[Cite as *Galgoczy v. Chagrin Falls Auto Parts, inc.*, 2010-Ohio-4684.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94281

JEFFREY GALGOCZY

PLAINTIFF-APPELLANT

vs.

CHAGRIN FALLS AUTO PARTS, INC.

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-667448

BEFORE: Stewart, J., Rocco, P.J., and Jones, J.

RELEASED AND JOURNALIZED: September 30, 2010

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MELODY J. STEWART, J.:

Plaintiff-appellant, Jeffrey Galgoczy, appeals from a summary judgment rendered in favor of defendant-appellee, Chagrin Falls Auto Parts, Inc., on his claims for wrongful termination and promissory estoppel. Chagrin Falls Auto Parts terminated Galgoczy because he had accrued 12 days of medical absences in a seven-month period. Galgoczy based his legal claims on the disciplinary procedures outlined in an employee handbook that he alleged created an implied contract of employment that Chagrin Falls Auto

Parts breached. He also alleged that he reasonably relied on the promise of continued employment because Chagrin Falls Auto Parts hired him despite being aware that he suffered from chronic migraine headaches. Chagrin Falls Auto Parts defended by noting that it hired Galgoczy as an at-will employee and that it was entitled to terminate him at any time and for any reason. The court granted summary judgment without opinion.

I

Galgoczy first argues that the court erred by granting summary judgment because issues of material fact existed demonstrating that Chagrin Falls Auto Parts breached an implied contract of employment. He maintains that his absences should have been considered "excused" and that Chagrin Falls Auto Parts failed in any event to follow the disciplinary procedures outlined in its employee handbook.

Summary judgment may issue when, after viewing the evidence in a light most favorable to the nonmoving party, there is no genuine issue as to any material fact and reasonable minds could conclude only that judgment must issue as a matter of law. See Civ.R. 56(C).

Ohio adheres to the concept of at-will employment, meaning that in the absence of a contract, employment is terminable at-will by either the employer or the employee, at any time, and for any reason not contrary to law. *Leininger v. Pioneer Natl. Latex*, 115 Ohio St.3d 311, 2007-Ohio-4921,

875 N.E.2d 36, at ¶6. In some circumstances, however, an employee handbook can create a binding contract if it contains clear promissory language that the employee accepts by continuing to work after receiving it. See *Mers v. Dispatch Printing Co.* (1985), 19 Ohio St.3d 100, 483 N.E.2d 150, paragraph two of the syllabus. Given the presumption of at-will employment, the party seeking to prove the existence of an implied contract has a heavy burden because all of the elements of a contract must be established, including a "meeting of the minds" to show that employment was intended to be other than at-will. *Penwell v. Amherst Hosp.* (1992), 84 Ohio App.3d 16, 21, 616 N.E.2d 254; *Cohen & Co. v. Messina* (1985), 24 Ohio App.3d 22, 24, 492 N.E.2d 867.

Galgoczy points to a provision in the Chagrin Falls Auto Parts employee handbook relating to absences that required the employee to "call in each day the employee is absent unless prior arrangements have been made." He claimed that on all 12 occasions on which he missed work due to migraine headaches he called in to report his absences, so his compliance with the absence provision of the handbook precluded his discharge on that ground.

Tellingly, Galgoczy's argument does not consider a provision of the handbook stating that "excessive" absenteeism may "result in discipline up to and including discharge." But regardless of whether the excused absences

provision of the handbook could be interpreted to create a clear promise of continued employment despite excessive absences, any implied contract claim is defeated by the following statement contained in the handbook: "The policies contained in this employee handbook are not intended as a contract of employment and may be added to or changed as needed by our company. Our company adheres to the policy of employment-at-will, which enables either the employee or the employer to terminate the employment relationship at any time."

Disclaimers like that used in this case preclude the use of a written employee handbook to demonstrate an implied contract of employment. *Wing v. Anchor Media, Ltd. of Texas* (1991), 59 Ohio St.3d 108, 110, 570 N.E.2d 1095; *Handler v. Merrill Lynch Life Agency, Inc.* (1993), 92 Ohio App.3d 356, 635 N.E.2d 1271. The disclaimer plainly states that nothing in the handbook could be construed as creating a contract of employment. Absent a meeting of the minds on the nature and extent of excused absences, Galgoczy could not as a matter of law show the existence of an implied contract on the issue of excused absences. *Mastromatteo v. Brown & Williamson Tobacco Corp.*, 2d Dist. No. 20216, 2004-Ohio-3776, at ¶18.

II

Galgoczy next argues that the court erred by granting summary judgment on his promissory estoppel claim. He maintains that he informed

Chagrin Falls Auto Parts about his migraine headaches prior to being hired and was told that it would not be a problem, so his hiring gave him the right to rely on continued employment in the event those headaches caused him to be absent.

Ordinarily, a contract requires a promise supported by consideration. *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, 770 N.E.2d 58, at ¶16. However, in some circumstances a promise can be binding if the promisee has suffered some detriment in reasonably relying on the promise, even if that detriment was not requested as consideration. This is known as promissory estoppel, and this doctrine of contract law can apply to oral, at-will employment contracts. *Mers*, 19 Ohio St.3d at paragraph three of the syllabus. However, a promisor is free by a suitable disclaimer to deny any legally binding effect to a promise. *Tohline v. Cent. Trust Co., N.A.* (1988), 48 Ohio App.3d 280, 282, 549 N.E.2d 1223.

As earlier noted, Chagrin Falls Auto Parts' employee handbook contained a disclaimer stating: "The policies contained in this employee handbook are not intended as a contract of employment * * *." This disclaimer sufficiently showed Chagrin Falls Auto Parts' intention to not create in the handbook any promises that would be enforceable. Id. With the absence of any promise, no enforceable contract existed as a matter of law. *Lenzo v. New Resources Corp*. (Mar. 26, 1998), 8th Dist. No. 72443.

It follows that Chagrin Falls Auto Parts' disclaimer of any contract of employment made Galgoczy's reliance on the terms of the handbook unreasonable. *Olive v. Columbia/HCA Healthcare Corp*. (Mar. 9, 2000), 8th Dist. Nos. 75249 and 76349. Galgoczy admitted in his deposition that he was an at-will employee and that the handbook stated that Chagrin Falls Auto Parts reserved the right "to dismiss any employee at any time with or without cause and with or without notice." He also admitted that the employee handbook stated that excessive absenteeism could result in termination and no one at Chagrin Falls Auto Parts told him that his job was secure no matter how many days he missed. In fact, Galgoczy conceded that he had been counseled about his absences in a review that took place a week or two before his termination, saying that it had been "brought up about me missing days." When asked if it was his understanding that as long as he was missing days for health reasons his employment would not be affected, he could only respond, "[t]hat I couldn't answer. That was never brought up to me." He did concede, however, that he had not been told that as long as he missed work for a medical reason, he would not be terminated.

The handbook provisions relating to at-will employment and his counseling for excessive absences belie Galgoczy's stated belief that his absences were "excused" as long as he called them in prior to the start of his shift. Galgoczy admitted that he had not been promised secure employment

despite his medical absences and further admitted that he had been counseled about excessive absences prior to his termination. Galgoczy's purported reliance on the "excused absences" provision of the handbook was not only contrary to specific disclaimers and counseling made by Chagrin Falls Auto Parts, but also unreasonable based on his own understanding that his absences were having an effect on business. As a matter of law, Galgoczy did not establish the requisite elements of promissory estoppel. The court did not err by granting summary judgment.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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MELODY J. STEWART, JUDGE

KENNETH A. ROCCO, P.J., and
LARRY A. JONES, J., CONCUR