[Cite as *Antonucci v. Ohio Dept. of Taxation*, 2010-Ohio-3326.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Richard D. Antonucci et al.,	:	
Plaintiffs-Appellants,	:	
v.	:	No. 09AP-629 (C.C. No. 2006-07368)
Ohio Department of Taxation,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on July 15, 2010

Blaugrund, Herbert & Martin, Inc., and *David S. Kessler*, for appellants.

Richard Cordray, Attorney General, and *Velda K. Hofacker-Carr*, for appellee.

APPEAL from the Court of Claims of Ohio

CONNOR, J.

{¶1} Appellants, Richard D. Antonucci, Gary L. Driggs, and Rosemary F. Zureick ("appellants"), appeal the decision of the Court of Claims of Ohio to grant judgment to appellee, Ohio Department of Taxation ("appellee"), after the bifurcated trial on the issue of appellee's liability. For the following reasons, we affirm the judgment rendered by the Court of Claims.

{¶2} Appellee employed each of the appellants for a period of no less than 30 years. Appellants each held the position of Tax Commissioner Agent Supervisor 3 ("TCA

3") up until late 2001 when appellee decided to abolish appellants' positions. As a result, appellants filed appeals with the State Personnel Board of Review. An administrative law judge issued a report and recommendation finding that appellee had acted in bad faith in abolishing appellants' jobs. As such, the administrative law judge recommended that the decisions to abolish the positions be disaffirmed and appellants be reinstated to their former positions with back pay and other emoluments to which they were entitled. Appellee filed objections to this recommendation. Before the objections were resolved, the parties engaged in settlement negotiations. Ultimately, the parties reached settlements in May and June of 2004. The settlement agreements are identical, except for the names of the parties, the respective cities in which they were employed, and the respective sums of money they were entitled to receive. In accordance with the memorialized, signed agreements, each of the appellants were reinstated to the position of TCA 3 in June 2004.

{¶3} On October 25, 2005, appellee requested that the Ohio Department of Administrative Services ("DAS") revise two classifications of employees: the Tax Commissioner Agent Series and the Tax Auditor Series. After the appropriate hearings, DAS and the Joint Commission on Agency Rule Review approved the requested revisions. As a result, appellants' TCA 3 positions were reclassified as Tax Commissioner Agent Supervisor 2 ("TCA 2") positions. Additionally, their salaries were "redlined," which means that appellants would not receive pay raises until all of the other members of the TCA 2 classification reached appellants' levels of pay. Therefore, although appellants' job duties and rates of pay remained unchanged after the

reclassification, they allege that it had an impact on anticipated pay raises and their retirement benefits.

{¶4} The parties all agree that the reclassification of appellants' positions from TCA 3 to TCA 2 and the redlining of their salaries were done in accordance with Ohio's civil service laws. However, appellants filed the instant action to assert that appellee's actions of reclassifying and redlining constitutes a breach of their respective settlement agreements.

{¶5} The matter proceeded to a trial on the issue of appellee's liability for the alleged breach of contract. The parties stipulated to evidence and submitted proposed findings of fact and conclusions of law. The trial court held that the settlement agreements were clear and unambiguous and that appellee's actions of reclassifying and redlining did not breach the terms of the agreements. Accordingly, the trial court granted judgment to appellee. Appellants have timely appealed and raise the following assignments of error:

> Assignment of Error No. 1: The Court of Claims erred in determining that the settlement agreements between the parties are clear and unambiguous.
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> Assignment of Error No. 2: The Court of Claims erred by not admitting Plaintiffs' Exhibits 1 and 2 and other testimony concerning the intent of the parties into evidence.
>
> Assignment of Error No. 3: The Court of Claims erred by finding that Appellee did not breach its settlement agreements with Appellants because Appellee's actions did not violate Ohio's Civil Service laws.

{¶6} The construction of written contracts involves issues of law that appellate courts review de novo. *Alexander v. Buckeye Pipe Line Co*. (1978), 53 Ohio St.2d 241, paragraph one of the syllabus. The purpose of contract construction is to realize and give

effect to the intent of the parties. *Skivolocki v. East Ohio Gas Co.* (1974), 38 Ohio St.2d 244, paragraph one of the syllabus. "[T]he intent of the parties to a contract resides in the language they chose to employ in the agreement." *Shifrin v. Forest City Enterprises, Inc.*, 64 Ohio St.3d 635, 638, 1992-Ohio-28, citing *Kelly v. Med. Life Ins. Co.* (1987), 31 Ohio St.3d 130, paragraph one of the syllabus. See also *Saunders v. Mortensen*, 101 Ohio St.3d 86, 2004-Ohio-24, ¶9 (it is presumed that the intent of the parties to the contract lies within the language used in the contract); *Kelly* at 132 (the intent of the parties is presumed to reside in the language they chose to use in the agreement).

{¶7} In determining the intent of the parties, the court must read the contract as a whole and give effect to every part of the contract, if possible. *Clark v. Humes*, 10th Dist. No. 06AP-1202, 2008-Ohio-640; *Foster Wheeler Enviresponse, Inc. v. Franklin Cty. Convention Facilities Auth*., 78 Ohio St.3d 353, 361-62, 1997-Ohio-202. The intent of each party is to be gathered from a consideration of the contract as a whole. Id.; *Harden v. Univ. of Cincinnati Med. Ctr.*, 10th Dist. No. 04AP-154, 2004-Ohio-5548, ¶21.

{¶8} When parties to a contract dispute the meaning of the contract language, courts must first look to the four corners of the document to determine whether an ambiguity exists. *Buckeye Corrugated, Inc. v. DeRycke*, 9th Dist. No. 21459, 2003-Ohio-6321. "[I]f the contract terms are clear and precise, the contract is not ambiguous and the trial court is not permitted to refer to any evidence outside of the contract itself." *Ryan v. Ryan* (Oct. 27, 1999), 9th Dist. No. 19347. Indeed, when contract terms are clear and unambiguous, courts will not, in effect, create a new contract by finding an intent which is not expressed in the clear language utilized by parties. *Alexander* at 246, citing *Blosser v. Enderlin* (1925), 113 Ohio St. 121, paragraph one of the syllabus. Additionally, when

the written instrument is unambiguous, parol evidence will not be considered in an attempt to demonstrate an ambiguity that otherwise does not exist. *Shifrin* at 638, citing *Stony's Trucking Co. v. Pub. Util. Comm*. (1972), 32 Ohio St.2d 139, 142.

{¶9} In the instant matter, the parties agree that the relevant provision of the settlement agreements is paragraph 4(A), which provides:

> **Reinstatement**: ODT shall return [appellant] to the position of Tax Commissioner Agent Supervisor 3, in the [City], Ohio office. [Appellant] will return to this position on the first day of a new pay period following the execution of this agreement. Neither the language of this paragraph or [sic] the fact of this agreement shall be construed in any way to create a contract for employment between the named parties to this agreement. By signing this agreement [appellant] acknowledges and accepts that [he/she] retains only the rights provided to [appellant] by Civil Service law as codified in the Ohio Revised and Ohio Administrative Codes, as well as federal law so far as any of those apply to [appellant's] employment with the State of Ohio.
>
> ODT represents that it is not aware of any unreported conduct by [appellant] while [he/she] was working for ODT that could give rise to disciplinary or criminal action against [appellant]. However, such representation does not nor shall it bar ODT from taking appropriate disciplinary action should such past action by [appellant] come to light or present conduct occur in the course of her continued employment with ODT.

(Appellants' trial exhibit Nos. 3, 4, and 5.) Further, the agreements also contain an integration clause providing:

> This Agreement sets forth the entire agreement between the parties hereto, and fully supersedes any and all prior discussions, agreements or understandings between the parties. The undersigned parties state that they have carefully read the foregoing and understand the contents thereof, and that each executes the same as their own free and voluntary act.

Id.

{¶10} In their first assignment of error, appellants argue that paragraph 4(A) is unclear and ambiguous because it is susceptible to more than one reasonable interpretation. Specifically, they argue that the settlement agreements did not reserve the right for appellee to reclassify or redline appellants' positions, while the agreements also did not specifically provide that appellants could remain in the TCA 3 classification until retirement. We will break down appellants' argument into its two component parts to illustrate how and why appellants' position lacks merit.

{¶11} With regard to appellee's right to reclassify and redline, it is undisputed that the civil service laws permit for reclassification and redlining. Further, the four corners of the settlement agreements underlying this case clearly allow appellee to act in accordance with the civil service laws. Additionally, by way of their stipulations, the parties agreed:

> The actions of the Department of Taxation which resulted in the reclassifications of Antonucci, Driggs and Zureick from Tax Commissioner Agent Supervisor 3 to Tax Commissioner Agent Supervisor 2 and "redlining" them in April, 2006 was done in accordance with Ohio's Civil Service laws.

(Joint parties' stipulations, exhibit No. A, ¶20.) As a result, we find that the settlement agreements did reserve appellee with the right to reclassify and redline appellants' positions. We therefore reject appellants' contention to the contrary.

{¶12} Next, appellants note that the settlement agreements did not provide that appellants could remain in the TCA 3 classification until retirement or disciplinary removal. Nevertheless, appellants believe that they had such rights after executing the settlement agreements. The basis for this belief apparently stems from the negotiations leading up to the execution of the settlement agreements. Appellants fail to point to any ambiguities

in the settlement agreements themselves and instead reference these prior negotiations in an effort to inject an ambiguity into the settlement agreements. Again, however, parol evidence will not be considered to demonstrate an ambiguity that otherwise does not exist. *Shifrin* at 638, citing *Stony's Trucking* at 142. This is precisely what appellants are attempting to do. Appellants' position is essentially that a term which was omitted from the settlement agreements creates an ambiguity in those agreements. Rather than creating an ambiguity in the settlement agreements, this omission indicates that the parties did not agree to reserve the right for appellants to remain in the TCA 3 classification until retirement or disciplinary removal.

{¶13} Based upon our review, appellee had the right to reclassify and redline appellants' positions under the settlement agreements. As a result, appellants did not retain the right to remain in a TCA 3 classification until retirement or disciplinary removal. The settlement agreements were clear and unambiguous in this regard. The trial court did not err in reaching this same finding. We therefore overrule appellants' first assignment of error.

{¶14} Our resolution of appellants' first assignment of error is also dispositive of appellants' second assignment of error. In appellants' second assignment of error, they argue that the trial court erred in excluding extrinsic evidence regarding the parties' intent. However, courts may only consider extrinsic evidence of the parties' intent when "the language is unclear or ambiguous, or where the circumstances surrounding the agreement invest the language of the contract with a special meaning." *Metcalfe v. Akron*, 9th Dist. No. 23068, 2006-Ohio-4470, ¶18, quoting *Kelly v. Med. Life Ins. Co.* (1987), 31 Ohio St.3d 130, 132. See also *Drs. Kristal & Forche, D.D.S., Inc. v. Erkis*, 10th

Dist. No. 09AP-06, 2009-Ohio-5671, ¶21, quoting *Ryan v. Ryan* (Oct. 27, 1999), 9th Dist. No. 19347 ("[I]f the contract terms are clear and precise, the contract is not ambiguous and the trial court is not permitted to refer to any evidence outside of the contract itself.").

{¶15} In the instant matter, appellants do not argue in favor of a special meaning. Further, because we have determined that the settlement agreements were clear and unambiguous, we find that the trial court did not err in excluding the extrinsic evidence offered to demonstrate the parties' intent. We accordingly overrule appellants' second assignment of error.

{¶16} In their third assignment of error, appellants argue that the trial court erred in finding that appellee was entitled to judgment because it complied with civil service laws. Specifically, they argue, "[a]ppellants' claim in the instant case is that their reduction breaches the settlement agreements, not that [a]ppellee's actions are otherwise illegal." (Appellants' brief, at 16.) However, we have already found that the settlement agreements permitted appellee to reclassify and redline appellants' positions. Accordingly, we find that the acts of reclassifying and redlining could not have amounted to a breach of contract. We accordingly overrule appellants' third assignment of error.

{¶17} Having overruled each of appellants' three assignments of error, we affirm the judgment rendered by the Court of Claims of Ohio.

Judgment affirmed.

BROWN and FRENCH, JJ., concur.