COURT OF APPEALS
DECISION
DATED AND FILED

February 11, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP1379 **Cir. Ct. No. 2011CV622**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

DANIEL J. WACKETT,

PLAINTIFF-APPELLANT,

V.

CITY OF BEAVER DAM,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dodge County: DANIEL GEORGE, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Daniel Wackett appeals a summary judgment dismissing his action for implied contract/quantum meruit and unjust enrichment against his employer, the City of Beaver Dam. Wackett argues the circuit court failed to apply a presumption that there was no implied contract for Wackett to

continue working at his prior salary when performing additional duties. We conclude the City demonstrated, as a matter of law, that there was an implied contract for Wackett to continue working at his prior salary. Accordingly, we affirm.

BACKGROUND

¶2 Wackett started working for the City's public works department in November 1972. In 1990, Wackett was promoted to department supervisor. The director of public works, Bruce Gall, retired in July 2003. Wackett was appointed to serve as acting director, but also continued in his duties as department supervisor. Another City employee, John Bemis, was appointed director in October 2003.

¶3 Bemis resigned in July 2004. That same month, City employee Chris Liveris was appointed acting director. Liveris resigned the position in September 2004. Mayor Jack Hankes appointed Wackett to again serve as acting director in addition to maintaining his department supervisor position. Wackett applied to be the permanent director that same month in response to an internal posting, but the City did not hire anyone.

¶4 In December 2004, Wackett reapplied for the position and was interviewed, but the City decided not to hire any of the applicants and to advertise the position again. Wackett reapplied later that month, but was not interviewed. The City again decided not to hire anyone.

¶5 In April 2005, Wackett wrote Hankes and requested that the City make a decision about permanently filling the director of public works position. In part, Hankes responded, "Though perhaps unfair in some respects, spending

limit discussions in Madison, a city deficit for '05, and the fact that PW work is getting done [with a vacant position] all combine to make this a matter of lesser urgency against more pressing matters."

¶6 In December 2005, the City again advertised the director of public works position, and Wackett, who continued to serve as acting director, again applied. Wackett was not interviewed. The board of public works recommended an applicant to the common council for hiring, but the applicant was rejected as unqualified and nobody was hired. Wackett continued working as department supervisor and acting director through February 2008, when he retired early.[1] Ultimately, the City decided to combine the parks and public works departments under one director, the director of facilities.

¶7 Wackett filed an action for implied contract/quantum meruit and unjust enrichment, contending he was entitled to additional compensation for the additional duties he performed as acting public works director.[2] The circuit court granted the City summary judgment dismissing Wackett's claims. In an oral decision, the court held:

[1] Wackett fails to identify any additional duties he was required to perform as acting director. Although he sets forth several alleged duties, he provides no supporting record citations. We therefore disregard those asserted facts. *See* ***Tam v. Luk***, 154 Wis. 2d 282, 291 n.5, 453 N.W.2d 158 (Ct. App. 1990). Wackett also does not identify how much time he spent performing any additional duties. The City, for its part, repeatedly asserts Wackett's additional duties amounted to only a "few" or "several" hours per month. While Wackett does not dispute these assertions in his reply, we were unable to find record support at the City's provided citations.

[2] Wackett's claims were initially filed with other claims in federal court. After the federal case was dismissed, he filed the present action. The City unsuccessfully argued in the circuit court that the statute of limitations barred some or all of Wackett's claims. The City renews that argument on appeal, but we need not address it because we resolve the case on other grounds. *See* ***State v. Castillo***, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997) (appellate courts not required to address every issue raised when one issue is dispositive).

> With regard to the implied contract theory, the defendant did, in fact, have a contractual relationship with the city. What occurred was that his duties were modified to incorporate some additional responsibilities as the interim public works director, but there was no agreement []or evidence to support an intent to enter into an agreement for any kind of additional compensation. The plaintiff continued over a course of years to perform the duties he had been assigned, and continued to accept his level of compensation that had been contracted for as payment for those duties.
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> ….
>
> As to the theory of unjust enrichment, … the Court finds that would not apply here where we actually do have a contract that already exists between the parties. The plaintiff was in a contractual relationship with the city. The plaintiff accepted additional duties as the interim director, and continued to accept his same salary for the years that he performed the duties of interim director until he retired.
>
> I understand the plaintiff feels he was perhaps taken advantage of by the City, and that he was strung along with the hope of becoming public works director, but his option was to sit down and work out an agreement for the services he was providing—or he had the option of leaving public service if he so desired. It was not his option to accept his salary over the course of multiple years and then retire and expect to recoup what he thought his services may have been worth through some sort of litigation.

Wackett now appeals.

DISCUSSION

¶8 Wackett appeals a grant of summary judgment. Summary judgment is appropriate when "there is no genuine issue as to any material fact and … the moving party is entitled to a judgment as a matter of law." WIS. STAT. § 802.08.[3]

[3] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

When determining whether there are genuine factual issues, the facts must be viewed in the light most favorable to the nonmoving party. ***Kraemer Bros. v. U.S. Fire Ins. Co.***, 89 Wis. 2d 555, 567, 278 N.W.2d 857 (1979). We review grants of summary judgment de novo. ***Donaldson v. Urban Land Interests, Inc.***, 211 Wis. 2d 224, 229-30, 564 N.W.2d 728 (1997).

¶9 In an untitled introduction to his entire argument section, Wackett contends:

> The Circuit Court … erred because it presumed the existence of a contract for the acting Director position absent evidence to the contrary when under Wisconsin law, the presumption actually runs the other way, requiring Beaver Dam to prove the existence of such a contract. Beaver Dam did not offer evidence sufficient to establish that Wackett had intended to accept such a contract.

(Citations omitted.)

Implied contract/quantum meruit

¶10 Wackett argues a reasonable fact-finder could conclude there was an implied contract to pay him the reasonable value of his services. He relies on the following language from WIS JI—CIVIL 3026:

> If a person performs services … for another at the other's request and there is no express agreement as to compensation, a promise to pay the reasonable value of the services … may be properly implied; there must be some conduct of the person benefited from which his or her free election to promise to pay may be fairly inferred.

Wackett further relies on a case cited in the jury instruction comment that held: "The general rule is that if a person performs valuable services for another at that other's request, the law implies, as matter of fact, the making of a promise by the latter and acceptance thereof by the former to pay the one performing the service

the reasonable value thereof." ***Wojahn v. National Union Bank***, 144 Wis. 646, 667, 129 N.W. 1068 (1911) (citations omitted).

¶11 Wackett argues that because he performed valuable services for the City as acting director and was not paid anything in addition to his supervisor salary, he is entitled to a presumption that there was an implied contract for additional compensation. He asserts the City provided no evidence to rebut the presumption.

¶12 We reject Wackett's assertion that there is no evidence contrary to the presumption of an implied contract for additional compensation. Wackett ignores the fact that he accepted the supervisor-level salary for nearly four years while also acting as director. Although Wackett repeatedly contacted the mayor and submitted applications for the director position, that position was never offered to Wackett. Wackett also makes much of the fact that the mayor prepared a draft compensation proposal, which he discussed with Wackett. However, this instead weakens Wackett's argument. There is no dispute that the proposal was merely that: a draft proposal, prepared in case Wackett was actually hired to the director position. Given the draft proposal—contingent on Wackett being hired as director—Wackett could not have reasonably expected to receive additional pay if he was not hired. Indeed, Wackett never requested, much less demanded, additional compensation for his interim duties as acting director. Accordingly, the City demonstrated, as a matter of law, that there was an implied contract for Wackett to continue working at his supervisor-level salary while also performing the additional interim duties of acting director.

¶13 Wackett argues he is entitled to additional compensation under the theory of quantum meruit. "Recovery in quantum meruit is allowed for services

performed for another on the basis of a contract implied in law to pay the performer for what the services were reasonably worth." ***Gename v. Benson***, 36 Wis. 2d 370, 376-77, 153 N.W.2d 571 (1967). Because there was no implied contract for additional pay, Wackett is not entitled to quantum meruit recovery. Moreover, we would reject Wackett's quantum meruit claim because he fails to support numerous assertions of fact and law with appropriate citations.[4] *See* ***Tam v. Luk***, 154 Wis. 2d 282, 291 n.5, 453 N.W.2d 158 (Ct. App. 1990) (we need not address arguments lacking proper record citation); ***State v. Flynn***, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994) (arguments that are not properly supported by legal authority will not be considered); *see also* WIS. STAT. RULE 809.19(10)(e).

Unjust enrichment

¶14 Wackett alternatively argues he has a valid claim for unjust enrichment. The elements of a cause of action in equity for unjust enrichment are: (1) a benefit conferred upon the defendant by the plaintiff; (2) an appreciation or knowledge by the defendant of the benefit; and (3) acceptance or retention by the defendant of the benefit under circumstances making it inequitable for the defendant to retain the benefit without payment of its value. ***Puttkammer v. Minth***, 83 Wis. 2d 686, 688-89, 266 N.W.2d 361 (1978).

¶15 We have already determined that the parties implicitly agreed to the amount of compensation to be provided for the performance of all of Wackett's

[4] Specifically, several of Wackett's legal assertions lack either any citation or pinpoint citation. Many of Wackett's factual assertions lack any citation, have incomplete citations, or are not supported by the record at the citations provided.

duties, including those of acting director. Because the City demonstrated, as a matter of law, an implied contract to continue paying Wackett his supervisor-level salary, Wackett's equitable claim for unjust enrichment fails. The doctrine of unjust enrichment does not apply where parties have entered into an express or implied contract. *See* ***Continental Cas. Co. v. Wisconsin Patients Comp. Fund***, 164 Wis. 2d 110, 118, 473 N.W.2d 584 (Ct. App. 1991) (citing ***Watts v. Watts***, 137 Wis. 2d 506, 530, 405 N.W.2d 303 (1987)).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.