STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1471

Matthew J. Stiehm,
Appellant,

vs.

City of Dundas,
Respondent.

Filed July 1, 2008
Affirmed
Toussaint, Chief Judge

Rice County District Court
File No. 66-C4-06-000258

Peter J. Stiehm, Attorney at Law, 307 Burnes Drive, Hopkins, MN 55343 (for appellant)

Julie A. Fleming-Wolfe, Attorney at Law, 1922 Grand Avenue, St. Paul, MN 55105 (for respondent)

Considered and decided by Toussaint, Chief Judge; Connolly, Judge; and Crippen, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Chief Judge

Appellant Matthew J. Stiehm challenges a district court order granting summary judgment in favor of respondent City of Dundas and dismissing his claims with prejudice. Because there are no genuine issues of material fact and because the district court did not err in its application of the law, we affirm.

F A C T S

Prior to his employment with respondent, appellant worked as a police officer in Nebraska. In April 2004, appellant applied for the position of respondent's chief of police. The employment application, signed and dated by appellant, indicated:

> It is understood and acknowledged that, unless otherwise defined by applicable law, or other written agreement, *any employment relationship with this organization* is of an *'at will'* nature, which means that the employee may resign at any time and the employer may discharge at any time with or without cause.

(Emphasis added.) Appellant was interviewed for the chief of police position but was not selected. Sometime later, appellant contacted respondent's city administrator and told her that he was interested in a part-time police officer position. Over a series of conversations with the city administrator, appellant notified her that, due to financial reasons, he would not relocate to Minnesota without a guarantee of a minimum of 16 working hours per week. On June 4, 2004, the city administrator sent appellant a letter stating: "[A]s I stated to you on the phone, we can guarantee you a minimum of 16 hours a week which would be a weekend shift." In his deposition, appellant acknowledged that the city administrator never told him that the "position was for any specified length of

time." In her deposition, the city administrator testified that she "did not mean that he would be guaranteed 16 hours for the rest of his life. . . . we did not put any condition on how long that would last or when it would cease."

Appellant also claims that the city administrator orally guaranteed him that he would be hired as respondent's next full-time police officer. In her June 4, 2004 letter, the city administrator stated: "It is also the intent of the City to add an additional full-time officer prior to the beginning of the new year." The record corroborates the city administrator's deposition testimony that she never orally guaranteed appellant that he would be hired as the next full-time officer, but that "he would have the same opportunity as any other employee or nonemployee to apply for that position, because it would be posted."

Appellant started his employment for respondent on July 26, 2004. According to respondent's written personnel policies: "All employees hired shall be required to successfully complete a six (6) month probationary period." On January 26, 2005, appellant's performance review was conducted by the police chief at the end of his six-month probationary period. The police chief determined that appellant had not met department expectations in productivity, independence, initiative, judgment, and problem solving/decision making. Because of appellant's poor performance, the police chief continued appellant's probation period for six months in accordance with respondent's personnel policies.

While on extended probation, appellant was formally warned by the police chief on four occasions regarding departmental policy violations. First, the police chief sent a

memorandum to appellant concerning a complaint made against him by citizens who alleged that he was watching them through windows in their houses while in his squad car observing traffic on their street. Second, the police chief advised appellant in writing that he was not to venture beyond city limits while on patrol. Third, the police chief notified appellant in writing of: (1) his failure to use proper procedure for DUI breath testing; (2) his failure to properly operate the squad-car radar; (3) his failure to ask for training on these devices; (4) his improper report writing; and (5) his failure to familiarize himself with Minnesota laws. Fourth, the police chief wrote appellant a letter asking him to work additional shifts as other officers were required to do and stating that, if he was unable to do so, she "would take that as an indication that [he was] not committed and dedicated to this department."

In response to the last warning letter, appellant requested a meeting with the city administrator, police chief, and mayor. As soon as the meeting began, the city administrator handed appellant a letter of termination. The city administrator testified that appellant was not discharged for "unethical or illegal conduct," but because "he was not a good fit" for respondent due to his continuing failure to comply with departmental policies and procedures.

Later, the city administrator and the police chief wrote a memorandum outlining the reasons for appellant's termination, wherein they recounted: (1) a time when appellant turned off the video camera in his squad car in violation of department policy; (2) appellant's poor report writing; (3) appellant's failure to learn how to operate the preliminary breath test machine or the radar equipment; (4) appellant's unnecessary

speeding while on duty; (5) appellant's inappropriate questioning of drivers he pulled over (e.g., asking them "if they have any drugs, weapons, bombs, grenades, missile launchers, ankle biting dogs, killer bees, etc." without probable cause); (6) the citizens' complaints; (7) the incident when appellant left city limits; and (8) an incident where appellant inappropriately had someone call the police chief at her home to ask for a background check.

After the city council approved a resolution upholding appellant's termination, he initiated a lawsuit against respondent. Respondent moved the district court to grant summary judgment and dismiss appellant's claims with prejudice. After a hearing, the district court granted respondent's motion and dismissed appellant's complaint with prejudice.

D E C I S I O N

Appellant challenges the district court order granting summary judgment in favor of respondent, arguing that the district court erred by not considering his alternative theory of promissory estoppel and allowing it to proceed to the jury and by granting summary judgment on his common-law wrongful-discharge claim.

On appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact; and (2) whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Summary judgment is justified "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of

law." Minn. R. Civ. P. 56.03. The "party resisting summary judgment must do more than rest on mere averments." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn.1997). We must "view the evidence in the light most favorable to the party against whom judgment was entered." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

I.

Appellant claims that even if an employment contract for permanent employment did not exist, "promissory estoppel and/or detrimental reliance can exist as a separate cause of action even without the existence of a contract." He argues that the district court should have allowed his alternative promissory-estoppel cause of action to proceed to the jury.

The doctrine of promissory estoppel implies "a contract in law where none exists in fact." *Grouse v. Group Health Plan, Inc.*, 306 N.W.2d 114, 116 (Minn. 1981). The elements of promissory estoppel in the context of an employment dispute are: (1) the employer "made a promise;" (2) the employer "expected or should have reasonably expected the promise to induce substantial and definite action" by the employee; (3) the "promise did induce such action;" and (4) the "promise must be enforced to avoid injustice." *Rognlien v. Carter*, 443 N.W.2d 217, 220 (Minn. App. 1989) (holding that appellant was entitled to present promissory estoppel as alternative claim because he relied on employer's oral representations regarding permanent employment when giving up previous job), *review denied* (Minn. Sept. 21, 1989).

Here, the district court determined that appellant had not established a breach-of-contract claim because there was no evidence that respondent had made any promises to

him of permanent employment or that he could only be terminated for cause. Because the record does not indicate that any such oral promises were made to appellant, his promissory estoppel claims also fails because the first element cannot be fulfilled.

Even viewing the evidence in the light most favorable to appellant, we cannot conclude that respondent promised appellant that he would be excused from at-will employment status. Respondent only promised appellant that he could work 16 hours per week for an indefinite period of time, and the record indicates that respondent fulfilled that promise until appellant was terminated. Even if appellant could be fired only for cause, respondent had ample grounds to terminate his employment. The district court did not err in precluding appellant's promissory estoppel claim from proceeding to the jury.

II.

Appellant contends that the district court erred in dismissing his common-law wrongful-discharge claim, arguing that he was terminated in violation of public policy because: (1) he was perceived as a whistle-blower; (2) he was fired for not meeting a ticket quota; and (3) respondent failed to comply with the Peace Officer Discipline Procedures Act, Minn. Stat. § 629.89, subd. 5 (2006).

First, appellant argues that he was perceived as a whistleblower because "the City Administration thought they were getting rid of a whistleblower, but terminated the wrong person." Appellant claims that he was fired because city officials thought that he had complained about the police chief committing "timecard fraud," even though he did not. Nothing in the record indicates that appellant was terminated in violation of the Whistleblower Act for reporting "a violation or suspected violation of any federal or state

law or rule . . . to an employer or to any governmental body or law enforcement official." *See* Minn. Stat. § 181.932, subd. 1(a) (2006). Appellant simply did not engage in protected conduct under the act. *See Hubbard v. United Press Int'l, Inc.,* 330 N.W.2d 428, 444 (Minn. 1983) (holding that elements of a prima facie case of retaliatory discharge are statutorily-protected conduct by employee, adverse employment action by employer, and causal connection between the two). Appellant claimed he was "perceived" as a whistleblower, but the Whistleblower Act does not provide relief to an employee terminated for being "perceived" as a whistleblower but who did not actually report any wrongdoing. Even if the act did provide for such relief, the factual record here does not establish that appellant was "perceived" as a whistleblower.

Second, appellant argues that he was "terminated because he failed to write enough tickets, i.e. he did not meet his quota." He claims that the police chief admitted that he was terminated for failing to write enough tickets, and that "the City Attorney flatly stated that the failure to write enough tickets was the reason in a telephone conversation." Appellant is correct that Minnesota recognizes a common-law theory of wrongful discharge, but he cannot make such a claim because he did not refuse to participate in an activity that he believed violated state or federal law. *See Phipps v. Clark Oil & Refining Corp.*, 408 N.W.2d 569, 571 (Minn. 1987) (holding that, even though Whistleblower Act was enacted, Minnesota still recognizes common-law wrongful-discharge claim if employee is "discharged for refusing to participate in an activity that the employee, in good faith, believes violates any state or federal law or rule or regulation"); *see also Nelson v. Productive Alternatives, Inc.*, 715 N.W.2d 452, 453

(Minn. 2006) ("Minnesota Whistleblower Act does not preclude common-law wrongful-discharge claims premised on *Phipps*.") Nothing in the record establishes that appellant was terminated for refusing to participate in an illegal ticket-quota program in violation of Minn. Stat. 169.985 (2006). In her deposition, the police chief testified that her employees "know that [it's] illegal to give a quota," and that "I would never tell somebody how many you have to make." Appellant's mere averments and speculation cannot withstand summary judgment. *See DLH, Inc.*, 566 N.W.2d at 71.

Third, appellant argues that respondent violated the Peace Officer Discipline Procedures Act, making his termination improper and establishing a wrongful-discharge claim. *See* Minn. Stat. § 629.89, subd. 5 (requiring that when "written complaint" is filed, "formal statement" of officer being complained of must be taken, and copy of written complaint must be given to officer). If appellant is claiming that he was discharged in retaliation for exercising his rights under this statute, nothing in the record supports such a claim, and therefore summary judgment was appropriate. *See id.*, subd. 14 ("No officer may be discharged, disciplined, or threatened with discharge or discipline as retaliation for or solely by reason of the officer's exercise of the rights provided by this section.").

Because the record shows that appellant was not terminated in violation of public policy, the district court did not err in granting summary judgment in favor of respondent and dismissing appellant's common-law wrongful-discharge claims.

Affirmed.