

STATE OF MICHIGAN
COURT OF APPEALS

KANDRA K. ROBBINS,

Plaintiff-Appellee,

v

SAULT STE. MARIE TRIBE OF CHIPPEWA
INDIANS,

Defendant-Appellant.

UNPUBLISHED

May 20, 2010

No. 290321

Chippewa Circuit Court

LC No. 06-008746-NO

Before: WHITBECK, P.J., and SAWYER and BORRELLO, JJ.

PER CURIAM.

Defendant Sault Ste. Marie Tribe of Chippewa Indians appeals as of right the trial court's denial of its motions for judgment notwithstanding the verdict and for new trial, following a jury verdict for plaintiff Kandra Robbins. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Sault Ste. Marie Tribe first employed Robbins in 1992, while she was still a law student. After graduating from law school, she continued to work for the Tribe as an attorney. In 2001, she was hired by then-chairperson Bernard Bouschor as the Tribe's chief judge. Robbins served as an at-will employee until February 2002, when she signed an employment contract with the Tribe. The written employment agreement provided that Robbins would receive a severance payment equal to two years' salary if her employment was terminated. The contract provided, however, that the Tribe was not obligated to pay severance under certain conditions, including if Robbins voluntarily resigned her employment.

On January 31, 2006, Robbins submitted her resignation to the Tribe's board of directors, effective February 14, 2006. The following day, chairperson Aaron Payment sent Robbins two written communications accepting Robbins' resignation on behalf of the tribe. Neither writing mentioned the effective date of the resignation. On February 2, Robbins sent Payment an e-mail agreeing to waive any claims pursuant to her employment contract if the Tribe agreed to pay her accrued vacation and sick time. On the morning of February 3, Payment sent an e-mail to Cheryl Bernier, the Tribe's human resources director, instructing her to have Robbins removed from her chambers by the end of that day. When Bernier confronted Robbins, Robbins refused to leave unless she received her severance payment. Payment attempted to reassign Robbins to the Tribe's legal department in order to avoid firing her outright, but Robbins refused to leave the

chambers of the chief judge. Payment then contacted Fred Paquin, the Tribe's chief of police and a board member. Paquin was then able to convince Robbins to leave the premises.

Robbins brought this suit against the Tribe in order to force it to pay her severance, in the amount of \$204,576. The Tribe argued, among other things, that its Governmental Team Member Manual (the manual) was incorporated into the contract and allowed the Tribe to accept resignations immediately. Robbins argued that the manual was not part of the contract, citing several sections of the manual that directly contradicted the written employment agreement.

The trial court instructed the jury that Robbins had the burden of proving damages and explained the proper method of calculating damages, but then informed the jury that the parties had stipulated to the amount of damages and that it did not need to calculate damages. Robbins' counsel objected, arguing that the agreement on damages relieved Robbins of the burden of proof on that issue and that instructing the jury on the proper method of calculating damages, and then informing the jury that it could not determine damages would cause confusion. The trial court agreed and proposed to reinstruct the jury. At this point, the Tribe's counsel objected, arguing that the new instructions would be more confusing and asserting that Robbins had agreed to the original instructions in off-the-record discussions in chambers.

The trial court reinstructed the jury, reiterating that Robbins had the burden of proof with respect to the existence and breach of a contract, and clarifying that if the jury found that Robbins had proven that a contract existed and was breached, it was to find for Robbins in the amount of \$204,576. The Tribe renewed its objection. After deliberating, the jury returned a verdict for Robbins, in the amount stipulated. The Tribe moved for judgment notwithstanding the verdict or new trial. The trial court denied the motions, and the Tribe now appeals.

II. MOOTNESS

Initially, Robbins claims that this appeal is moot because the judgment has been satisfied. This Court rejected this argument when Robbins raised it in her motion to dismiss,¹ and we reject it again here. Although Robbins is correct that a *voluntary* satisfaction of a judgment renders any appeal moot,² in this case Robbins achieved her satisfaction through garnishment of the Tribe's assets. An involuntary satisfaction by means of garnishment does not render an appeal moot, or waive a party's right to appeal.³

¹ *Robbins v Sault Ste Marie Tribe of Chippewa Indians*, unpublished order of the Court of Appeals, entered Sept. 28, 2009 (Docket No. 290321).

² *Becker v Halliday*, 218 Mich App 576, 578-579; 554 NW2d 67 (1996).

³ *Kusmierz v Schmitt*, 268 Mich App 731, 740 n 3; 708 NW2d 151 (2005), rev'd on other grounds 477 Mich 934 (2006).

III. JUDGMENT NOTWITHSTANDING THE VERDICT

A. STANDARD OF REVIEW

The Tribe first argues that the trial court erred in denying its motion for judgment notwithstanding the verdict or new trial because the verdict was against the great weight of the evidence. We review de novo the denial of a defendant's motion for judgment notwithstanding the verdict.⁴ "Reversal is permitted only if the evidence, while viewed in a light most favorable to [the] plaintiff, fails to establish a claim as a matter of law."⁵

B. ANALYSIS

There was evidence supporting both parties' positions in this case. In deciding a motion for judgment notwithstanding the verdict, the trial court is required to examine the evidence in the light most favorable to the non-moving party.⁶ The factual dispute on which this case hinged was whether the provision in the manual allowing the Tribe to accept a resignation immediately was part of Robbins' contract. The Tribe argued that it was, based on a section in the written employment agreement providing that Robbins would comply with the policies of the Tribe. Robbins argued that it was not because there were several items in the manual that clearly did not apply to Robbins (most obviously, the manual's recitation that all "team members" were at-will employees). The manual also recited that it did not constitute an employment contract.

The trial court, in denying the Tribe's motion for judgment notwithstanding the verdict, opined that a different jury deciding the case on a different day could have found the other way, but that the trial court was required to view the evidence in the light most favorable to Robbins. We are bound by the same standard, and thus find that the provision allowing immediate acceptance of resignations was not part of Robbins' employment contract. As such, this case falls under the rule of *Cain v Allen Electric & Equip Co.*⁷

In *Cain*, the plaintiff submitted his resignation to his employer to be effective at a future date.⁸ In response, the defendant employer fired the plaintiff before the effective date.⁹ The Michigan Supreme Court addressed whether the plaintiff's employment was terminated by his own resignation or by the employer's act:

By whom was the employer-employee relationship terminated . . . ? We will turn to the stipulation of facts for the answer. "Mr. L. O. Zick, President of [The] [d]efendant, acting on its behalf, called [the] plaintiff into his office and

⁴ *Garg v Macomb Co Community Mental Health Services*, 472 Mich 263, 272; 696 NW2d 646, amended 473 Mich 1205 (2005).

⁵ *Id.*

⁶ *Garg*, 472 Mich at 272.

⁷ *Cain v Allen Electric & Equip Co*, 346 Mich 568; 78 NW2d 296 (1956).

⁸ *Id.* at 571.

⁹ *Id.* at 571-572.

told [the] plaintiff that his employment was terminated, effective immediately, and that he was never to return to work” Bluntly put, he was fired because he had submitted his resignation to take effect in future. To argue that the defendant merely “accelerated” [the] plaintiff’s departure confuses the actual termination with the reason therefor.^[10]

The holding applies equally here. Where an employer terminates employment prior to the effective date of resignation, in the absence of a contractual provision allowing the employer to do so, the employment was terminated by the employer, not by the employee’s resignation.

IV. JURY INSTRUCTION

A. STANDARD OF REVIEW

The Tribe argues that it was entitled to a new trial because the jury instructions were erroneous and prejudicial because it unduly emphasized certain facts or evidence, and unnecessarily repeated certain points of law, and because Robbins reneged on an off-the-record agreement to jury instructions. “We review for an abuse of discretion a trial court’s denial of a motion for new trial.”¹¹ “The determination whether a jury instruction is applicable and accurately states the law is within the discretion of the trial court.”¹²

B. ANALYSIS

The Tribe’s presentation with respect to the first two points approaches abandonment of the issue. The Tribe does not explain how the second jury instruction unduly emphasized certain facts or evidence, or unnecessarily repeated points of law. It does not explain why these errors, if they existed, prejudiced the Tribe. Nor is it obvious that these errors existed or that the instructions were prejudicial. It is not enough to merely announce an error and leave it to this Court to develop an argument in support of it.¹³

As to the off-the-record discussions, the Tribe claimed that it only agreed to stipulate to damages in exchange for Robbins’ agreement to jury instructions. Robbins denied that she ever agreed to the jury instruction that was initially given. No record exists of this discussion. The trial judge was the only impartial participant in the discussion in chambers. As such, we defer to the trial court’s ruling on the issue, which was to adopt Robbins’ statement (including the denial that she reneged on the agreement) as the opinion of the court.

Even if we were to conclude that error occurred, we would find that it was harmless. No evidence was presented at trial to support the finding of damages in any amount greater or less than \$204,576. The Tribe only disputed whether Robbins was entitled to severance pay, but

¹⁰ *Id.* at 580.

¹¹ *Allard v State Farm Ins Co*, 271 Mich App 394, 406; 722 NW2d 268 (2006).

¹² *Bordeaux v Celotex Corp*, 203 Mich App 158, 168-169; 511 NW2d 899 (1993) (quotation and citation omitted).

¹³ *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998).

never disputed the amount of severance pay. We may not set aside a verdict or disturb an order of the trial court unless our refusal to do so would be “inconsistent with substantial justice.”¹⁴ In this case, the amount of damages was uncontested throughout the trial. Even if the trial court’s instruction on damages were erroneous, the jury would necessarily have reached the same result without it.

V. EXISTENCE OF CONTRACT

We briefly address the Tribe’s alternative defense that it had no enforceable employment contract with Robbins because the chairperson lacked the authority to bind the Tribe to this contract. The Tribe admitted in its answer that a contract existed and admitted in its response to Robbins’ request for admissions that the chairperson had the authority to execute the contract. Pursuant to MCR 2.312(D), a fact admitted in discovery is “conclusively established unless the court on motion permits withdrawal or amendment.” The court rule serves the goals of “facilitat[ing] proof with respect to issues that cannot be eliminated from the case, and . . . narrow[ing] the issues by eliminating those that can be.”¹⁵

Robbins sought, and the Tribe provided, an admission on this subject so that the parties would not have to litigate the question of the chairperson’s authority to execute the contract on the Tribe’s behalf. The Tribe could have denied Robbins’ allegation and litigated the issue before judge and jury. It would subvert the goal of MCR 2.312 to allow the Tribe to contradict its admission and litigate a new factual issue in this case well after the trial has already been held and a verdict reached.

Even if we were to consider the merits of the argument, we would not reverse. The Tribe cites only *Johnson v Menominee*,¹⁶ in support of its position. That case involved a city government, and stood for the propositions that city council members may not bind the city to employment contracts, and that a municipal board may not extend certain employment contracts beyond the life of that board. The Tribe is not a municipal corporation or municipal government. It is a sovereign national government. In 2001, its board passed Sault Tribe Resolution 2001-07, authorizing its chairperson to enter into employment contracts with key employees. We decline the Tribe’s invitation to limit its sovereignty by applying the Michigan common law of municipal corporations to hold these actions of the Tribe invalid.

We affirm.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Stephen L. Borrello

¹⁴ MCR 2.613(A).

¹⁵ *Radtko v Miller, Canfield, Paddock & Stone*, 453 Mich 413, 420; 551 NW2d 698 (1996).

¹⁶ *Johnson v Menominee*, 173 Mich App 690; 434 NW2d 211 (1989).