

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

RICHLAND COUNTY CHILDREN'S
SERVICES,

Plaintiff - Appellees

-vs-

MICHAEL E. STOFFER, JR.

Defendant - Appellant

JUDGES:

Hon. John W. Wise, P.J.

Hon. Craig R. Baldwin, J.

Hon. Earle E. Wise, J.

Case No. 2019 CA 0060

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Richland County
Court of Common Pleas, Case No.
2017-CV-0475 R

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

March 19, 2020

APPEARANCES:

For Plaintiff-Appellees

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Baldwin, J.

{¶1} Michael Stoffer appeals the decision of the Richland County Court of Common Pleas granting summary judgment to Richland County Children's Services (RCCS) on its claim for breach of contract and on appellant's claim for breach of oral contract. Appellee is RCCS.

STATEMENT OF FACTS AND THE CASE

{¶2} Michael Stoffer was hired by RCCS in 2011 and worked as a social worker trainee, social worker I, foster care specialist, and intake/assessment caseworker before he resigned in April 2017. RCCS paid for his education at Case Western Reserve during his tenure at RCCS under a Tuition Reimbursement Policy and, when he resigned, RCCS claimed Stoffer had violated that policy obligating him to pay RCCS the \$45,265.50 they expended for his degree. Stoffer did not respond to the demand for payment, and after RCCS filed suit, Stoffer filed a counterclaim for \$76,225.00 for time he claims that he was on call and did not receive payment due.

{¶3} Michael Stoffer was hired by RCCS in September 2011 as a social worker trainee, and as a new employee he was provided training and instruction regarding RCCS policies and procedures as well as copies of the relevant policies and procedures. Amendments to the policies and procedures were provided to Stoffer and he signed a statement verifying that it was his obligation to read and comply with the policies and procedures and to contact his supervisor or human resources with any questions. Two subjects of the RCCS Policies and Procedures, Tuition Reimbursement and On Call/After Hours, are the focus of this case.

{¶4} RCCS is obligated to serve the community twenty-four hours per day and seven days per week, addressing urgent needs to protect children. The On Call/After Hours policy and procedure was designed to fulfill that mandate by obligating case workers at RCCS to register to serve on the On Call/After Hours List. The procedure required each case worker to serve on the on-call list seven times each year. The case worker could avoid serving on-call by finding another case worker to work in his place. When on call, the case worker was required to be available to respond to a call and may be required to travel to a specific location to address a need. The on call case worker was prohibited from consuming alcohol or becoming impaired in any way. In exchange, the case worker would receive a stipend of fifty dollars for each weekday and seventy-five dollars for each week-end day served in on call status. In addition, if the employee was required to leave home for a call, he would receive his hourly rate for time on the call.

{¶5} RCCS employees were obligated to complete hand-written time sheets recording on-call time, regular time and over-time, execute a verification attesting to the accuracy of the time and submit them to their supervisor every two weeks.

{¶6} Stoffer faithfully complied with the requirement that he submit a completed time sheet with his signature verifying the accuracy of the time he claimed to be at work. While he did serve some time on the On Call list, most of this obligation was served by others he recruited to serve in this place. When he did perform On Call services or worked overtime, that time was recorded on his time sheet and submitted. Stoffer does not contend that he was not paid for the time that he recorded on his time sheet.

{¶7} Stoffer alleged a violation of the On Call policy only after he was accused of violating the RCCS Tuition Reimbursement Policy. The latter policy provided RCCS

employees an opportunity to further their education at the expense of RCCS. The RCCS budget included a limited amount to compensate employees for satisfactory performance in an approved degree program.

{¶8} Stoffer applied to participate in the program in June 2014 when he submitted his request to obtain a Master of Science in Social Administration at Case Western Reserve. Within the application, he described how the degree was related to his current position and how it would benefit RCCS. He also signed the following acknowledgment:

I hereby acknowledge that I have read the Tuition Reimbursement Policy. I am in agreement with said Policy. I am aware that I must receive prior written approval, one month in advance, for the Tuition Reimbursement Program. For each quarter, I must complete the Tuition Reimbursement Course Information and receive written approval prior to the beginning of the quarter to begin my classes and to receive reimbursement from the Agency.

I understand that I am responsible for the reimbursement of tuition fees to Richland County Children Services if I should leave within three (3) years of obtaining my degree. I also understand that I am responsible for the reimbursement of all tuition fees for non-completion of the degree for which agency tuition fees have been paid. I further agree to have deductions taken from my pay check for any monies owed to Children Services if I should leave employment within the three (3) year period.

{¶9} Stoffer's time with RCCS was unremarkable, and, by all accounts he was viewed as a dependable and dedicated employee. He completed all requirements for his MSSA degree at Case Western, but had not yet participated in the graduation ceremony when, on April 4, 2017 he delivered a letter to human resources announcing his intent to resign effective April 14, 2017. Patricia Harrelson accepted the resignation and responded in a letter dated April 4, 2017 explaining the consequences of his resignation and explicitly reminding him of his obligation under the Tuition Reimbursement Policy:

In addition, since you agreed to re-pay the total of your educational costs should you fail to honor your commitment to RCCS, you will be required to return the amount of \$45,270.50. Please see Kevin Goshe to arrange to repay this obligation.

Stoffer Deposition Exhibit 13

{¶10} Stoffer did not respond to this letter. On April 19, 2019 Ms. Harrelson sent a second letter to Stoffer, warning of an impending collection action:

I am writing to inform you that the Richland County Children Services Board has authorized the civil collection of the \$45,270.50 that you owe the agency as reimbursement for the payment of tuition for your attendance in a Master's of Social Work Educational Program.

You have 10 days from the date of this letter to make payment of the entire amount above to Richland County Children Services.

Stoffer Deposition Exhibit 12

{¶11} Stoffer did not respond to the letter. RCCS withheld \$4,649.39 from his final paycheck and on June 24, 2017 RCCS filed a complaint seeking to recover \$40,616.11 plus costs & attorney fees.

{¶12} Stoffer filed an answer denying any obligation to repay RCCS and a counterclaim, alleging breach of an oral contract to pay the on call stipend, and retaliation. The retaliation count was dismissed when the trial court found that it did not have jurisdiction over that matter. RCCS filed a motion for summary judgment on its claim for breach of the Tuition Reimbursement Policy and also sought judgment on Stoffer's claim for breach of oral contract. Stoffer opposed the motions contending that issues of material fact remained to be resolved. On May 30, 2019, the trial court granted RCCS motion for summary judgment. Stoffer filed a timely appeal and submits two Assignments of Error:

{¶18} "I. WHETHER THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT DISMISSING APPELLANT'S COUNTERCLAIM DUE TO THE EXISTENCE OF GENUINE ISSUES OF MATERIAL FACT."

{¶19} "II. WHETHER THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT FOR APPELLEE ON ITS CLAIMS FOR BREACH OF CONTRACT AGAINST APPELLANT STOFFER DUE TO THE EXISTENCE OF GENUINE ISSUES OF MATERIAL FACT."

Standard of Review

{¶20} Because Stoffer is appealing the trial court's decision on a motion for summary judgment, we review the assignments de novo. A de novo review requires an independent review of the trial court's decision without any deference to the trial court's determination. *Brown v. Scioto Cty. Bd. of Commrs.*, 87 Ohio App.3d 704, 711, 622

N.E.2d 1153 (4th Dist.1993) as quoted in *State v. Standen*, 173 Ohio App.3d 324, 2007-Ohio-5477, 878 N.E.2d 657, ¶ 7 (9th Dist). “Thus, viewing the pleadings in the light most favorable to the [appellee], we must determine whether [appellee] was entitled to judgment as a matter of law.” Civ.R. 56(C). *Troyer v. Janis*, 132 Ohio St.3d 229, 2012-Ohio-2406, 971 N.E.2d 862, ¶ 6. Accordingly, we apply the same standard as the trial court and court of appeals in this case. *771 *Bonacorsi v. Wheeling & Lake Erie Ry. Co.*, 95 Ohio St.3d 314, 2002-Ohio-2220, 767 N.E.2d 707, ¶ 24. “* * * we afford no deference to the trial court’s decision and independently review the record to determine whether summary judgment is appropriate.” *Tornado Techs., Inc. v. Quality Control Inspection, Inc.*, 8th Dist., 2012-Ohio-3451, 977 N.E.2d 122, ¶ 13.

{¶21} Stoffer claims the trial court erred by granting summary judgment when genuine issues of material fact remained to be resolved. A dispute of fact is “material” if it affects the outcome of the litigation. The dispute is “genuine” if manifested by substantial evidence going beyond the mere allegations of the complaint. *Black v. McLaughlin*, 5th Dist. Richland No. CA-2338, 1985 WL 4718, *2. A material fact is an essential element of the claim or defense, as defined by the substantive law. *Mt. v. Columbus & Southern Ohio Elec. Co.*, 39 Ohio App.3d 1, 2, 528 N.E.2d 1262 (5th Dist.1987).

ANALYSIS

I.

{¶22} Stoffer asserts, in his first assignment of error, that summary judgment was inappropriate as genuine issues of material fact regarding his claim for breach of an oral contract remain to be decided. The foundation of Stoffer's argument that an oral contract existed is his contention that "he was to be on-call twenty-four (24) hours day, seven (7)

days a week (including nights, weekends and holidays) in case they needed to reach him if children needed to be placed after hours or on weekends." (Appellant's Brief, p. ix). "Stoffer was informed and directed by his supervisors that he was required and expected to be on-call 24/7 as part of his foster care specialist job." (Appellant's Brief, p. 3) Because he received this directive, Stoffer claims that a genuine issue of material fact remains to be decided before determining whether an oral contract existed. Stoffer's argument fails because he does not identify a disputed fact but, instead, relies upon an untenable interpretation of a conversation with his supervisors.

{¶23} During his deposition, Stoffer made the assertion that he was required to be on call seven days per week and twenty-four hours per day and the following exchange occurred:

Q. And who told you that you were required to be on call 24 hours a day every day of the year?

A. Lori Feeny and Nicole Foulks.

Q. And when did that conversation occur?

A. Approximately within the first week of me taking that position in Lori Feeny's office.

Q. What did Ms. Feeny and Ms. Foulks specifically tell you at that point in time?

A. That I needed to provide them my personal cell phone number because they would need it in the event that they needed to contact me during nonstandard work hours.

Q. Did they tell you anything else?

A. No.

Q. So who made the statement that you were required to be on call every day of the year?

A. I believe it was Lori Feeny.

Q. So they did tell you something else?

A. When they asked me for my phone number, because they said that they needed it to contact me after hours.

Q. So what was the specific statement that Ms. Feeny told you at that point in time?

A. What I had said.

Q. Okay. Can you repeat that for me, please?

A. That they needed my personal cell phone number in the event that they needed to contact me after hours.

Q. Okay. Did you follow up with Ms. Foulks or Ms. Feeny about whether or not or why you were required to be on call every day of the year?

A. No.

Q. Did you ever ask any other supervisor about this alleged representation by Ms. Feeny?

A. No.

Q. Where did that conversation take place?

A. In Lori Feeny's office.

Q. Do you recall if anyone else was present for this conversation?

A. No one else was present other than Nicole Foulks.

Q. Did either of them tell you that you would receive the on call or after hours pay stipend every day?

A. No.

Q. Did you ask either Ms. Foulks or Ms. Feeny if you would receive the on call pay stipend every day?

A. No.

Q. Did you ask Ms. Foulks or Ms. Feeny why they requested your personal cell phone number?

A. No.

Q. Did they specifically tell you that they were requesting your personal cell phone number so you could be reached at all times?

A. Yes.

Q. Okay. And why did you -- did you ask them why you needed to be reached at all times?

A. No.

Stoffer Deposition, p. 28, line 14 to p. 30, line 24.

{¶24} RCCS does not deny that Stoffer's supervisors requested his phone number to be able to contact him after hours, so the parties do not dispute this fact. The dispute involves the legal impact of that statement, so this issue is appropriate for consideration in the context of a motion for summary judgment. Stoffer now interprets the request for his personal phone number as a mandate that he be on call perpetually during his tenure with RCCS. He was never expressly told that he must be on call continuously and he did not complete his time sheet to reflect that he was on call during any pay period except when he was specifically registered to be on call pursuant to RCCS on call policy. The RCCS policy required the On Call worker to remain local, not consume alcohol or become

impaired and to be prepared to go out on a call in Richland County, if necessary. Stoffer's alleged 24/7 on call duty service did not fulfill these requirements. Instead, he did consume alcohol, may have been impaired, attended classes at Case Western, visited with family and left the state for vacation. He did nothing that suggested that he believed he was on call continuously and did not make the assertion that he was on call and was entitled to compensation until he received the complaint seeking reimbursement for tuition paid on his behalf.

{¶25} Stoffer offers no authority to support his argument that the request by RCCS management for his personal phone number so he could be reached after hours creates a genuine issue of material fact regarding an obligation to compensate him and we find relevant authority leads us to conclude otherwise. Based upon his deposition testimony, during the time he was allegedly on call, but not serving on the list of On Call / After Hours workers per RCCS policy, he was free to pursue personal activities without restriction. He was not "engaged to wait" to the exclusion of any personal pursuit and was essentially completely relieved from duty for a period long enough to use the time for his own purposes. *Abdelkhaleq v. Precision Door of Akron*, N.D.Ohio No. 5:07 CV 3585, 2009 WL 10713910, *3; *Chao v. Akron Insulation & Supply, Inc.*, N.D.Ohio No. 5:04-CV-0443, 2005 WL 1075067, *9, aff'd, 184 Fed.Appx. 508 (6th Cir.2006).

{¶26} We hold that reasonable minds would not conclude that simply requesting an employee's phone number for a potential future need to contact them after hours, without more, cannot be expanded into an obligation to remain on call twenty four hours per day entitling Stoffer to On Call/After Hours pay. Even if we were to accept Stoffer's argument that this request was some type of on call assignment, at best he was waiting

to be engaged, and free to use his time as he pleased, and not engaged to wait for further instruction from his employer so the time is not compensable. *Taunton v. GenPak LLC*, 762 F.Supp.2d 1338, 1346 (M.D.Ala.2010).

{¶27} Stoffer also contends that a question of material fact regarding an agreement to compensate him was created by the doctrine of estoppel citing to the case of *Mers v. Dispatch Printing Co.* 19 Ohio St.3d 100, 105, 483 N.E.2d 150, 155 (1985). As noted by appellee, Stoffer did not include allegations of estoppel in his counterclaim and cannot be permitted at this juncture to argue that issue. *Greene v. Whiteside*, 181 Ohio App.3d 253, 2009-Ohio-741, 908 N.E.2d 975, ¶ 28 (1st Dist.) (“The plaintiff cannot fulfill his burden to show a triable issue of fact by asserting new claims in response to a properly supported motion for summary judgment.”); *Wolk v. Paino*, 8th Dist. Cuyahoga No. 94850, 2011-Ohio-1065, ¶ 36-38 (Plaintiff limited to allegations of complaint and may not enlarge those claims in defense to summary judgment motion).

{¶28} Further, Stoffer’s argument lacks any assertion of a promise by RCCS, reliance upon the alleged promise of RCCS or how Stoffer modified his behavior to comply with the alleged promise, so even if considered the argument would fail. *Mers v. Dispatch Printing Co., supra*

{¶29} Appellant’s first assignment of error is overruled.

II.

{¶30} In his second assignment of error, Stoffer claims that summary judgment in favor of RCCS on its claim for tuition reimbursement is inappropriate as genuine issues of material fact remain regarding the agreement. Stoffer claims that the agreement is ambiguous and subject to an interpretation that favors his argument that he is not obliged

to reimburse RCCS or, in the alternative, the ambiguity raises a question of fact that must be addressed by a jury. He also argues that he received verbal reassurances from his supervisors that he would not be obligated to repay the amount expended on his behalf.

{¶31} The language of the reimbursement agreement is undisputed and RCCS policy and procedure prohibit oral modifications and mandate that any amendment be approved by the RCCS Board of Directors. Stoffer's contentions regarding what he was told or heard regarding the reimbursement policy will not, therefore, be considered. The remaining issue for our consideration is a review of the terms of the agreement.

{¶32} RCCS and Stoffer have assumed a term of the agreement that is not expressly present, both choosing the interpretation that favors their argument. The contract does obligate Stoffer to reimburse RCCS for non-completion of his degree, but the agreement sets no parameters for the completion of the degree, specifically the time within which Stoffer must complete the degree to avoid the obligation to reimburse RCCS the tuition it paid for his education. Stoffer's argument makes clear his position that he may complete his degree at any time, even after his resignation, and avoid non-completion of the degree and any repayment obligation. RCCS argues that "Appellant did fail to complete his degree while he worked at RCCS; he did not complete his degree until he graduated in May 2017" thus arguing that the agreement required completion of the degree while Stoffer was an employee.

{¶33} When we review contractual language "[c]ommon words appearing in a written instrument will be given their ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly evidenced from the face or overall contents of the instrument. *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 241-42, 374

N.E.2d 146 (1978). Where a contract is ambiguous, a court may consider extrinsic evidence to ascertain the parties' intent. *Shifrin v. Forest City Enterprises, Inc.* (1992), 64 Ohio St.3d 635, 597 N.E.2d 499 as quoted in *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256, ¶ 12 (2003). Language is ambiguous if it is reasonably susceptible to two or more constructions. *Weiner v. Am. Cancer Soc.*, 8th Dist. Cuyahoga No. 80308, 2002-Ohio-2718, ¶¶ 18-20 (Citations omitted.) Further, “[w]here the language of a contract * * * is susceptible of two constructions, one of which makes it fair, customary, and such as prudent men would naturally execute, while the other makes it inequitable, unusual, or such as reasonable men would not be likely to enter into, the interpretation which makes a rational and probable agreement must be preferred.’” *Graham v. Drydock Coal Co.*, 76 Ohio St.3d 311, 1996-Ohio-393, 667 N.E.2d 949 (1996) (Citations omitted).” Under the law of Ohio, which governs this contract, courts are directed to give rational construction to contracts and avoid constructions that are inequitable, unusual, or unreasonable. *Export-Import Bank of U.S. v. Advanced Polymer Scis., Inc.*, 624 F.Supp.2d 696, 704 (N.D. Ohio 2009), aff’d, 604 F.3d 242 (6th Cir.2010) quoting *Graham v. Drydock Coal Co.*, *supra*.

{¶34} We hold that Stoffer's construction of the contract is inequitable, unusual and such that reasonable men would not be likely to enter into it in the context of this case. The goal of the parties in this case is education which will provide a benefit to both parties, so the subject matter and the timing of the education is subject to constraints. The restrictions are particularly important to RCCS as it is dealing with public funds, creating a greater responsibility to invest the funds wisely. The Tuition Reimbursement Approval Form submitted by Stoffer seeking payment for his degree confirms that mutual

benefit is the goal of the agreement. Stoffer, as the applicant, was required to "Explain how the degree is related to [his] current position" and "**** how the degree will benefit the Agency and [him] as an employee." Stoffer Deposition, Exhibit 9. Stoffer's interpretation of the agreement would permit completion of the course work at any time, including after separation from employment, and RCCS would be prohibited from recovering its investment despite the fact that it did not receive any benefit from the agreement. We find that such an interpretation is one that reasonable men would not be likely to enter into and that the more rational and probable interpretation requires that the degree be acquired while the employee is still actively employed, so the employer can received some benefit from its investment.

{¶35} We reject Stoffer's interpretation of the Tuition Reimbursement Policy and hold that the policy requires that the education be completed and the three years post degree employment occur before Stoffer would be exempt from the obligation to re-pay. If Stoffer did not complete the degree while employed, he cannot serve the three years as an employee and is not exempt from the obligation to repay.

{¶36} Stoffer's argument that repayment obligation was waived by statements of RCCS employees is not supported by the record. First, RCCS policy makes it clear that any modification of the policies must be in writing. The alleged oral representations of RCCS employees cannot bind the RCCS Board without some evidence that they were given that authority and Stoffer has not introduced any evidence that would support a finding that they were so authorized. The examples of circumstances where an RCCS employee was allegedly not pursued for failure to pay were all factually distinguishable, and were shown to be discretionary decisions of the RCCS executive and not the Board.

The case by case consideration by the Director to not pursue collection cannot be expanded to a general waiver of the terms of the agreement between Stoffer and RCCS.

{¶37} We find Stoffer's argument that a genuine issue of material fact existed as a result of the language of the agreement unpersuasive, we reject his construction of the contract and we deny the second assignment of error.

{¶38} The decision of the Richland County Court of Common Pleas is affirmed.

By: Baldwin, J.

Wise, John, P.J. and

Wise, Earle, J. concur.