STATE OF MICHIGAN

COURT OF APPEALS

THOMAS PEACOCK,

Plaintiff-Appellant,

v

ONAWAY COMMUNITY FEDERAL CREDIT UNION, BRIAN JANECZEK, APRIL PEACOCK, and RON HORROCKS,

Defendants-Appellees.

UNPUBLISHED
May 27, 2004

No. 243460
Presque Isle Circuit Court
LC No. 01-002442-CZ

Before: Murray, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

In this breach of an employment contract case, plaintiff appeals as of right the order granting defendant's motion for partial summary disposition.[1] We affirm.

Plaintiff's sole issue on appeal is that trial court erred in granting summary disposition to defendant because statements made by representatives of Onaway Community Federal Credit Union to plaintiff created both express and implied contracts for just-cause employment. We disagree. A trial court's ruling on a motion for summary disposition under MCR 2.116(C)(10) is reviewed de novo. *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 490; 579 NW2d 411 (1998).

Under MCR 2.116(C)(10), a party may move for dismissal of part of a claim based on the assertion that there is no genuine issue with respect to any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. *Universal Underwriters Group v Allstate Ins Co*, 246 Mich App 713, 720; 635 NW2d 52 (2001). When reviewing the motion, the court must consider the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party. *Id.* at 720.

[1] Defendants filed two separate motions challenging the three separate counts within plaintiff's complaint. Although the trial court granted both motions and dismissed all three counts, plaintiff is only appealing the dismissal of count I, which alleged breach of contract.

"At will" is the presumed employment relationship in Michigan. *Lynas v Maxwell Farms*, 279 Mich 684; 273 NW 315 (1937). That is, employees serve at the will of their employer unless they can overcome the presumption by proving that clear and unequivocal statements of job security were made to the employer to the employee. *Rowe v Montgomery Ward Inc*, 437 Mich 627, 645; 473 NW2d 268 (1991). A just-cause employment relationship can also be found "as a result of an employee's legitimate expectations grounded in an employer's policy statements." *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 598; 292 NW2d 880 (1980). "[T]he proper inquiry is whether the employer, through its employment manual or otherwise, made representations or promises that termination would be only for just cause." *Biggs v Hilton Hotel Corp*, 194 Mich App 239, 241; 486 NW2d 61 (1992).

Assuming for purposes of this opinion that an oral just-cause contract existed, the trial court nevertheless properly granted defendants summary disposition because if such a contract did indeed exist, the contract was nullified by a subsequent disclaimer.

Plaintiff signed two different acknowledgements that contained both contractual disclaimer and at-will language. The first acknowledgment stated:

> While the Credit Union supports the policies described in this handbook, it reserves the right to change or terminate them at any time.
>
> * * *
>
> The policies described in this handbook do not create nor constitute an employment agreement between the Onaway Community Federal Credit Union and any employee.
>
> * * *
>
> I agree to conform to the rules and regulations of Onaway Community Federal Credit Union, and my employment and compensation can be terminated, with or without cause, and with or without notice, at any time, at the option of either the Credit Union or myself.

Only a little over a month later, plaintiff signed another acknowledgement that stated:

> I have received a copy of the Onaway Community Federal Credit Union Personnel Policy which supersedes all previous personnel policies and any oral or written representations contrary to the provisions of this Policy. I understand and agree that any provision of the Policy may be amended or revised at any time by the Credit Union.

Further, page 2 of the handbook states:

> A. The manager will be employed and discharged by the board of directors.

B. All other employees will be employed and discharged by the ceo/mgr. All employees are hired on an at will basis.

Plaintiff argues that despite that fact that he signed an acknowledgment of these statements, he did so only as a "courtesy," and in fact, an implied contract was created at the time that the policy statement was implemented because the Board told him that "a lot of [the] stuff" in the manual did not apply to him. Plaintiff's argument lacks merit.

In *Nieves v Bell Industries, Inc*, 204 Mich App 459; 517 NW2d 235 (1994), the plaintiff was told during his interview that he would not be arbitrarily fired and then later signed several documents providing for at-will employment. When he specifically asked about the provisions, the plaintiff was told that they did not apply to him. *Id.* at 461. This Court found that even if the plaintiff had a just-cause employment contract, "the [agreement] that plaintiff signed clearly and unambiguously defined the terms of plaintiff's employment, including the company's at-will employment policy." *Id.* at 463. Adhering to well-established contract law, this Court went on to hold:

> One who signs a contract cannot seek to avoid it on the basis that he did not read it or that he supposed that it was different in terms. . . . When an employment contract expressly provides for employment at-will, a plaintiff, by signing the contract, assents to employment at will and cannot maintain an action based on a prior oral agreement for just-cause employment. [*Id.* (citations omitted).]

This Court further stated, "While plaintiff may have had a subjective expectation that his employment could not be terminated except for just cause, such an expectation in and of itself does not create a just-cause employment contract." *Id.* at 464. Therefore, based on *Nieves*, the trial court's determination that any just-cause contract that plaintiff might have had was nullified by plaintiff's later acknowledgment of OCFCU's at-will employment policy was correct.

We also reject plaintiff's argument that the subsequent acknowledgment he signed is unenforceable for lack of consideration. Our Supreme Court rejected this same argument in *Scholz v Montgomery Ward Inc & Co,* 437 Mich 83, 90 n 7; 468 NW2d 845 (1991):

> Assuming that an express oral contract actually existed prior to plaintiff signing the employment-at-will disclaimer, the disclaimer would not fail for lack of consideration. A contract modification, in the absence of additional consideration, is enforceable if it is in writing and signed by the party against whom it is charged. MCL 566.1; MSA 26.978(1).

Hence, the written acknowledgement signed by plaintiff, which modified his prior express oral contract, does not fail for lack of consideration.

Last, plaintiff argues that the procedures the Board went through before his termination implied a just-cause contract, and he supports this contention by pointing out that a member of the Board stated that the reason they investigated plaintiff before his termination was because they had to "have a good reason to terminate his employment." However, merely creating a

systematic way of dealing with employees' misconduct does not overcome the presumption of at-will employment. *Lytle v Malady*, 458 Mich 153, 165-166; 579 NW2d 906 (1998); *Biggs, supra* at 242.

Affirmed.

/s/ Christopher M. Murray
/s/ Pat M. Donofrio