

IN THE UTAH COURT OF APPEALS

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Nancy Macdonald, M.D.,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellant,	)	
	)	Case No. 20060408-CA
v.	)	
	)	
University of Utah, a division	)	F I L E D
of the State of Utah, dba	)	(April 12, 2007)
University of Utah Health	)	
Sciences Center,	)	2007 UT App 123
	)	
Defendant and Appellee.	)	

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Third District, Salt Lake Department, 050902633  
The Honorable L.A. Dever

Attorneys: Gregory N. Hoole and Roger H. Hoole, Salt Lake City,  
for Appellant  
Mark L. Shurtleff, Peggy E. Stone, and Akiko  
Kawamura, Salt Lake City, for Appellee

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Before Judges Billings, Davis, and McHugh.

BILLINGS, Judge:

Plaintiff Dr. Nancy Macdonald appeals the trial court's order granting summary judgment in favor of Defendant University of Utah (the University). Dr. Macdonald argues the trial court erred in ruling that she was not entitled to a retention review and that there were no issues of material fact regarding Dr. Macdonald's claim for breach of the implied covenant of good faith and fair dealing. Rulings on summary judgment under Utah Rule of Civil Procedure 56(c) are reviewed for correctness. See Green River Canal Co. v. Thayn, 2003 UT 50, ¶16, 84 P.3d 1134. We affirm.

Dr. Macdonald first argues the trial court erred in ruling that her contract unambiguously denied her a formal retention review. The trial court's interpretation of a contract "presents a question of law, which we review for correctness." Id. "'The underlying purpose in construing or interpreting a contract is to ascertain the intentions of the parties to the contract.'" Id. at ¶17 (quoting WebBank v. American Gen. Annuity Serv. Corp.,

2002 UT 88, ¶17, 54 P.3d 1139). "[I]f the language within the four corners of the contract is unambiguous, the parties' intentions are determined from the plain meaning of the contractual language, and the contract may be interpreted as a matter of law." Id. (quoting WebBank, 2002 UT 88 at ¶19). The appellate court "consider[s] each contract provision . . . in relation to all of the others, with a view toward giving effect to all and ignoring none." Id. (omission in original) (quoting WebBank, 2002 UT 88 at ¶18).

The employment contract between Dr. Macdonald and the University plainly states that "[a]ll annual auxiliary faculty appointments end automatically each June 30." Although the contract also states that "employment is reviewed on an annual basis," it does not expressly mandate a formal retention review. Consequently, the annual employment review provided for in the contract occurred when the University decided not to renew Dr. Macdonald's employment contract.

Dr. Macdonald contends that the contract does actually require a formal retention review because the contract explicitly states that "the School of Medicine will conduct a retention review during your [third] and [sixth] years." However, nothing in the contract indicates that these formal retention reviews provided during the third and sixth years of employment were necessary before the University decided not to renew Dr. Macdonald's employment contract after her second year of employment. Therefore, we conclude that Dr. Macdonald had no right to a formal retention review before the University decided not to renew her contract.

Second, Dr. Macdonald argues that the trial court's summary judgment ruling dismissing her claim for breach of the implied covenant of good faith and fair dealing was erroneous because genuine issues of material fact exist. Summary judgment may only be granted if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Utah R. Civ. P. 56(c).

"In Utah, virtually every contract imposes upon each party a duty of good faith and fair dealing . . . ." Oakwood Vill., L.L.C. v. Albertsons, Inc., 2004 UT 101, ¶43, 104 P.3d 1226. "The obligation of good faith requires each party to refrain from actions that will intentionally 'destroy or injure the other party's right to receive the fruits of the contract.'" Id. (quoting St. Benedict's Dev. Co. v. St. Benedict's Hosp., 811 P.2d 194, 199 (Utah 1991)). The covenant of good faith and fair dealing does not "establish new, independent rights or duties to which the parties did not agree ex ante," nor does it "create rights and duties inconsistent with express contractual terms."

Id. at ¶45. As discussed above, Dr. Macdonald was not entitled to a retention review. To provide protections for a retention review would create "new, independent rights or duties" that are not in the contract, and doing so would be beyond the bounds of the covenant of good faith and fair dealing. Id. Therefore, the trial court did not err in granting summary judgment for the University.

Accordingly, we affirm.

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Judith M. Billings, Judge

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WE CONCUR:

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge