

STATE OF MICHIGAN
COURT OF APPEALS

JOHN W. STANOWSKI,

Plaintiff-Appellant,

v

CITY OF JACKSON, JULIUS A. GIGLIO,
CATHERINE BRECHTELSBAUER, and
WILLIAM R. ROSS,

Defendants-Appellees.

UNPUBLISHED

August 6, 2009

No. 282641

Jackson Circuit Court

LC No. 06-005853-CK

Before: Meter, P.J., and Murray and Beckering, JJ.

PER CURIAM.

I. Introduction

In this wrongful termination action, plaintiff appeals as of right the trial court's December 4, 2007, order denying his motion for summary disposition and granting defendants' motion for summary disposition. Plaintiff's employment as a city attorney was terminated after plaintiff changed his voter registration and driver's license address from Jackson to Saline, Michigan in Washtenaw County in order to run for the position of Washtenaw County prosecutor. We affirm, as counts I, II and III fail to state a claim upon which relief could be granted, MCR 2.116(C)(8), while plaintiff failed to establish a genuine issue of material fact as to count IV.

II. Facts and Proceedings

There are no disputed material facts in this case. Plaintiff was hired by the city of Jackson as an assistant city attorney on December 1, 1997. His written employment agreement, signed by both the city manager and city attorney, specified that he served at the pleasure of the city manager, that he was required to abide by city residency requirements, and that either party could terminate the contract without cause, but with 30 days notice. In order to comply with the residency requirement of his employment contract, plaintiff purchased a house in the city of

Jackson. However, in 1998 he and his wife also purchased a home in Saline, where plaintiff's wife continued to live.¹

In approximately May 2004, plaintiff decided to run for Washtenaw County prosecutor. To do so, he submitted an Affidavit of Identity indicating that his residence was in Saline. Plaintiff also changed his driver's license and voter identification card to show the Saline home as his residence. Administrators within the city of Jackson eventually discovered this information, which revealed that plaintiff was in violation of the residency clause within his contract.² As a result, plaintiff had several meetings with city administrators on this issue, including one on September 9, 2004 with defendants Brechtelsbauer (the human resource manager) and Giglio, the city attorney. At the meeting of September 9, plaintiff questioned the rationale for the residency clause, and then indicated a desire to retire either in December 2004 (assuming his election as Washtenaw prosecutor, which did not occur) or July 2005. Plaintiff requested to do so if the city would agree not to enforce the residency clause against him. Brechtelsbauer indicated that she would inform the interim city manager about plaintiff's request, who may also have to discuss it with city council, and get back to him. By September 24, 2004, plaintiff had failed to change his residency back to Jackson, and was terminated in a letter signed by both Giglio and the city manager, defendant William Ross.

More than two years later, plaintiff filed a complaint against defendants. The complaint contained four counts, Count I entitled "Invalid Residency Requirements," Count II entitled "Breach of Contract," Count III entitled "Reasonable Expectation," and Count IV entitled "Promissory Estoppel/Detrimental Reliance." After engaging in discovery, both parties filed motions for summary disposition. After hearing oral arguments, the trial court issued a nine-page written opinion and order granting defendants' motion for summary disposition and denying plaintiff's motion for summary disposition. It is from this final order that plaintiff appeals as of right.

III. Analysis

This Court reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 495-496; 628 NW2d 491 (2001). Defendants' motion was brought pursuant to MCR 2.116(C)(7), (8) and (10).

In the proceedings below, the trial court and the parties spent a great deal of time discussing the legality of the city's residency clause as it relates to the Residency of Public Employees Act (RPEA), MCL 15.601 *et. seq.* On appeal, the parties continue to present detailed arguments on this issue. However, we view that issue as merely ancillary to a more pivotal

¹ Plaintiff was formerly an assistant Washtenaw County prosecutor.

² The initial residency clause required plaintiff to live within the city limits, but it was modified after passage of the Residency of Public Employees Act, MCL 15.601 *et. seq.*, to provide that plaintiff had to reside within 20 miles of the city's border.

question, which is whether plaintiff's claims even state a claim upon which relief can be granted. MCR 2.116(C)(8). Thus, we determine that issue before we look to the reasons articulated by the trial court. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 508-509; 741 NW2d 539 (2007).

A. Count I

In Count I plaintiff alleges that the city's personnel policies relative to residency are inconsistent with the provisions of the RPEA, and in particular MCL 15.602(2). However, whether the city's policies and ordinances conflict with the statutory provisions is of no moment to plaintiff, because even if they were "there is no express authorization permitting a private cause of action against a public employer for violation of MCL 15.602(2)." *Lash v Traverse City*, 479 Mich 180, 194; 735 NW2d 628 (2007). Thus, Count I of plaintiff's complaint fails to state a claim upon which relief can be granted, because plaintiff has no private remedy for a violation of the statute against these defendants.

In any event, we reject plaintiff's argument that Jackson's residence policy conflicts with the RPEA, that he is permitted to have more than one residence according to other definitions of "residence," and that the trial court's determination was inconsistent with *City of Saginaw v Lindquist*, 139 Mich App 515; 362 NW2d 771 (1984). Questions of statutory interpretation are reviewed de novo. *Lash, supra* at 186.

A municipal ordinance is preempted by state law where it directly conflicts with the state statute or the statutory scheme preempts the ordinance because it occupies the field of regulation. *John's Corvette Care, Inc v City of Dearborn*, 204 Mich App 616, 618; 516 NW2d 527 (1994). MCL 15.602 provides in relevant part:

(1) Except as provided in subsection (2), a public employer³ shall not require, by collective bargaining agreement or otherwise, that a person reside within a specified geographic area or within a specified distance or travel time from his or her place of employment as a condition of employment or promotion by the public employer.

(2) Subsection (1) does not prohibit a public employer from requiring, by collective bargaining agreement or otherwise, that a person reside within a specified distance from the nearest boundary of the public employer. However, the specified distance shall be 20 miles or another specified distance greater than 20 miles. [Footnote added.]

"The plain language of § 1 describes the general prohibition against residency requirements—a public employer 'shall not require' that a person reside within a specific geographic area or within a specific distance or travel time from the employee's workplace as a

³ The parties do not dispute that defendant Jackson is a public employer within MCL 15.601(1), as a "county, township, village, city, authority, school district, or other political subdivision of this state[.]"

condition of employment.” *Lash, supra* at 188. Further, “§ 2 provides an exception and describes what residency limitations a public employer *may* require as a condition of employment. Under § 2, an employer may require that an employee reside within a *specified distance* from the nearest boundary of the public employer, without regard to the employee’s place of employment, as long as that specified distance is 20 miles or greater.” *Id.* (emphasis in original).

After the effective date for MCL 15.602, the city council added the requirement that “all non-union employees must maintain their residence within twenty (20) miles of the geographic boundary of the city of Jackson (i.e., 20 miles from the city limits)” in order to comply with MCL 15.602(2). Plaintiff argues that Jackson’s 20-mile limit violates MCL 15.602(2) and that, because MCL 15.602 controls residency requirements, the city could not impose additional requirements. We disagree.

A public employer’s residency policy may permissibly require “that an employee reside *within* a specified distance from the nearest boundary of the public employer . . . as long as that specified distance is 20 miles or greater.” *Lash, supra* at 188 (emphasis added on “within” and removed on “a specified distance”). Jackson’s policy that an employee “must maintain [his] residence *within* twenty (20) miles of the geographic boundary of the city of Jackson” therefore comports with MCL 15.602(2). Utilizing dictionary definitions, *Haynes v Neshewat*, 477 Mich 29, 36; 729 NW2d 488 (2007), the term “within” is defined as “in the compass or limits of; not beyond” and “at or to some point not beyond, as in length or distance.” *Random House Webster’s College Dictionary* (1997). Requiring employees to maintain their residence *within* 20 miles *encompasses* 20 miles contrary to plaintiff’s argument. There is no conflict between the statute and Jackson’s residency policy; the statute does not preempt the policy. *John’s Corvette Care, Inc, supra* at 618.

In reaching our conclusion, we do not rely upon the definitions of residence found in MCL 168.11 and MCL 257.50a. The parties’ employment agreement provided its own definition of “residence” and the method for determining residence for purposes of its own policy. The plain, unambiguous terms of the contract will be enforced as written. Additionally, plaintiff’s reliance on *Lindquist, supra* at 520, for the proposition that an employee’s voter registration and driver’s license address is not controlling in determining residence is also unavailing. In that case, the city’s residency policy provided that “city employees shall maintain a permanent and bona fide residence within the corporate limits of the city and that failure to do so is deemed to be an abandonment of employment.” *Id.* at 517-518. There is no indication that the city code or any employment contract otherwise further defined “residence.” *Lindquist* is therefore distinguishable from and does not apply to the present circumstances.

B. Count II

Plaintiff alleges in Count II of his complaint that defendants breached a contract with him because Giglio was allegedly not authorized under the city charter to terminate an appointee of the city manager. Again, however, whether the city attorney could terminate plaintiff’s employment has no bearing on whether plaintiff can bring a breach of contract action for the termination of his employment. It is undisputed that plaintiff’s employment was at the pleasure of the city manager, and that his employment was therefore at will. “An employee hired under such a [at-will] contract may be discharged at any time and for no reason; the employer can do so

arbitrarily and capriciously.” *Bracco v Michigan Technological Univ*, 231 Mich App 578, 598; 588 NW2d 467 (1998). And, because plaintiff has done nothing to suggest that the presumption of at-will employment has been overcome, whether the wrong person actually terminated his employment⁴ does not provide plaintiff with an avenue of relief to challenge the termination. Thus, Count II was properly dismissed as a matter of law.⁵

C. Count III

Count III also failed to state a claim upon which relief could be granted. In that count, plaintiff alleged that he had a reasonable expectation that defendants Brechtelsbauer and Giglio would present plaintiff’s retirement/residency proposal to the city council and to the city manager before any decision was made, that the expectation was violated, and resulted in his termination from employment. The only “reasonable expectation” doctrine related to employment law that we are aware of arises from the Supreme Court’s decision in *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579; 292 NW2d 880 (1980). However, *Toussaint* is of no avail to plaintiff’s claim because the purported reasonable expectation was that defendants Brechtelsbauer and Giglio would take action on plaintiff’s request, and “*Toussaint* was strictly limited to instances of employee discharge” *Fischhaber v General Motors Corp*, 174 Mich App 450, 455; 436 NW2d 386 (1988). Thus, because there is no “reasonable

⁴ Plaintiff argues that the city manager could only delegate hiring, suspending and terminating of employees to administrative officers who were subject to the manager’s direction and supervision. He argues that because the city manager and city attorney were coequals, the city attorney could not terminate him. We disagree, and conclude that the placement of commas on both sides of the phrase, “subject to the manager’s direction and supervision” indicate that plaintiff’s interpretation of Article XI, Section 11.3(1) of the city charter and Article II, Section 2.4(1) of the ordinances, is erroneous. If this phrase merely modified the term “any administrative officer,” then no commas would be required. The last antecedent rule provides that a modifying clause is automatically applied solely to the last antecedent where no commas are used to set off the phrase. *Cameron v ACIA*, 476 Mich 55, 71; 718 NW2d 784 (2006). Here, there is only one antecedent, that being the term “administrative officer.” Thus, commas would be completely unnecessary around the phrase “subject to the manager’s discretion and supervision”, if in fact that phrase was intended to modify “administrative officer.” The last antecedent rule does not apply where a clause is set off with commas. *Id.* The only way to read the challenged language is that the city manager has authority to appoint, suspend or remove all city employees under his direction and supervision, which appears to be all city employees under Article XI, Section 11.3(2) of the city charter; and, the city manager may authorize administrative officers to exercise the same powers over subordinates in their own offices and departments, but subject to the manager’s discretion and supervision.

⁵ Plaintiff also relies on the affidavit of former city attorney and former city manager Raduazo, who drafted Sections 11.3 and 7.5. However, statements by the drafters of legislation are of limited value, as “there is no reasonable way to attribute these individual statements to the Legislature as a whole, much less at the climactic moment of the final vote itself.” *In re Complaint of Mich Cable Telecom Ass’n*, 241 Mich App 344, 373; 615 NW2d 255 (2000). Raduazo’s opinion is entitled to no weight and represent only his personal views. *Cole v Ladbrooke Racing Mich, Inc*, 241 Mich App 1, 12-13; 614 NW2d 169 (2000).

expectation” legal theory that can support the type of expectation that plaintiff is asserting in Count III of his complaint, it was properly dismissed for failure to state a claim upon which relief can be granted.⁶

D. Count IV

Count IV contains plaintiff’s two claims of promissory estoppel against Brechtelsbauer and individual members of the city council. Whether the legal doctrine of promissory estoppel is applicable constitutes a question of law that is reviewed de novo on appeal. *James v Alberts*, 464 Mich 12, 14; 626 NW2d 158 (2001).

A successful claim of promissory estoppel requires proving the following four factors:

(1) a promise; (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee; (3) which in fact produced reliance or forbearance of that nature; and (4) circumstances such that the promise must be enforced if injustice is to be avoided. [*Booker v Detroit*, 251 Mich App 167, 174; 650 NW2d 680 (2002), rev’d in part on other grounds 469 Mich 892 (2003), quoting *Marrero v McDonnell Douglas Capital Corp*, 200 Mich App 438, 442; 505 NW2d 275 (1993).]

A promise is defined as “a manifestation of intention to act or refrain from acting in a specified manner, made in a way that would justify a promisee in understanding that a commitment had been made.” *Booker, supra* at 174, quoting *Schmidt v Bretzlaff*, 208 Mich App 376, 379; 528 NW2d 760 (1995). The promise must be definite and clear. *Booker, supra* at 174. The doctrine of promissory estoppel is cautiously applied, “only ‘where the facts are unquestionable and the wrong to be prevented undoubted.’” *Id.*, quoting *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 687; 599 NW2d 546 (1999). This Court must objectively examine the words, actions and circumstances at issue, and the parties’ relationship. *Booker, supra* at 174.

⁶ Plaintiff also argues that the city manager did not have the right to terminate his employment without providing 30-days notice. There is no such allegation in plaintiff’s complaint, and so it is not a claim that can now be asserted on appeal. In any event, the November 21, 1997, letter of appointment states that plaintiff’s appointment “may be terminated by either party without cause at any time upon thirty (30) days written notice to the other.” Examining the plain language of the contract, it specifies that a termination *without cause* requires 30-days notice. It does not address whether notice is required, or how much notice is required, if plaintiff was terminated *for cause*. The plain language of the contract should be enforced as written. *Rory v Continental Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). The notice provision was inapplicable in this case because plaintiff was fired for cause, i.e., failing to comply with Jackson’s residency requirements.

Plaintiff focuses on Brechtelsbauer's statement to him during the September 9, 2004, meeting where after the discussion regarding plaintiff's proposal, Brechtelsbauer stated, "Okay, so we'll get back to you by Monday Or at least I'll get back to you on what the manager says about this, and if he says we need to go talk to Council on Tuesday night, then it may be further delayed, so you understand that." This was not a clear and definite promise by Brechtelsbauer, as she merely indicated that she "would imagine" that plaintiff's proposal "would be an issue that would at least be discussed" by the city council. A promise must be "a manifestation of intention to act . . . in a specified manner[.]" *Booker, supra* at 174. Viewing the circumstances and words objectively, *Novak, supra* at 687, although Brechtelsbauer stated that she would "get back to you on what the manager says," she did not definitely and specifically commit to recommending any specific course of action (accepting or denying plaintiff's proposal), she did not promise that she would present plaintiff's proposal to the city council, she did not promise that the city manager would even consent to consider plaintiff's proposal, and she did not promise that no adverse action would be taken against plaintiff in the interim. Her statement of opinion regarding what she would advise to others does not constitute a promise. *Ypsilanti Twp v Gen Motors Corp*, 201 Mich App 128, 134 n 2; 506 NW2d 556 (1993), remanded on other grds 443 Mich 882 (1993). And, "mere[] words of assurance or statements of belief" and mere predictions of future events do not constitute "a promise of future action." *State Bank of Standish v Curry*, 442 Mich 76, 90; 500 NW2d 104 (1993). The fact that she did not provide any definite, clear promises is reinforced by the context; Brechtelsbauer explicitly informed plaintiff that the policy applied to all employees and she had no authority to change the policy or accept his proposed offer of retirement.

Moreover, it was not reasonable for plaintiff to rely on Brechtelsbauer's alleged promise, even if one was made. *Booker, supra* at 174. "[R]eliance is reasonable only if it is induced by an actual promise." *First Security Savings Bank v Aitken*, 226 Mich App 291, 312; 573 NW2d 307 (1997), overruled on other gds *Smith v Globe Life Ins Co*, 460 Mich 446; 597 NW2d 28 (1999). The day after the meeting with Brechtelsbauer and Giglio, plaintiff received a letter on September 10, 2004, from Giglio, copying Brechtelsbauer and interim city manager, Ervin Portis, in which Giglio noted that the city manager delegated his discipline authority to department heads, i.e., Giglio as head of the legal department. The letter further stated:

We advised we would discuss this matter with Ervin Portis, the Interim City Manager, and would respond no later than early next week. After careful consideration and discussion, I am directing you to become compliant with the city's residency requirement, as set forth on page ii of the Personnel Policy, no later than the end of business of Friday, September 17, 2004. If you choose not to restore yourself to compliance, appropriate administrative consequences will follow, which may include termination.

Despite this letter specifically advising plaintiff that the issue had been carefully considered and discussed, and directing him to comply with the residence requirement, plaintiff chose to take no action with respect to complying with the residence requirement. Plaintiff, still later, took no action to protect his interests after speaking with Portis himself about the residence issue, and Portis offered no relief. Portis testified that he told plaintiff: "I didn't have the authority to waive the policy and then that I had even previously discharged a police officer [sic]

for violating the residency policy.” No question of material fact exists on a promissory estoppel claim against Brechtelsbauer.⁷

E. Miscellaneous Issues

Finally, with respect to the individual city council members, we conclude that any reliance on their individual statements to plaintiff that they supported plaintiff’s proposal was unreasonable as a matter of law.

It is fundamental that those dealing with public officials must take notice of the powers of the officials. Persons dealing with a municipal corporation through one of its officers must at their peril take notice of the authority of the particular officer to bind the corporation. . . . Additionally, individual city council members have no power to bind the municipality.

Generally, no officer or board, other than the common council, has power to bind the municipal corporation by contract. [*Johnson v City of Menominee*, 173 Mich App 690, 693-694; 434 NW2d 211 (1988) (internal citations omitted).]

“[M]unicipal officers can bind a municipality only if they are empowered to do so by the city charter.” *Manning v Hazel Park*, 202 Mich App 685, 691; 509 NW2d 874 (1993). Here, there is no indication that the city charter gave individual council members the authority to bind the municipality, and plaintiff points to no such provision. Consequently, plaintiff dealt with the individual city council members and relied on any individual’s representations at his own peril. Further, plaintiff attended the September 14, 2004, city council meeting and asked the city council to immediately submit the residence policy to a committee for review and revision to include exceptions, but no action was taken by council.

We note that plaintiff argues throughout his brief on appeal that the trial court’s opinion and his termination were based on “hearsay documents,” indicating that he changed his address to Saline. Although plaintiff has only given cursory treatment to this issue, *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998), citing *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984), Giglio and Brechtelsbauer’s consideration of the now challenged documents was proper. Hearsay was not, of course, a consideration when making the decision to

⁷ As part of his promissory estoppel claim involving Brechtelsbauer, plaintiff argues that as an attorney acting as an “intermediary,” she owed him a duty under the Michigan Rules of Professional Conduct. “[T]hough failure to comply with the requirements of [the MRPC] may provide a basis for invoking the disciplinary process, such failure does not give rise to a cause of action for enforcement of the rule or for damages caused by failure to comply with the rule.” *Watts v Polaczyk*, 242 Mich App 600, 607 n 1; 619 NW2d 714 (2000), citing MRPC 1.0(b). To the extent that plaintiff is alleging a separate breach of fiduciary duty claim supported only by citation to the Michigan Rules of Professional Conduct, his claim must fail. *Id.*

terminate plaintiff, because they were not being offered into evidence in court. MRE 801(C). And, other evidence presented to the trial court, including plaintiff's own testimony and admissions, established that he changed his driver's license and voter registration address.

Defendants may tax costs as prevailing parties. MCR 7.209(A).

Affirmed.

/s/ Patrick M. Meter
/s/ Christopher M. Murray
/s/ Jane M. Beckering