STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1176

James Connolly,
Appellant,

vs.

Department of Public Safety, State of Minnesota,
Respondent.

Filed March 2, 2010
Affirmed
Larkin, Judge

Ramsey County District Court
File No. 62-CV-08-3642

Marshall H. Tanick, Phillip J. Trobaugh, Mansfield, Tanick & Cohen, P.A., Minneapolis, Minnesota (for appellant)

Lori Swanson, Attorney General, Kristyn M. Anderson, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Wright, Presiding Judge; Worke, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant claims that the district court erred by awarding summary judgment to respondent based on its conclusion that the grievance procedure in appellant's collective-

bargaining agreement provided the exclusive remedy for appellant's expense-reimbursement dispute. Appellant argues that the collective-bargaining agreement does not apply because the dispute concerned expenses related to a temporary work assignment with the federal government. Because the terms of the collective-bargaining agreement apply to the dispute and its grievance procedure was appellant's exclusive remedy, we affirm.

FACTS

The facts underlying the district court's summary-judgment award are largely undisputed. Appellant James Connolly was a long-time employee in the Driver and Vehicle Services Division (DVS) of the Minnesota Department of Public Safety (DPS). He progressed through the agency over the years and ultimately obtained a supervisory position as a driver examination program manager. As a supervisor, his employment was governed by the terms of a collective bargaining agreement (CBA) between the state and the Middle Management Association (MMA). The CBA was approved by the legislature. *See* Minn. Stat. § 179A.22, subd. 4 (2008) ("The commissioner of finance is authorized to enter into agreements with exclusive representatives. The negotiated agreements and arbitration decision must be submitted to the legislature to be accepted or rejected in accordance with this section and section 3.855.").

In November 2006, Connolly's supervisor, Joan Kopcinski, notified him of an opportunity for a temporary, one-year assignment with the Federal Motor Carrier Safety Administration (FMCSA) in Washington, D.C. This assignment was to begin on July 1, 2007. State employees selected for the position were to "[r]emain employees of the State

Agency and continue to be subject to all State employment conditions and benefits, including wages and health benefits." Connolly was approved for the temporary assignment. Connolly alleged that he was told that "all expenses would be paid for by the federal government." But Connolly also acknowledged that he understood that he would remain an employee of the State of Minnesota during the temporary work assignment, and that upon completion of the assignment, he would be able to return to his job with the DVS.

In anticipation of this temporary assignment, Connolly made plans to move to Washington, D.C. In February 2007, Connolly listed his house for sale. He informed Kopcinski of this action, and she congratulated him. In May, Connolly accepted an offer on his house. He informed Kopcinski, and she again congratulated him. Connolly's wife also made plans to retire based on her husband's temporary relocation to Washington, D.C.[1] She ultimately left her employment on June 12, 2007. The Connollys also informed their adult son that he would no longer be able to reside with them.

Per a request from FMCSA, Connolly prepared and submitted several estimated expense calculations. On June 1, Connolly submitted an expense estimate of $187,629.29. On June 6, he submitted an estimate of $194,079. On or about June 7, the estimate had increased to $200,079.47. His final estimate, submitted on June 13, totaled $201,759.47 and included 12 months of rent and utilities, 365 days of a per diem for

[1] Connolly's wife had technically retired from her employment with the Minnesota Department of Transportation in June 2006. Thereafter, she worked in a part-time, temporary, unclassified position which began on June 15, 2006 with an end date of June 14, 2007. She resigned on June 12, 2007, without seeking an extension of the position.

meals, 52 weeks of laundry, and the cost of commuting to and from his home in D.C. to his workplace, in addition to 12 months of salary and benefits. Connolly also sought to be reimbursed for a house-hunting trip, travel with his spouse to and from D.C. with two cars, and his moving expenses. Connolly acknowledged that his expense estimates were based upon the CBA.

DPS calculated its own estimate of Connolly's projected expenses based upon its interpretation of the CBA, particularly Articles 18 and 19. Article 18 provides for expenses when an employee is traveling. It allows the employee to be reimbursed for lodging, utilities, and laundry, and also provides a per diem for food costs.

Article 19, dealing with relocation expenses, provides, in part:

> When a supervisor must change residence as a condition of employment or in order to accept an appointment at a higher salary range offered by a Department, the move shall be considered to be at the initiative and in the best interests of the Employer and the Appointing Authority shall approve the reimbursement of relocation expenses in accordance with the provisions of this Article.

Article 19 allows the employee to recover moving expenses, as well as realtor fees. Article 19 also provides for standard traveling expenses at the appointing authority's discretion. However, Article 19 limits the amount of time an individual can be in travel status to a maximum of 90 days, with an allowance for an additional 90 days at the discretion of the appointing authority.

Under Article 18, Connolly could be in travel status for 12 months, and receive lodging, utilities, and laundry expenses in addition to a per diem. But in order to receive moving expenses and realtor fees, Connolly would need to be in relocation status under

Article 19. Human-resources and labor-relations representatives determined that under Article 19, Connolly could be in relocation status and thereby receive moving expenses and realtor fees, and that he could also receive 6 months of travel expenses for lodging, laundry, utilities, and a per diem. Believing the latter to be the best possible situation for Connolly, DPS based its expense reimbursement estimate on Article 19.[2]

On June 21, 2007, the state presented its calculations to Connolly. Based upon its interpretation of the CBA, DPS offered to pay Connolly $192,203, consisting of 12 months of salary and benefits, six months of rent and utilities, six months of a per diem, realtor fees, and moving expenses. The difference between the state's estimate and Connolly's estimate was less than $10,000. Nonetheless, on July 2, 2007, Connolly chose to retire rather than accept the state's offer.

On April 18, 2008, Connolly filed a complaint against DPS alleging breach of contract, or in the alternative, promissory estoppel. On March 19, 2009, the district court heard DPS's motion for summary judgment and granted the motion in its entirety. This appeal follows.

[2] It should be noted that while Article 19 provides that individuals in relocation status can be in travel status and allowed standard travel expenses for up to 90 days, these individuals shall only be allowed travel expenses to either "1) travel between their original work station and their new work station on a daily basis; or, 2) be lodged at their new work station and be allowed to return to their original work station once a week." Because Connolly would not be traveling between his original work station and his new work station or be returning to his original work station once a week, it does not appear that he was eligible for travel expenses, in addition to relocation expenses, under Article 19.

D E C I S I O N

"A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). "On appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted." *Id.* "On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). "We review de novo whether a genuine issue of material fact exists" and "whether the district court erred in its application of the law." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002).

Breach-of-Contract Claim

The district court concluded that because Connolly would remain a state employee while on temporary assignment in Washington D.C., Articles 18 and 19 of the CBA, which concern travel and relocation expenses, governed the determination of Connolly's expense reimbursement. The district court further concluded that because the CBA applied, the CBA grievance procedure was Connolly's exclusive remedy for any dispute regarding expense reimbursement. Connolly argues that the district court erred because the CBA was not applicable to his unique situation.

"[T]he compensation, terms and conditions of employment for all employees represented by an exclusive representative . . . shall be governed solely by the collective bargaining agreement executed by the parties and approved by the legislature." Minn. Stat. § 43A.18, subd. 1 (2008). Connolly was a state employee and member of the MMA at all times relevant to this lawsuit. The CBA covers "all supervisors employed by the State of Minnesota for more than fourteen (14) hours per week and more than sixty-seven (67) working days per year." Connolly was such a supervisor. Therefore, the terms and conditions of his employment with DPS were governed solely by the MMA CBA.

Article 7 of the CBA governs grievance procedures. It provides in relevant part:

> For the purpose of this Agreement, a grievance shall be defined as a dispute or a disagreement as to the interpretation or application of any term or terms of this Agreement. Supervisors are encouraged to first attempt to resolve the matter on an informal basis with their immediate superior at the earliest opportunity. If the matter cannot be resolved to the supervisor's satisfaction by informal discussion, it shall then be settled in accordance with the following [grievance] procedure.

Under the plain language of this article, any dispute that falls within the ambit of the CBA must be resolved through the grievance procedure, including a dispute concerning whether the terms of the CBA apply.

"The widely-accepted rule in both Minnesota and federal courts is that, if a grievance procedure within a collective bargaining agreement is intended to be the exclusive remedy for an employee's claims, employees cannot bring actions in state or federal court for breach of contract." *White v. Winona State Univ.*, 474 N.W.2d 410, 412 (Minn. App. 1991). Nothing in the record indicates that the CBA contemplated avenues

of formal relief other than the grievance process. *See McIntire v. State*, 458 N.W.2d 714, 720 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990) (affirming a district court's award of summary judgment on a breach-of-contract claim where nothing in the record indicated that the bargaining agreement contemplated avenues of relief outside of the grievance process). Rather, the CBA language indicates that the parties intended for the grievance procedure to provide Connolly's exclusive remedy: Article 7 explicitly provides that any disagreement as to the application of the terms of the CBA "shall" be settled in accordance with the grievance procedure.

"Generally, an employee must exhaust all administrative remedies provided under a CBA before bringing an action derived from the contract in district court." *Edina Educ. Ass'n v. Bd. of Educ. of Indep. Sch. Dist. No. 273*, 562 N.W.2d 306, 310 (Minn. App. 1997), *review denied* (Minn. June 11, 1997). Rather than exhausting his administrative remedies under the CBA, Connolly improperly brought an action in district court. DPS was entitled to judgment as a matter of law.

Connolly asserts that the CBA does not apply to this dispute because Articles 18 and 19 do not specifically reference a one-year temporary position and because his employment change was voluntary, whereas Article 19 applies only to layoffs. The plain language of the CBA refutes this assertion. The fact that this was a one-year temporary assignment with the federal government is irrelevant to our analysis. As the district court noted, Connolly was to remain a state employee throughout his temporary assignment. The CBA governs employment agreements between the state and its supervisors, such as Connolly. The fact that the agreement does not explicitly mention temporary federal

assignments is also irrelevant; the CBA explicitly covers state supervisors, in their capacity as state employees, as well as reimbursement of their travel and relocation expenses.

And application of Article 19 is not limited to layoffs. Only a portion of Article 19 refers explicitly to layoffs. It states: "If the application of Section 7 of Article 13 requires a supervisor to change residence and such change meets the thirty-five (35) mile requirements provided for in this Article . . . the supervisor shall be eligible for payment of relocation expenses consistent with this Article . . . ." Article 13, Section 7, concerns supervisors that have been laid off. However, in this context, Article 19 merely articulates that relocation expenses can be paid to supervisors who have been laid off. Article 19 does not apply *only* to those individuals; rather it applies to all supervisors, laid off or not, who must change residence. This included Connolly. In order to be eligible for reimbursement of relocation expenses supervisors "must change residence as a condition of employment."[3] To qualify for the temporary position, Connolly was required to move to Washington, D.C. It is not dispositive that this move was voluntary. Once he decided to take the temporary assignment, he was required to "change residence as a condition of employment."

[3] The article also applies to supervisors who must change residences "in order to accept an appointment at a higher salary range." Connolly would have been receiving the same salary in the temporary position that he received while working at DVS. Therefore, only the first provision regarding changing residences as a condition of employment is relevant to this analysis.

The plain language of the CBA indicates that it applies to the dispute concerning reimbursement of Connolly's relocation expenses.[4] Because the CBA was directly applicable, Connolly's sole remedy for the dispute was to follow the grievance procedure in the CBA. The district court did not err by granting DPS's motion for summary judgment.

Promissory-Estoppel Claim

Connolly argues that the district court erred by granting DPS's motion for summary judgment because the CBA did not bar his promissory-estoppel claim. DPS asserts that the district court properly concluded that Connolly's promissory-estoppel claim fails as a matter of law because the CBA was the exclusive dispute remedy available to Connolly.

"[T]he doctrine of promissory estoppel only applies where no contract exists." *Banbury v. Omnitrition Int'l Inc.*, 533 N.W.2d 876, 881 (Minn. App. 1995). In this case, the CBA governs the terms of Connolly's employment with DPS, including reimbursement of relocation expenses, thus barring his promissory-estoppel claim. The

[4] Connolly argues that we should consider the affidavit of a former MMA business agent as competent evidence that the CBA did not apply to expense reimbursement under the circumstances in this case. However, the CBA's terms unambiguously provide for reimbursement of relocation expenses. Therefore, extrinsic evidence is not admissible on this issue. *See Kauffman Stewart, Inc. v. Weinbrenner Shoe Co.*, 589 N.W.2d 499, 502 (Minn. App. 1999) ("It is improper to go beyond the actual language of the contract where the wording is clear.").

district court did not err by concluding that the promissory-estoppel claim was barred as a matter of law.

Affirmed.

Dated:

Judge Michelle A. Larkin