

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Daniel Van Beuge,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20100212-CA
v.)	F I L E D
)	(December 23, 2010)
Draper City,)	
)	2010 UT App 371
Defendant and Appellee.)	

Third District, Salt Lake Department, 080907344
The Honorable William W. Barrett

Attorneys: Jerrald D. Conder, Salt Lake City, for Appellant
Stanley J. Preston, Bryan M. Scott, and Stephen J.
Preston, Salt Lake City, for Appellee

Before Judges Orme, Voros, and Roth.

ORME, Judge:

"Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." Fericks v. Lucy Ann Soffe Trust, 2004 UT 85, ¶ 10, 100 P.3d 1200. See Utah R. Civ. P. 56(c). We review a grant of summary judgment for correctness, giving no particular deference to the district court's conclusions of law. See Fericks, 2004 UT 85, ¶ 10.

Draper City listed eighteen facts in its memorandum in support of its motion for summary judgment. Van Beuge did not controvert the facts set forth in the City's memorandum. See Utah R. Civ. P. 7(c)(3)(B). Accordingly, the City's facts were deemed admitted for summary judgment purposes. See id. 7(c)(3)(A).¹

¹Van Beuge's memorandum in opposition to summary judgment does list additional facts not found in the City's memorandum. Under rule 7(c)(3)(B) of the Utah Rules of Civil Procedure, any additional facts set forth by a party in its memorandum opposing a motion for summary judgment must be "supported by citation to supporting materials, such as affidavits or discovery materials."

(continued...)

We conclude that the district court did not err in holding that these facts establish that Van Beuge was not a permanent employee. Specifically, the undisputed facts show that, because of numerous job performance issues, Van Beuge was told by his superior that his probationary status was being extended an additional six months. Further, Van Beuge's supervisor confirmed in an email to the City's human resources department that he had informed Van Beuge of the extension of his probationary status. Additionally, a performance evaluation report, signed by Van Beuge, stated that Van Beuge's probationary period was ending but also recommended it be extended. Finally, although a human resources employee prepared a Personnel Action Form that purported to memorialize a change in Van Beuge's status from "probationary" to "permanent," the employee explained that she had made a copy-and-paste clerical mistake while generating

¹(...continued)

Utah R. Civ. P. 7(c)(3)(B). Van Beuge does not support his reference to the City's personnel manual with the required citation. Likewise, Van Beuge merely contends that the City failed to comply with the provisions of the manual, but he cites no evidence supporting this claim. "[I]n the context of summary judgment, we are confined to the disputed facts that were properly before the [district] court." Heideman v. Washington City, 2007 UT App 11, ¶ 16, 155 P.3d 900. See Granite Credit Union v. Remick, 2006 UT App 115, ¶ 10 n.4, 133 P.3d 440 (refusing to consider factual assertions alluded to in a memorandum opposing summary judgment where those assertions were "not supported by affidavit or any other document"). Accordingly, because Van Beuge failed to cite any evidence to support his reference to the manual or the City's claimed failure to comply with the manual, the facts underlying his contract theory were not properly before the court. See Heideman, 2007 UT App 11, ¶ 16 (determining that litigants opposing summary judgment did not put facts at issue because "they failed to support their memorandum with any admissible evidence, as required by rule 7 of the Utah Rules of Civil Procedure").

a batch of personnel forms and did not have authority to change Van Beuge's employment status to permanent.

Affirmed.

Gregory K. Orme, Judge

WE CONCUR:

J. Frederic Voros Jr., Judge

Stephen L. Roth, Judge