STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1186

Mercedes Sheldon,
Relator,

vs.

Independent School District No. 284, Wayzata, Minnesota,
Respondent.

Filed April 5, 2011
Affirmed in part, reversed in part, and remanded
Bjorkman, Judge

Independent School District No. 284

Ann Elizabeth Thompson, Education Minnesota, St. Paul, Minnesota (for relator)

Sara Ruff, Plymouth, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Wright, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Relator Mercedes Sheldon challenges the decisions of the school board of respondent Independent School District No. 284, Wayzata, Minnesota, to (1) rescind an executed contract for employment during the 2010-11 school year and (2) not renew relator's 2009-10 probationary teaching contract. Relator argues that the rescission

constituted a breach, entitling her to damages, and that respondent waived its right to nonrenewal when it executed the 2010-11 contract. We conclude that the rescission was erroneous as a matter of law but that the nonrenewal was a proper exercise of the board's discretion. Accordingly, we affirm in part, reverse in part, and remand to the board for a determination of damages consistent with this opinion.

FACTS

On July 13, 2009, relator signed a contract for a one-year probationary teaching position at Wayzata High School. Respondent's system for evaluating probationary teachers to determine fitness for contract renewal includes at least three teaching observations during the school year. After the third observation, but prior to May 1, the probationary teacher is provided with a "summative" evaluation report, which includes a recommendation of contract renewal or termination by the evaluating administrator. The evaluation system is described during new teacher orientation and set out in the Wayzata High School teacher handbook, which is distributed to all teachers.

Relator's third observation took place on March 10, 2010. The events giving rise to this case occurred between that date and relator's April 29 summative evaluation. It is the practice within the district for human resources to work with each school to determine teacher staffing levels for the following year; the staffing level for each position—which is expressed as a fraction of full-time employment (FTE)—is adjusted according to projected enrollment, desired student-teacher ratios, and class offerings. On March 15, 2010, the Wayzata High School associate principal sent the following e-mail to the human resources department:

> Please make the following change on your 2010-11 staffing worksheet for the high school. The staffing for Mercedes Sheldon (Communications) should be changed from 0.833 to 0.916 FTE. This would leave the high school with a total FTE remaining of 1.151.

After receiving this message, the human resources department placed relator's contract modification on the April 12 school board meeting agenda and generated a teaching contract for her for the following school year at the FTE level indicated in the e-mail. On April 12, the school board's chair and clerk signed the contract. The next day, relator signed it.

On April 29, more than two weeks later, relator received her summative-evaluation report and was informed that she was not being recommended for a renewed contract. She responded that she had already executed an employment contract for the following year. At the May 10 school board meeting, the board adopted a resolution to not renew relator's 2009-10 teaching contract. At a June 28 special meeting, the school board voted to

> rescind [the] contract modification (.833 to .916) approved at the April 12, 2010 Board of Education meeting, of teacher who was non-renewed at the May 10, 2010 Board of Education meeting. The 2010-11 contract with Ms. Sheldon is canceled, consistent with the Board's May 10, 2010 action to non-renew her contract.

This certiorari appeal follows.

D E C I S I O N

"[A] school board determination will be reversed when it is fraudulent, arbitrary, unreasonable, unsupported by substantial evidence, not within its jurisdiction, or based on

an error of law." *Dokmo v. Indep. Sch. Dist. No. 11, Anoka-Hennepin*, 459 N.W.2d 671, 675 (Minn. 1990). Substantial evidence is evidence upon which reasonable minds can rely in arriving at a conclusion after reviewing the record as a whole. *Downie v. Indep. Sch. Dist. No. 141*, 367 N.W.2d 913, 916 (Minn. App. 1985), *review denied* (Minn. July 26, 1985).

I. The school board erred as a matter of law in rescinding the 2010-11 teaching contract.

Relator argues that respondent's rescission of the executed 2010-11 teaching contract had no legal basis and, as such, constituted a breach, entitling her to damages. Respondent contends that rescission was proper on the grounds of unilateral mistake or, in the alternative, because the circumstances of the offer raised a presumption of error. Because we conclude that respondent has not demonstrated a unilateral mistake, that the contract offer did not trigger in relator a duty to inquire as to the validity of the offer, and rescission of the contract would impose a hardship on relator, we hold that the contract was valid upon acceptance and rescission was erroneous as a matter of law.

Generally, "[a] unilateral mistake in entering a contract is not a basis for rescission unless there is ambiguity, fraud, misrepresentation, or where the contract may be rescinded without prejudice to the other party." *Speckel by Speckel v. Perkins*, 364 N.W.2d 890, 893 (Minn. App. 1985); *see also N. Star Ctr., Inc. v. Sibley Bowl, Inc.*, 295 Minn. 424, 426, 205 N.W.2d 331, 332 (1973) (observing that "a contract may be avoided by one of the parties for his own mistake of fact when such mistake was caused by the inequitable conduct of the other contracting party"). The mistake must concern "a

material element of the contract." *Olson v. Shephard*, 165 Minn. 433, 436, 206 N.W. 711, 712 (1926). In the absence of inequitable or fraudulent conduct, "[r]elief from contractual obligations on grounds of unilateral mistake alone has been granted only when enforcement would impose an oppressive burden on the one seeking rescission, and when rescission would impose no substantial hardship on the one seeking enforcement." *Gethsemane Lutheran Church v. Zacho*, 258 Minn. 438, 445, 104 N.W.2d 645, 649 (1960).

We first consider whether respondent entered into the 2010-11 teaching contract by mistake. Respondent argues that offering relator a contract before her probationary period was over, and before "a conscious decision was made about extending another contract to her," was a unilateral mistake that went to the heart of the contract. The principal error cited by respondent concerns the misinterpretation of the language in the associate principal's e-mail requesting a change in the staffing level for "Mercedes Sheldon (Communications)." Respondent argues it made a mistake in reading this language as designating relator personally, instead of her position. We disagree. The message specifically identifies relator by name and refers only parenthetically to her department. And respondent's conduct consequent to the e-mail was deliberate and intentional: after human resources prepared and presented a resolution and contract to the school board, the contract was approved unanimously by the board, reviewed and signed by the board chair, and delivered to relator for execution. A lack of effective communication among respondent's agents is not a unilateral mistake.

Respondent's assertions that the offer itself was a mistake because respondent never intended to consider relator's future employment prior to her completion of the probationary period and had not yet made a "conscious decision" to hire her are also unavailing. Respondent's subjective intent is irrelevant to our contract analysis: "Minnesota follows the objective theory of contract formation, under which an outward manifestation of assent is determinative, rather than a party's subjective intention." *Speckel*, 364 N.W.2d at 893; *see also Cederstrand v. Lutheran Bhd.*, 263 Minn. 520, 532, 117 N.W.2d 213, 221 (1962) ("Expressions of mutual assent, by words or conduct, must be judged objectively, not subjectively."). Respondent cannot use a lack of effective communication among its employees to justify rescission.

We next turn to respondent's argument that the circumstances of the offer were sufficiently unusual that relator was bound to inquire as to its validity before accepting the offer. Such a duty may be imposed "when there are factors that reasonably raise a presumption of error." *Bauer v. Am. Int'l Adjustment Co.*, 389 N.W.2d 765, 767 (Minn. App. 1986) (quotation omitted), *review denied* (Minn. Sept. 24, 1986). The duty to inquire assures that an offeree "will not be permitted to snap up an offer that is too good to be true." *Id*. (quotation omitted). Respondent cites *Speckel* for the proposition that relator was obliged to inquire about the 2010-11 teaching contract. This reliance is misplaced. In *Speckel*, a personal-injury case, the insurance company's attorney reiterated the insurer's unwillingness to pay the policy limit, but, in the same letter, offered the dollar amount of the limit in settlement. *Speckel*, 364 N.W.2d at 891. The district court ordered specific performance, rejecting the insurer's arguments that the

error was inadvertent or the result of a mistake. *Id*. at 892. We reversed based on the letter's internal contradictions, concluding that such an offer is not enforceable upon acceptance, but imposes a duty to inquire on the offeree. *Id*. at 893.

This case presents very different circumstances. First, the attorney who made the mistaken offer in *Speckel* never saw or signed the letter containing the offer before it went out; here, the chair of the school board reviewed and signed the contract before authorizing human resources to present it to relator. Second, the problem in *Speckel* was with the unusual language of the offer: its terms were both internally inconsistent and inconsistent with the facts of the case. Here, the offer was a standard-form teaching contract that, as presented to relator, contained neither internal inconsistencies nor terms so objectively inconsistent with the parties' prior dealings as to give relator pause.

We are not persuaded by respondent's argument that the alleged external contradiction between the fact of the offer to relator and the incomplete probationary-evaluation process was so blatantly obvious that it reasonably bound relator to inquire about the offer's correctness and precluded the offer from being enforceable upon acceptance. The handbook language concerning probationary teachers states: "Teachers will receive a brief written account after each of the observations (formative report) and a written summative report at the conclusion of all annual observations." The handbook does not state that renewal decisions concerning probationary teachers are only made after the completion of the summative report. Relator reasonably relied upon the propriety of the process resulting in the offer: she received a contract signed by the chair of the school board and transmitted to her through the human resources department.

Neither the circumstances of the offer nor the contract's terms were sufficiently unusual to impose on relator a duty to question respondent's intent. *See Bauer*, 389 N.W.2d 768 (rejecting an insurance company's argument that the recipient of an inadvertent settlement offer had a duty to inquire on the grounds that "no consequent duty to inquire arises here where the mistaken assumption resulted from miscommunication between two agents of the same insurance company. It was not the responsibility of [the offeree] to assist in the coordination of the opposing party's settlement efforts.").

Although we conclude that respondent has not established either a unilateral mistake or that the circumstances of the offer raised a presumption of error that required relator to inquire about the contract's validity, we briefly consider whether the additional requirements for rescission are met. There is no evidence or allegation of fraud, misrepresentation, or inequitable conduct on relator's part. Thus, rescission would only be warranted if it did not impose a substantial hardship on relator. The record demonstrates rescission deprived relator of her employment, which we discern to be a substantial hardship.[1] The school board's rescission of the 2010-11 contract was erroneous as a matter of law and constitutes a breach.

II. Respondent's nonrenewal of the 2009-10 teaching contract was valid.

Relator argues that respondent waived its right to nonrenew her 2009-10 teaching contract when it executed the 2010-11 teaching contract with her a month earlier. Specifically, she maintains that respondent's actions in drafting, approving by vote,

[1] We further observe, as more fully set forth below, that enforcement of the 2010-11 teaching contract would not impose an oppressive burden on respondent because enforcement does not create a continuing contract.

signing, and transmitting the 2010-11 contract to her are so inconsistent with a reservation of the right to subsequently nonrenew her then-current contract that respondent's voluntary relinquishment of the right to nonrenew should be inferred as a matter of law. We disagree.

> Waiver is defined as a voluntary relinquishment of a known right. Voluntary choice is of the essence of waiver and not mere negligence, even though waiver may be inferred from negligence. It is largely a matter of intention and there can be no waiver without actual or implied intent to waive. Therefore, it must be based on a full knowledge of the facts.

Cohler v. Smith, 280 Minn. 181, 189, 158 N.W.2d 574, 579 (1968). "Conduct indicating a waiver may be so inconsistent with a purpose to stand upon one's rights as to leave no room for a reasonable inference to the contrary. Then the intent to waive appears as a matter of law." *Farnum v. Peterson-Biddick Co.*, 182 Minn. 338, 341, 234 N.W. 646, 647 (1931).

We discern no record evidence to support relator's argument that respondent, by either an express or implied act, waived its right to nonrenew relator's 2009-10 contract. Relator's argument that nonrenewal of the 2009-10 contract is logically incompatible with offering her a contract for the 2010-11 school year is not without merit. But the inconsistency is not equivalent to a waiver. The only statutory restriction on respondent's right to nonrenew teachers is that written notice of the decision must be given before July 1. Minn. Stat. § 122A.40, subd. 5(a) (2010). Relator argues that where a contract is renewed prior to July 1, the school board is precluded from subsequently canceling the contract, even if the cancellation occurs before July 1. This argument is inconsistent with

the statutory language, which does not limit the school board's authority not to renew so long as it does so prior to July 1.

We therefore conclude that the school board acted within its broad authority when it voted not to renew relator's 2009-10 contract. And we note that when the school board made its nonrenewal decision, the parties had already entered into a binding contract for the following academic year and that respondent subsequently breached that contract by rescinding it without a valid legal basis. In other words, the decision not to renew relator's contract validly terminated respondent's obligations under the probationary contract, but did not excuse respondent from its obligations under the 2010-11 contract.

Respondent argues that its nonrenewal decision effectively precluded enforcement of the 2010-11 contract pursuant to the latter's duration clause, which states:

> Provided the teacher has completed his probationary period . . . and has not been discharged or advised of a refusal to renew his contract . . . this contract shall remain in full force and effect from year to year thereafter, unless terminated by discharge or other Board action as provided by law[.]

Respondent contends that because it advised relator of its refusal to renew her 2009-10 contract, the 2010-11 contract never took effect. But the sentence immediately preceding the language relied upon by respondent provides: "*This contract* shall remain in full force and effect for the duration of the 2010-2011 school year, unless terminated by discharge or other Board action as provided by law." (Emphasis added.) By its plain meaning, the language cited by respondent—"from year to year thereafter"—refers to the years after 2010-11, and does not set out conditions precedent to enforcement during the 2010-11 school year. And the conditions precedent to the termination of the contract

during the 2010-11 school year—"discharge or other Board action"—did not occur: relator was not discharged, and the board's decision to nonrenew relator's probationary contract only extinguished its obligations under that instrument. We further note that when the parties entered into a binding agreement for relator's employment during the 2010-11 academic year, respondent had not discharged relator or advised her of a refusal to renew her contract; as such, the creation of the contract signaled the completion of relator's probationary period, as the term is used in Minn. Stat. § 122A.40, subd. 7.

Having determined that respondent breached the 2010-11 employment contract, we turn to the question of damages. The measure of damages for breach of contract is generally the amount required to place the nonbreaching party in the position he or she would have been had the contract been performed. *Peters v. Mut. Benefit Life Ins. Co*., 420 N.W.2d 908, 915 (Minn. App. 1988). In this case, respondent entered into a teaching contract with relator for the 2010-11 school year. Relator argues, without citing to controlling authority, that the appropriate remedy is appointment to a continuing-contract position, which, she maintains, is the position she would hold but for respondent's breach. We disagree. Although respondent's decision not to renew relator's probationary contract did not preclude respondent's obligations under the 2010-11 contract, it did, under that contract's duration clause, limit the length of the contract to one year. We further observe that it would be excessively burdensome, and an infringement of the board's discretion to make employment decisions, to require respondent to enter into an ongoing, indefinite employment relationship with relator.

We therefore remand this matter to the school board to determine, and pay to relator, the salary and benefits relator would have received under the 2010-11 contract.

Affirmed in part, reversed in part, and remanded.