STATE OF MICHIGAN

COURT OF APPEALS

RONALD O'BRIEN,

Plaintiff-Appellant,

v

WAYNE CENTER, INC., a Michigan nonprofit corporation; WALTER G. HORLINGS, an individual; and ANN ZUZICH, an individual, jointly and severally,

Defendants-Appellees.

UNPUBLISHED
September 10, 1996

No. 175889
LC No. 91119449 CZ

Before: Marilyn Kelly, P.J., Gribbs and W.E. Collette,* JJ.

PER CURIAM.

Plaintiff appeals as of right from a grant of summary disposition to defendants pursuant to MCR 2.116(C)(8) and (C)(10) in this wrongful termination action.

Plaintiff argues that the pleadings, deposition testimony and affidavits were sufficient to create a genuine issue of material fact as to whether he was a just cause employee. He asserts that summary disposition was premature where the judge failed to conduct an in camera inspection of documents that defendants were ordered to produce. He claims that the judge erred in denying his motion for reconsideration based on newly discovered evidence. Finally, he argues that his count for breach of a covenant of good faith was improperly dismissed under MCR 2.116(C)(8). We reverse in part, affirm in part and remand.

On March 11, 1986, defendant hired plaintiff as deputy director for support services of the Wayne Center. His employment was terminated on December 26, 1990, via a letter from defendant Walter Horlings. The letter indicated that plaintiff had encouraged and assisted a union employee in filing a grievance against Wayne Center. Plaintiff denied the allegations.

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* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff brought suit on July 25, 1991, alleging wrongful discharge, breach of contract and the covenant of good faith and intentional infliction of emotional distress.[1] On February 7, 1992, plaintiff moved to compel the production of documents. The trial judge ordered certain documents produced for an in camera inspection, including those from a January 23, 1991, board meeting.

On March 27, 1992, the trial judge granted summary disposition to defendants on the claims for wrongful discharge and intentional infliction of emotional distress. The judge found as a matter of law that plaintiff was an at will employee, terminable at the discretion of defendants. On April 6, 1992, the judge granted summary disposition as to the count for breach of contract and breach of the covenant of good faith for failure to state a claim upon which relief could be granted.

On August 14, 1992, plaintiff moved for reconsideration based on newly discovered evidence. The trial judge denied that motion. On December 9, 1992, plaintiff filed an application for leave to appeal. This Court vacated the judgment in part and remanded the case to the trial judge for further proceedings. On May 31, 1993, the Michigan Supreme Court vacated the Court of Appeals' orders and remanded the case to our Court for plenary consideration.

I

Plaintiff argues that he presented a genuine issue of material fact concerning whether he could be terminated only for just cause. Employment contracts for an indefinite duration are presumptively terminable at the will of either party. *Rood v General Dynamics Corp*, 444 Mich 107, 116; 507 NW2d 591 (1993). However, a party may overcome the presumption by presenting proof of (1) a contractual provision for a definite term of employment, or (2) a provision forbidding termination absent just cause. *Id.* at 117. Additionally, employer policies may become part of an employment relationship if such policies instill legitimate expectations of job security in employees. *Id.* at 117-1118.

Plaintiff argues that oral promises by defendant Horlings established a contract that expressly provided for his termination only for just cause. Oral statements of job security must be clear and unequivocal to overcome the presumption of at will employment. *Rowe v Montgomery Ward*, 437 Mich 627, 645; 473 NW2d 268 (1991). The meaning that reasonable persons might attach to the language given the circumstances must be determined. *Id.* at 640.

Here, plaintiff testified at his deposition that defendant Horlings informed by him that his job duties included dealing with personnel matters, including hiring and firing. Consequently, plaintiff specifically inquired whether the employees could be terminated at will. Horlings responded that all union employees are covered by a just cause provision in their collective bargaining agreement, and that a similar just cause relationship was understood to apply to management employees. Horlings stated to plaintiff, "We couldn't get away with less."

Horlings' oral statements were insufficient to create an express just cause contract. Horlings merely informed plaintiff of defendant's policies. He did not promise plaintiff that he could be terminated only for just cause. *Rowe, supra*.

However, we find that there is sufficient evidence from which a reasonable jury could conclude that Horlings' oral statements, coupled with defendants' employment policies, gave plaintiff a legitimate expectation that he could be fired only for just cause. Horlings' statements about just cause employment were in response to plaintiff's specific inquiry concerning the employees' status at Wayne Center. Plaintiff could legitimately expect that, because defendant had a just cause policy with respect to all union and management personnel, he too would be covered by that policy.

Defendants argue that even if plaintiff was originally hired as a just cause employee, he became an at will employee when the employee handbook was changed to expressly provide for at will employment. Without express reservation, an employer may unilaterally change its just cause policy to one at will, provided it gives affected employees reasonable notice of the change. *Rowe, supra* at 648 (Riley, J.), 662 (Boyle, J.); *In re Certified Question*, 432 Mich 438, 441; 443 NW2d 112 (1989); *Lytle v Malady*, 209 Mich App 179, 197; 530 NW2d 135 (1995).

We find that a question of fact exists as to whether plaintiff received reasonable notification that his employment status had changed. According to plaintiff's affidavit submitted in opposition to defendant's motion for summary disposition, plaintiff conducted research pertaining to the conversion of employees from just cause to at will. Later, he asked Horlings whether the new policy applied to his own employment contract with Wayne Center. Horlings responded that at will employee status would apply to newly hired employees who commenced employment after formal acceptance by the agency of the changed policy. Moreover, Horlings told plaintiff that the new policy would never be applied to himself or to plaintiff. Therefore, even though plaintiff received the new policy manual, a question of fact exists as to whether he received notification that it applied to him.

II

Additionally, plaintiff argues that the minutes of defendants' January 23, 1991 board meeting provide evidence that he remained a just cause employee despite a change in the policy manual. Defendants submitted the minutes to the trial judge for an in camera inspection, alleging that they were privileged. However, a hearing on the matter was never held. It was error for the trial judge to dismiss plaintiff's case without holding a hearing. Looking at the minutes in a light most favorable to plaintiff, they support his claim that defendants believed he was a just cause employee in 1991, well after the policy was changed to provide for at will employment. However, we leave it to the trial judge to make the preliminary decision whether the minutes were inadmissible based on privilege.

III

The trial judge properly dismissed plaintiff's claim for breach of the covenant of good faith. Michigan courts have not recognized a cause of action for breach of an implied covenant of good faith in an employment law context. *Barber v SMH (US) Inc*, 202 Mich App 366; 509 NW2d 791 (1993); *Hammond v United of Oakland, Inc*, 193 Mich App 146; 483 NW2d 652 (1992); *Schwartz v Michigan Sugar Co*, 106 Mich App 471; 308 NW2d 459 (1981).

In summary, we reverse the grant of summary disposition on the wrongful discharge claim. We order the judge to conduct an in camera hearing regarding the minutes of the January 21, 1991 meeting. We affirm the grant of summary disposition with regard to the claim for breach of the covenant of good faith. In light of our handling of this matter, plaintiff's argument that the judge erred in denying his motion for reconsideration based on newly discovered evidence is moot.

We affirm in part, reverse in part and remand. We do not retain jurisdiction.

/s/ Marilyn Kelly
/s/ Roman S. Gribbs
/s/ William E. Collette

[1] Plaintiff's counsel stipulated at oral argument that the claim for intentional infliction of emotional distress has been abandoned on appeal.