

STATE OF MICHIGAN
COURT OF APPEALS

DOUGLAS FEE,

Plaintiff-Appellant,

v

HENRY FORD WYANDOTTE HOSPITAL,
HENRY FORD HEALTH SYSTEM, and ROBERT
RINEY,

Defendants-Appellees.

UNPUBLISHED
February 8, 2000

No. 208883
Wayne Circuit Court
LC No. 97-704828-NO

Before: O'Connell, P.J., and Meter and T. G. Hicks*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) in this employment action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was employed at Henry Ford Wyandotte Hospital for two periods of time. He asserts that, before his re-employment, he was told that his poor attendance record would be wiped clean, and that for that purpose alone he would be treated as a new employee. Plaintiff asserted that he was told that he would otherwise be treated as if he never left. At both his original hiring and at his rehiring, plaintiff signed documents explicitly providing that he was an at-will employee.

When plaintiff's employment was terminated for attendance problems, he brought this action alleging that defendants fraudulently induced him to return to work with the false representation that his attendance record would be given a clean slate. He alleged that defendants breached their contract by failing to honor this promise. The trial court granted defendants' motion for summary disposition, stating that plaintiff's claim was barred by his at-will employment status. We review the trial court's decision to grant defendants' motion for summary disposition de novo to determine whether any genuine issue of material fact exists that would prevent entering judgment for defendants as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998).

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

Plaintiff cannot maintain a breach of contract action where he signed an acknowledgment of at-will employment before beginning his employment, and where he admitted that there was no later signed writing altering the terms of employment. *Scholz v Montgomery Ward & Co, Inc*, 437 Mich 83, 89-90, 94; 468 NW2d 845 (1991). Regardless of any alleged prior agreement, the parties reached a new understanding when they executed the at-will employment agreement. *Id.* at 90. The agreement contained no provision erasing plaintiff's prior attendance record.

Plaintiff cannot maintain a cause of action for misrepresentation as to future employment promises. "An action for fraudulent misrepresentation must be predicated upon a statement of past or existing fact." *Marrero v McDonnell Douglas Capital Corp*, 200 Mich App 438, 444; 505 NW2d 275 (1993). "A mere broken promise does not constitute fraud, nor is it evidence of fraud." *Id.* None of the statements allegedly made related to past or existing facts, and therefore they cannot be the basis for an action in fraud.

Plaintiff also failed to provide any factual support for his claim of detrimental reliance. In his deposition, plaintiff acknowledged that defendant Riney, head of the human-resources department, never promised him that he would be rehired, never made any promises regarding terms or conditions of employment, and never promised him that he would have a clean slate regarding attendance. These admissions are binding, even though they contradict the allegations made in the complaint. *Henderson v Sprout Bros, Inc*, 176 Mich App 661, 670; 440 NW2d 629 (1989); *Stefan v White*, 76 Mich App 654, 659; 257 NW2d 206 (1977).

Accordingly, we conclude that the trial court did not err in granting defendants' motion for summary disposition.

Affirmed.

/s/ Peter D. O'Connell
/s/ Patrick M. Meter
/s/ Timothy G. Hicks