel v Kerr Manf Co*, 234 Mich App 600, 612; 600 NW2d 66 (1999). "To overcome the presumption of employment at will, a party must present sufficient proof either of a contractual provision for employment for a definite term or of a provision forbidding discharge in the absence of just cause." *Barnell v Taubman Co, Inc*, 203 Mich App 110, 115-116; 512 NW2d 13 (1993). These contractual provisions may arise from explicit promises or promises implied in fact. *Rood v General Dynamics Corp*, 444 Mich 107, 117; 507 NW2d 591 (1993).

Plaintiff contends that her employment with defendant could not be terminated without just cause, arguing three separate bases for her claim. We conclude that there is insufficient evidence on any of these bases to establish a just-cause employment agreement.

A

Plaintiff first argues that although she had no written contract establishing just-cause employment, defendants' pre-employment oral commitments of job security established a just-cause agreement. Oral statements may be sufficient to overcome the presumption of at will employment if the statements are clear and unequivocal, and would permit a reasonable person to find that a reasonable promisee would interpret the statements made as a promise of termination only for just cause. *Barnell, supra* at 116, 118. Mere optimistic hope of a long employment relationship will not suffice. *Rowe, supra* at 640. We disagree that the statements relied on by plaintiff meet the required standard.

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[1] Plaintiff's brief on appeal is premised on a former standard of review for summary disposition, i.e., that the trial court determine "whether a record might be developed that would leave open an issue upon which reasonable minds might differ" and that summary disposition may be granted only when "the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." The correct standard under MCR 2.116(C)(10) requires that a party present evidentiary proofs creating a genuine issue of material fact for trial. *Globe, supra* at 455-456 n 2.

Plaintiff likens her circumstances to those in *Barnell, id.* at 116-117, where prior to hiring, the plaintiff raised his concerns of job security with three of the defendant company's officials, all of whom assured the plaintiff that he would not be dismissed without basis. The plaintiff in *Barnell* was solicited for the new position of vice president of financial services. *Id*. at 112. In response to the plaintiff's specific concerns about job security, the defendant's chief financial officer, whom the new position was designed to assist, told the plaintiff that he need not be concerned about summary dismissal and that he would not be dismissed without cause (although the plaintiff was uncertain of the official's exact words). *Id*. at 112-113. Similarly, the defendant company's chief executive officer assured the plaintiff that there was a system for employee evaluation and the system would apply to the plaintiff. *Id*. at 113. The chief of operations responded to the plaintiff's job security concerns likewise, stating that employees were reviewed and would only be discharged if they were not performing. *Id*. Based on the plaintiff's specific inquiries about dismissal and the specific statements by the defendant's officials, as well as the lack of contrary evidence, the *Barnell* Court concluded that the oral assurances were sufficient to create an express agreement for just-cause employment. *Id*. at 116-118. Because the plaintiff was leaving a well-paid executive position to take the new position, the Court found it reasonable to conclude that job security was important to him. *Id*. at 117-118.

Unlike in *Barnell*, the statements and circumstances alleged by plaintiff in this case were not clear and unequivocal. The assurances relied on by plaintiff were essentially that she would not have to worry about job security and that she would be in line for the executive director's position when Staten left in eighteen to twenty-four months. These assurances allegedly came from a "Human Resource representative" involved in 21st Century's recruitment process and from certain 21st Century board members, who also told plaintiff that she was doing a good job. These statements are not clear and unequivocal and do not equate with the specific inquires and assurances in *Barnell*.

Moreover, unlike the plaintiff in *Barnell*, who consistently raised his concerns with those in charge of the company, plaintiff does not appear to have been consistent in her alleged negotiations for job security. Even though plaintiff had direct communications with Staten, the executive director (one of plaintiff's interviewers and her future supervisor), plaintiff apparently did not raise her job security concerns with Staten nor does plaintiff claim that Staten gave her any assurances of just-cause employment.

Unlike in *Barnell*, we do not find the fact that plaintiff left a "financially lucrative position," where she had an alleged promising future, indicative of her reliance on a just-cause agreement in taking the position with defendant. Plaintiff left a job with a salary of $72,000 for a position paying $88,000, which was to her immediate benefit. Further, plaintiff acknowledges consideration of other prospective positions. These circumstances undercut plaintiff's just cause arguments. The vague oral statements relied on by plaintiff cannot be viewed as "preemployment negotiations regarding security" required for a just-cause agreement or evidence of mutual assent by defendants. *Rowe, supra* at 643; *Bracco v Michigan Technological University*, 231 Mich App 578, 590, 600-601; 588 NW2d 467 (1998). The statements do not support a reasonable conclusion that plaintiff received a promise forbidding termination absent just cause. *Rowe, supra* at 639-640; *Barnell, supra* at 118.

Finally, plaintiff avers that defendants at no time made it known to her that she could be terminated at will and that at no time have defendants alleged that the Human Resource

representative was not authorized to act on defendants' behalf. However, plaintiff must overcome the presumption of at will employment, and these assertions, even if true, do not affect our analysis in that regard. After she was hired, plaintiff admittedly received an employee handbook, containing a provision that employment was at will, thus further negating her claimed just-cause status. The objective evidence does not rise to the level of an agreement providing termination only for just cause. *Rowe, supra* at 643.

B

Next, plaintiff argues that she established a "*Toussiant* claim," allegedly based on her "reasonable expectation of continued employment."[2] As an alternative to a contractual theory of wrongful discharge, a claim may be premised on a legitimate expectations theory, i.e., "the employee's legitimate expectations of continued employment absent just cause for termination arising out of the employer's policies and procedures." *Barnell, supra* at 116, citing *Touissaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 598; 292 NW2d 880 (1980).

In arguing her "*Toussaint* claim," plaintiff contends that her employment was not at will on the basis of statements in her performance evaluation by Staten, including the statement that "as of this date, we will work to modify your functional areas to carry out your work during the next six months." Plaintiff also relies on the fact that her performance evaluation contained complimentary, positive statements concerning her work performance. Plaintiff contends that because of these statements, she had a reasonable expectation of continued employment. Moreover, she argues that even if she did not have a just-cause agreement at hiring, the job evaluation statements, along with other positive affirmations of her good work from certain board members, the preemployment negotiations and assurances of job security, and reassurances by certain board members that she would eventually assume the executive director position, together establish a question of fact whether defendants modified the terms of her employment.

A reasonable expectations theory of wrongful discharge under *Toussaint, supra,* requires a two-step analysis: 1) "determine what, if anything, the employer has promised"; 2) "determine whether the promise, if made, is reasonably capable of instilling a legitimate expectation by employees of just-cause employment." *Braccco, supra* at 592. Given our above analysis regarding plaintiff's preemployment negotiations claim, plaintiff's additional allegations are insufficient to establish a reasonable expectations theory of recovery. Staten's indication in a performance evaluation that they would attempt to modify functional work areas over the "next six months" cannot reasonably be viewed as a commitment of just-cause employment. Plaintiff points to no reliance on a specific policy or procedure, such as a just-cause employment provision or practice, that supports her alleged expectation. See *Bracco, supra* at 589, citing *Toussaint, supra,* in which the plaintiff received a personnel policy manual containing a just-cause employment "policy," thus reinforcing the claimed oral assurance. Even considering the

[2] Plaintiff appears to have conflated the contractual and the legitimate expectations theories under *Toussaint*. See *Bracco, supra* at 600. Because we have addressed plaintiff's contractual claim, we focus on the analysis for a legitimate expectations claim.

statements together with the circumstances as a whole, we conclude that plaintiff has not shown a promise, let alone a promise supporting a reasonable expectation of just-cause status.

C

Finally, plaintiff argues that she established a wrongful discharge claim on the basis of promissory estoppel and detrimental reliance. We disagree. Citing *Lovely v Dickens*, 132 Mich App 485; 347 NW2d 752 (1984),[3] plaintiff claims that she is entiled to recovery on a theory of promissory estoppel because she was induced to leave a lucrative position to work for defendant, based on promises of a forthcoming written contract, a $105,000 salary, and other conditions, including the negotiated job security. To support an estoppel, a promise must be definite and clear. *Id*. at 490. Having concluded above that the evidence was insufficient to establish a promise of just-cause employment, plaintiff's claim of promissory estopple must fail.

IV

Plaintiff has not provided evidence to overcome the presumption of at will employment. "The courts should not lightly infer a finding of a policy of discharge only for cause." *Bracco, supra* at 599. The trial court erred in denying defendants' motion for summary disposition of plaintiffs' breach of contract claim.

Reversed.

/s/ Janet T. Neff
/s/ Mark J. Cavanagh
/s/ Henry William Saad

[3] We do not acknowledge that *Lovely* is applicable to plaintiff's claim. Further, the viability of *Lovely* has been questioned. *Crown Technology Park v D&N Bank, FSB*, 242 Mich App 538; 619 NW2d 66 (2000).