NO. COA10-1179
NORTH CAROLINA COURT OF APPEALS

Filed: 19 April 2011

TERRANCE GERALD,
Plaintiff,

v.

Durham County
No. 09 CVS 4288

HOUSING AUTHORITY OF THE CITY OF DURHAM and HARRISON SHANNON, individually, and in his official capacity,
Defendants.

Appeal by plaintiff from judgment entered 19 May 2010 by Judge Shannon Joseph in Durham County Superior Court. Heard in the Court of Appeals 22 March 2011.

Pamela A. Hunter for plaintiff-appellant.

Cranfill Sumner & Hartzog LLP, by Katie Weaver Hartzog, for defendants-appellees.

HUNTER, Robert C., Judge.

Terrance Gerald ("plaintiff") appeals from the trial court's judgment granting defendants Housing Authority of the City of Durham ("Durham Housing Authority" or "DHA") and Harrison Shannon's motion for summary judgment (collectively

"defendants"). Plaintiff argues on appeal that the trial court erred in granting defendants' motion for summary judgment on his breach of contract claim. After careful review, we affirm.

Background

On 27 June 2005, the Durham Housing Authority sent plaintiff a letter offering him the position of director of HOPE VI, a federally funded program that seeks to revitalize targeted neighborhoods in the City of Durham. The letter included an annual salary for the position and an effective date of 1 August 2005. The letter further stated:

> This is a temporary position working with the Durham Housing Authority's HOPE VI Program. There will be many phases to this program. Once the process for your particular position has ended, then, this will also conclude your position with the Durham Housing Authority. Please feel free to apply for any position that may be posted within the agency.

On 17 July 2005, plaintiff signed the letter indicating that he accepted the position. On that same day, plaintiff signed an application of employment, which stated:

> I hereby understand and acknowledge that, unless otherwise defined by applicable law, any employment relationship with this organization is of an "at will" nature, which means that the Employee may resign at any time and the Employer may discharge Employee at any time with or without cause. It is further understood that this "at will" employment relationship may not be changed by any written document or by conduct unless such change is specifically acknowledged in

> writing by an authorized executive of this organization.

Plaintiff also signed a form referred to as "Employee's Acknowledgment of Having Received Employee Personal [sic] Handbook[,]" which stated:

> I further acknowledge that this Handbook is a statement of policies and procedures and is not a written contract. My employment with the Durham Housing Authority is at will. This means that both I, and Durham Housing Authority are free to terminate my employment relationship at any time not prohibited by law.

Approximately a year after plaintiff began working for DHA, he was promoted to the position of "Director of Development and Strategic Initiatives." Plaintiff did not sign a contract related to this position; however, plaintiff signed a document referred to as "Receipt for Statement of Personnel Policies[,]" which stated: "I also understand that my employment relationship may be terminated at any time and for any reason by DHA, or by me, and that the Personnel Policies in no way constitute an employment contract."

On 20 February 2008, DHA sent plaintiff a memorandum as a follow-up to a meeting in which plaintiff was reprimanded for using a DHA credit card to purchase personal items for himself and his family. The memorandum instructed plaintiff to return the unauthorized items to DHA. On 23 April 2009, DHA sent

plaintiff a letter stating that he was terminated "for failure to return items purchased with an agency credit card."

On 24 June 2009, plaintiff filed a complaint against DHA, Chief Executive Officer Harrison Shannon, and seven individually named members of the Board of Commissioners in their official and individual capacities. Plaintiff brought claims for breach of contract, wrongful termination, misrepresentation, and fraud in the inducement. Plaintiff further sought punitive damages. On 14 September 2009, plaintiff filed a notice of voluntary dismissal with regard to all claims against the seven members of the Board of Commissioners. The remaining defendants, DHA and Mr. Shannon, filed a partial motion to dismiss pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. On 8 October 2009, the trial court granted defendants' motion in part, dismissing plaintiff's claims pertaining to misrepresentation and fraud in the inducement as well as plaintiff's claim for punitive damages.

After discovery was conducted, defendants moved for summary judgment as to all remaining claims. On 19 May 2010, the trial court granted defendants' motion for summary judgment and dismissed plaintiff's claims for breach of contract and wrongful termination. Plaintiff timely appealed to this Court from the 19 May 2010 judgment.

Standard of Review

"The standard of review on appeal [from] summary judgment is whether there is a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. The question is whether the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is a genuine issue as to any material fact." *Sellers v. Morton*, 191 N.C. App. 75, 81, 661 S.E.2d 915, 920-21 (2008). "The burden is upon the moving party to show that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law." *McGuire v. Draughon*, 170 N.C. App. 422, 424, 612 S.E.2d 428, 430 (2005) (internal citation omitted). "All facts asserted by the [nonmoving] party are taken as true and their inferences must be viewed in the light most favorable to that party." *Dobson v. Harris*, 352 N.C. 77, 83, 530 S.E.2d 829, 835 (2000) (internal citations omitted). On appeal, this Court reviews an order granting summary judgment *de novo*. *McCutchen v. McCutchen*, 360 N.C. 280, 285, 624 S.E.2d 620, 625 (2006).

Discussion

Plaintiff argues that the trial court erred in dismissing his breach of contract claim as a matter of law.[1] Specifically,

[1] Plaintiff makes no argument concerning the wrongful termination claim on appeal. He strictly argues that the trial court erred in granting summary judgment as to the breach of contract claim.

plaintiff argues that his contract with DHA set forth a definite term of employment — completion of the multiphase HOPE VI project — and that defendants violated that contract when they terminated his employment. We disagree.[2]

"North Carolina is an employment-at-will state. . . . [I]n the absence of a contractual agreement between an employer and an employee establishing a definite term of employment, the relationship is presumed to be terminable at the will of either party without regard to the quality of performance of either party." *Kurtzman v. Applied Analytical Industries, Inc.*, 347 N.C. 329, 331, 493 S.E.2d 420, 422 (1997); *see also Tompkins v. Allen*, 107 N.C. App. 620, 622, 421 S.E.2d 176, 178 (1992) ("Either party to an employment-at-will contract can terminate the contract at will for no reason at all, or for an arbitrary or irrational reason."), *disc. review denied*, 333 N.C. 348, 421 S.E.2d 176 (1993).

"North Carolina law has consistently held that to remove an employer-employee relationship from the employment-at-will doctrine, the contract must specify a definite term of

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[2] Defendants claim that when plaintiff accepted the promotion to Director of Development and Strategic Initiatives, any previous contract that plaintiff may have had with DHA was extinguished and his new position was for an indefinite period on an at-will basis. It appears from the record that plaintiff maintained his position of director of HOPE VI despite his promotion. Consequently, we will address the merits of plaintiff's breach of contract claim.

employment." *Wilkerson v. Carriage Park Dev. Corp.*, 130 N.C. App. 475, 477, 503 S.E.2d 138, 140, *disc. review denied*, 349 N.C. 534, 526 S.E.2d 478 (1998). "The burden is upon the employee to establish a specific duration." *Freeman v. Hardee's Food Systems*, 3 N.C. App. 435, 438, 165 S.E.2d 39, 41-42 (1969).

Here, plaintiff was informed by letter that he was being offered the temporary position of director of HOPE VI. There was no specification as to how long the program would exist. Plaintiff was told that once the HOPE VI program ended, so would his position. Defendants claim that, "[t]he language contained in these offer letters merely informs new employees hired to work on federal grant programs that their employment may end at the conclusion of the federal program -- because their position would no longer be funded." We agree with defendants that the offer letter does not establish a definite duration or that plaintiff was assured employment for a set period of time.

The *Wilkerson* case is on point as to this issue. There, the plaintiff, an experienced construction worker, was offered the position of project manager by the defendant corporation. *Wilkerson*, 130 N.C. App. at 476, 503 S.E.2d at 139. Plaintiff's position required him to oversee the construction of a 500-home development. *Id.* Plaintiff was offered a compensation package that included a bonus for each house built. *Id.* at 476, 503 S.E.2d at 140. Subsequently, plaintiff resigned from his

position, claiming that "various actions taken by the defendant while he was an employee rendered it impossible for him to complete his employment contract." *Id.* at 476-77, 503 S.E.2d at 140. The plaintiff argued on appeal that the fact that he was hired to oversee construction of 500 houses and that he was to receive a bonus for each completed house signified that he had a definite term of employment — from the time he was hired until the 500 houses were completed. *Id.* at 477, 503 S.E.2d at 140. This Court held:

> In this case, there was no agreement that Wilkerson would work for Carriage Park for a definite term, nor was there an agreement that Wilkerson would work until the 500 houses were completed. Wilkerson admitted in his deposition that he was not promised employment for a set period of time. His argument that the duration could be implied from the time necessary to construct the 500 homes is unpersuasive, as it does not address the dispositive question of whether the parties agreed he would work for a definite term.

Id. at 478, 503 S.E.2d at 140. As in *Wilkerson*, plaintiff in this case was hired for a temporary position that would end at an unspecified date. Plaintiff was not promised that he would remain employed for the duration of the HOPE VI program; rather, he was simply told that the position would only exist so long as the HOPE VI program was operating, and, therefore, the position of director would necessarily end once the program was terminated. Like the *Wilkerson* Court, we are not persuaded by

plaintiff's argument that the duration can be implied from the time necessary to complete the multiple phases of the HOPE VI program. Consequently, we hold that plaintiff's employment contract did not set out a definite term of employment, and, therefore, he was an at-will employee who could be terminated by DHA for any reason. Given our holding on this dispositive issue, we need not address the relevance of the additional documents signed by plaintiff where he acknowledged his at-will status or whether plaintiff was terminated for cause.

Affirmed.

Judges STEPHENS and ERVIN concur.

Report per Rule 30(e).