STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2093

Paula Savela,
Appellant,

vs.

City of Duluth,
Respondent.

Filed September 21, 2010
Affirmed in part and reversed in part
Halbrooks, Judge
Dissenting, Stauber, Judge

St. Louis County District Court
File No. 69DU-CV-08-1793

Don L. Bye, Shelly M. Marquardt, Duluth, Minnesota (for appellant)

John M. LeFevre, Jr., Mary D. Tietjen, Peter G. Mikhail, Kennedy & Graven, Chartered, Minneapolis, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and Stauber, Judge.

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

HALBROOKS, Judge

Appellant Paula Savela, individually and as a representative of a certified class, challenges the district court's grant of summary judgment to respondent rejecting appellant's claim that collective-bargaining agreements with respondent entitle the class

to receive the same level of health-insurance coverage that each member received on the date of his or her retirement. Appellant also asserts that the district court erred by dismissing a claim based on promissory estoppel. Because we conclude that the district court did not err by dismissing appellant's breach-of-contract claim, we affirm in part. But because we conclude that the district court erred by granting summary judgment to respondent on a promissory-estoppel theory that had not been raised, we reverse in part.

FACTS

Appellant represents a certified class of retired employees of respondent City of Duluth (city). Three members of the class sued the city, their former employer, after learning that the city no longer intended to provide the same level of health-insurance coverage that the class members had been receiving at the time of their retirements. These members obtained a temporary restraining order prohibiting the city from changing their health-insurance coverage. The parties stipulated to class certification, and the district court certified the class. After class certification, both parties moved for summary judgment, taking the position that the plain language of the applicable contract controls the outcome.

The class members were subject to one of several versions of a collective-bargaining agreement (CBA) at the time of their respective retirements. But the language at issue here is consistent throughout the various CBA versions. The applicable provision in the CBAs states that "[a]ny employee who retires from employment with the City on or after January 1, 1983, . . . shall receive hospital-medical insurance coverage to the

same extent as active employees, subject to [certain] conditions and exceptions." According to the stipulation for class certification:

> There is a live controversy between the City and the Class as to the meaning of the CBA language ("to the same extent as active employees") on the following issue: As a matter of contract, are the Class members' health benefits fixed and governed by the plan in place on the date of their retirement or may the City modify the benefits whenever and however benefits for current employees are modified?

Following a hearing, the district court concluded that the language of the provision in the CBAs is unambiguous and that, based on the plain language of the provision, the health-insurance coverage of the class is not fixed and the city can change or modify the coverage consistent with what is provided to active employees. The district court also dismissed the class's claim under a promissory-estoppel theory despite the parties' stipulation that the action was limited to a contract claim. This appeal follows.

D E C I S I O N

Appellant argues that the district court erred by denying her motion for summary judgment, by granting the city's motion, and by sua sponte granting the city summary judgment on a promissory-estoppel theory. Summary judgment should 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 as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. On appeal from an order granting summary judgment, this court asks 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). This court reviews "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). The parties agree that there are no genuine issues of material fact. The dispute centers on the district court's interpretation of the applicable contract.

I.

A public employer may obligate itself to pay its retirees' health-insurance premiums. *See* Minn. Stat. § 471.61, subd. 2b(e) (2008) (stating that a former employee is required to pay premiums "except as otherwise provided in a [CBA]"). This obligation survives the expiration of the CBA and is enforceable on contract grounds. *Hous. & Redev. Auth. of Chisholm v. Norman*, 696 N.W.2d 329, 336 (Minn. 2005) (confirming that an employer's contractual agreement to pay health-insurance premiums for retirees did not expire along with the CBA). Minnesota Statutes protect former public employees in other ways. For example, "[a] unit of local government must allow a former employee and the employee's dependents to continue to participate indefinitely in the employer-sponsored . . . insurance group that the employee participated in immediately before retirement." Minn. Stat. § 471.61, subd. 2b (2008). And "[u]ntil the former employee reaches age 65, the former employee and dependents must be pooled in the same group as active employees for purposes of establishing premiums and coverage for hospital, medical, and dental insurance." *Id.*, subd. 2b(b). The city does not dispute these obligations. The city agrees that it must continue paying the retirees' premiums, and there is nothing in the record to suggest that class members are being pooled with a

different insurance group than the one they participated in immediately before they retired. The city seeks to change the level of coverage it provides to retirees to be consistent with coverage provided to current employees, and appellant contends that the city is contractually prohibited from doing so.

The parties agree that the CBA language in effect at the time of retirement controls their respective rights and obligations. Contract interpretation is a question of law, which we review de novo. *Bus. Bank v. Hanson*, 769 N.W.2d 285, 288 (Minn. 2009). "In interpreting a contract, the language is to be given its plain and ordinary meaning." *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998). As noted, the applicable provision in the CBA states that "[a]ny employee who retires from employment with the City on or after January 1, 1983, . . . shall receive hospital-medical insurance coverage to the same extent as active employees." The parties dispute the meaning of the phrase "to the same extent as active employees." The city contends that the plain and ordinary meaning of this phrase is that retirees are entitled to health-insurance coverage to the same extent as current employees. Appellant argues that, despite the language in the CBA, the parties intended to lock in the level of coverage provided to employees as of their retirement dates.

As evidence of the intent of the parties, appellant submitted a number of affidavits describing the CBA negotiations and various statements made by the city to class members. Appellant also points to the parties' historic interpretation of the contract as evidence of the meaning of the contract term. But affidavits and historic interpretation are extrinsic to the contract. We look to extrinsic evidence only if the contract is found to

be ambiguous. *Norman*, 696 N.W.2d at 337. Extrinsic evidence may not be used to vary the terms of a written contract when the contract is neither incomplete nor ambiguous. *Alpha Real Estate Co. v. Delta Dental Plan*, 664 N.W.2d 303, 312 (Minn. 2003). If a contract is unambiguous, a party cannot alter its language based on "speculation of an unexpressed intent of the parties." *Metro. Sports Facilities Comm'n v. Gen. Mills, Inc.*, 470 N.W.2d 118, 123 (Minn. 1991). In an unambiguous contract, the plain and ordinary meaning of the contract controls. *Hanson*, 769 N.W.2d at 288. Therefore, we must first determine if the phrase "to the same extent as active employees" is ambiguous before addressing the extrinsic evidence of intent and historical interpretation offered by appellant. Ambiguity exists if the language of the contract is "reasonably susceptible of more than one meaning." *Minn. Teamsters Pub. & Law Enforcement Emps. Union, Local 320 v. Cnty. of St. Louis,* 726 N.W.2d 843, 847 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. Apr. 25, 2007).

The term "active employees" in the CBA is used in contrast to retired employees. The plain and ordinary meaning of "active employees" is employees who are currently working—as opposed to employees who have retired. We do not find the phrase reasonably susceptible to another meaning, and appellant offers no argument that the plain meaning of the phrase supports her alternative interpretation of the contract. Appellant instead argues that the term "active employees" should be essentially re-written to mean "active employees on the date of retirement" because that is what the parties intended.

But we cannot disregard the clear language of the contract to pursue the unstated intent of the parties. *See Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 123 (Minn. 2007) (stating, in the context of statutory interpretation, that "[w]e construe statutes to effect their essential purpose but will not disregard a statute's clear language to pursue the spirit of the law"). Because we conclude that no ambiguity exists in the phrase, we decline to consider the extrinsic evidence of intent and past interpretation provided by appellant. *See Norman*, 696 N.W.2d at 337 ("Under a contract analysis, we first look to the language of the contract and examine extrinsic evidence of intent only if the contract is ambiguous on its face."). And we cannot reach appellant's interpretation without relying on extrinsic evidence or unduly straining the plain and ordinary meaning of the language of the provision. According to the plain and ordinary meaning of the phrase "to the same extent as active employees," the city may modify the level of health-insurance coverage provided to retirees to the same extent that it modifies the level of coverage provided to active employees.

Contrary to appellant's assertion, concluding that the level of health-insurance coverage for retirees was not fixed on their retirement dates is not inconsistent with the supreme court's holding in *Norman.* In *Norman*, a retiree brought an action to prevent her former employer from discontinuing its payment of her insurance premiums. *Id.* at 331-32. The supreme court held that Norman's "right to the payment of health insurance premiums vested at the time she retired and [her former employer] cannot now unilaterally terminate those benefits." *Id.* at 338. But the supreme court was not presented with and did not address the level of coverage to which Norman was entitled; it

only addressed Norman's former employer's ongoing obligation to pay the insurance premiums. As discussed, the city does not dispute its obligation to continue paying premiums for the class. Therefore, *Norman* is inapposite.

II.

Appellant also asserts that the district court erred by sua sponte awarding the city summary judgment on the ground that appellant cannot support a promissory-estoppel claim. "A district court may, sua sponte, grant summary judgment if, under the same circumstances, it would grant summary judgment on motion of a party." *Estate of Riedel by Mirick v. Life Care Ret. Cmtys., Inc.*, 505 N.W.2d 78, 81 (Minn. App. 1993). A reviewing court will not reverse an otherwise appropriate sua sponte grant of summary judgment "unless the objecting party can show prejudice from lack of notice, from procedural irregularities, or from the lack of a meaningful opportunity to oppose summary judgment." *Id*.

The parties stipulated to the class certification. The stipulation and the district court's order state that "[t]his action is limited to the contract claim. . . . [Appellant] will not seek damages or any individualized relief in this action (including without limitation claims based on promissory estoppel)." Accordingly, the issue of promissory estoppel was not before the district court.

But despite the understanding that she was not litigating a promissory-estoppel claim, appellant submitted a large number of affidavits that raise facts relevant to a promissory-estoppel claim. Because appellant's intent to assert a promissory-estoppel claim was called into question by these affidavits, the district court ruled on the merits of

such a claim. Concluding that appellant would not succeed on a promissory-estoppel claim, the district court stated:

> To support a promissory estoppel claim, the [class] would have to show that any promise or promises made to them by the City of Duluth must be enforced to prevent injustice. Judicial determinations of injustice involve a number of considerations, including the reasonableness of a promisee's reliance. The record does not contain facts that would support the conclusion that reliance was reasonable, and therefore the City of Duluth is entitled to summary judgment.

The city acknowledges that "in light of the parties' stipulation, there is a question about whether or not the promissory estoppel [issue] was properly before the district court," but nevertheless urges this court to affirm the district court's ruling on promissory estoppel because it "cannot apply as a matter of law." We decline to do so because appellant was denied the opportunity to meaningfully oppose summary judgment on a promissory-estoppel theory. The affidavits submitted by appellant may have been relevant to a promissory-estoppel claim, but because the parties specifically agreed to address only the contract claim in this action, appellant did not argue the merits of a promissory-estoppel claim. We therefore reverse the district court's decision with respect to whether or not appellant could support a promissory-estoppel claim.

Affirmed in part and reversed in part.

STAUBER, Judge (dissenting)

I concur with the majority that a reversal is required on appellants' promissory-estoppel claim, which the parties agree was not fully briefed or argued below. But, I respectfully dissent from the affirmance of the district court's summary judgment in favor of the city, interpreting a critical term "active employees" to mean "now" active employees.

The law is not in dispute. As the majority points out, when we interpret a contract, the language is given its plain and ordinary meaning. *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998). A contract is ambiguous if its terms are reasonably susceptible to more than one interpretation. *Blattner v. Forster*, 322 N.W.2d 319, 321 (Minn. 1982). Only if a contract is ambiguous may the finder of fact consider extrinsic evidence in order to determine the intent of the parties to the contract. *City of Virginia v. Northland Office Props. Ltd. P'ship*, 465 N.W.2d 424, 427 (Minn. App. 1991), *review denied* (Minn. Apr. 18, 1991).

Here, the narrow issue is whether, under the applicable collective-bargaining-agreement (CBA) language, the phrase "active employees" means "now" active employees or "then" active employees – meaning the employees existing at the time of the employee's retirement. Focusing solely on the phrase "active employees," the majority concludes that the contract is unambiguous because "active employees" can only mean one thing: "employees who are currently working – as opposed to employees who have retired." I agree that this is a reasonable interpretation.

However, the plain language of a contract must be viewed as a whole when discerning the intent of the parties. *Brookfield Trade Ctr.*, 584 N.W.2d at 394; *Telex Corp. v. Data Prods. Corp.*, 271 Minn. 288, 293, 135 N.W.2d 681, 685 (1965). When viewing the applicable language as a whole, I believe the contract is reasonably susceptible to more than one interpretation. The applicable language states that "[a]ny employee who retires from employment from the City on or after January 1, 1983, . . . shall receive hospital-medical insurance coverage to the same extent as active employees." A fair reading of this provision indicates that the term "active employees" refers to employees who are active at the time of the employee's retirement. It does not refer to "now" active employees.

This reading of the contractual language is also consistent with the procedural posture of the contracts at issue. In this case, there were at least 129 contracts at issue over the past 26 years according to the city. Each contact represented the "active employees" when employed, not those employed previously or employed later. Thus, the phrase "active employees" can only refer to those employees under the CBA in place at the time of retirement. When each contract expired, a new, separate and distinct contract was negotiated for those "active employees" employed under the new contract. In other words, each contract has its own set of existing employees supporting the retiree's claim. At a minimum, the disputed language is ambiguous and, thus, not ripe for summary judgment. Therefore, I would reverse and remand for a trial so that this ambiguous contract can be interpreted with the assistance of extrinsic evidence.