

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

SUSAN MCGOVERN

Plaintiff

v.

WRIGHT STATE UNIVERSITY

Defendant

Case No. 2013-00231

Judge Patrick M. McGrath
Magistrate Anderson M. Renick

DECISION

{¶1} On March 31, 2014, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On April 14, 2014, plaintiff filed a response. On April 24, 2014, defendant filed a reply and a motion to file the same, which is hereby GRANTED instanter. The motion is now before the court for a non-oral hearing pursuant to L.C.C.R. 4.¹

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} “Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation

¹The court notes that this is a refiled case and that the court denied the parties’ cross-motions for summary judgment in the previous Case No. 2012-01767.

construed most strongly in the party's favor.” See also *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶4} Plaintiff was employed by defendant Wright State University (WSU) from 1985 to 1994 and again from 2003 to 2010. Plaintiff asserts a claim of breach of contract from her most recent employment as Program Director in the College of Science and Mathematics.

{¶5} Plaintiff received a letter dated November 16, 2010 from David Goldstein, Chair of the College of Science and Mathematics, which states, in relevant part, the following:

{¶6} “I regret to inform you that your employment with Wright State University as Program Director (LEADER Consortium) in the College of Science and [Mathematics] will cease as of the close of business on December 31, 2010. This notice is provided to you pursuant to Wright Way Policy 4101, Employment Specifications for Grant/Contract Funded Positions.

{¶7} “As a special contract employee, vacation is for use only within the appointment period and no payment for unused vacation time will be made upon termination. All accrued vacation is expected to be taken before December 31, 2010.” (Plaintiff’s Exhibit 8.)

{¶8} Plaintiff asserts that the terms of her employment contract are set forth in a letter dated December 29, 2008 from Michele Wheatly, which plaintiff signed on December 30, 2008. (Plaintiff’s Exhibit 1.) According to plaintiff, the letter she signed constituted an employment contract for a period of five years in an unclassified, full-time, continuing staff position. As such, plaintiff asserts that defendant breached the contract by failing to pay her for the remaining 36 months of her contract in the amount of \$235,702.40. Alternatively, plaintiff argues that her employment was subject to Policy Number 4004, which applies to unclassified staff who have been hired on a continuing employment agreement, not Policy Number 4101, which applies to grant-funded positions. Plaintiff further asserts that defendant breached the contract when it failed to provide her nine months of severance pay and benefits in the amount of \$58,925.60.²

²Policy Number 4004, titled “Conditions of Employment for Unclassified Staff” states, in pertinent part: “4004.1 Termination Notification

“a. The unclassified staff of Wright State University who have been hired on a Continuing Employment Agreement can be terminated by the university. The affected staff members shall be notified in writing as specified in the following paragraphs. Term of employment shall include only continuous employment at Wright State University as classified staff, unclassified staff, or faculty with no prior breaks in service.

{¶9} In its motion for summary judgment, defendant asserts that plaintiff was employed pursuant to a one-year, special contract supported by grant funds, that her contract expired on December 31, 2010, and that neither Policy Number 4101 nor 4004 applies to her inasmuch as the policies address termination of employment, rather than non-renewal of an employment contract.

{¶10} The December 29, 2008, letter from Michele G. Wheatly, states, in pertinent part:

{¶11} "I am pleased that you have verbally accepted the position of Program Director (LEADER Consortium) in the College of Science and Mathematics at Wright State University effective January 1, 2009, at an annual salary of \$56,850. I would now like to make the offer formal and provide further details. This salary supports a continuing appointment at 100% effort working under the supervision of the Director of LEADER (Michele Wheatly). *While the initial funding for the position originates from the NSF ADVANCE grant, the Provost's office has guaranteed continuance at the end of the 5 year period assuming that our goals are met.*

{¶12} "** * *

{¶13} "This is an unclassified staff position. As a staff member appointed to work full time in a continuing position, you are required to be enrolled in either the Ohio Public Employees Retirement System (OPERS) or the Wright State University Alternative Retirement Plan (ARP). * * *

{¶14} "** * *

{¶15} "We are confident that you will be a valuable addition to Wright State University and the broader LEADER consortium and we sincerely hope that you will formally accept this written offer. Please sign below indicating your acceptance of this offer. Please return the original to Michele Wheatly by January 9th 2009 and keep the copy for your files.

{¶16} "** * *

"c. Notice of termination without just cause shall be as follows:

Term of Employment	Notification
Less than 3 years	2 months
At least 3 years but less than 6 years	6 months
At least 6 years but less than 15 years	9 months
15 or more years	1 year (12 months)"

{¶17} “I accept the offer contained herein as indicated by my signature below *and will formally consummate this contract upon receipt of the Employment Agreement.*” (Emphasis added.)

{¶18} Plaintiff signed the letter on December 30, 2008. However, neither party has submitted the “Employment Agreement” referenced in Plaintiff’s Exhibit 1. In its motion for summary judgment, defendant represents that there was no separate employment agreement. Inasmuch as the document states that plaintiff’s signature indicates her formal acceptance of the employment offer and that the document itself references “this contract,” the court finds that the document is indeed an employment contract.

{¶19} The purpose of contract construction is to give effect to the intention of the parties, and such intent “is presumed to reside in the language they chose to employ in the agreement.” *Stoll v. United Magazine Co.*, 10th Dist. No. 03AP-752, 2004-Ohio-2523, at ¶ 7. In construing a written agreement, common words appearing in the written instrument are to be given their plain and ordinary meaning “unless manifest absurdity results, or unless some other meaning is clearly evidenced from the four corners of the documents.” *Id.* at ¶ 8, citing *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241 (1978), paragraph two of the syllabus. Additionally, a court is not required to go beyond the plain language of an agreement to determine the parties’ rights and obligations if a contract is clear and unambiguous. *Custom Design Technologies, Inc. v. Galt Alloys, Inc.*, 5th Dist. No. 2001CA00153, 2002-Ohio-100. “If a contract is clear and unambiguous, then its interpretation is a matter of law and there is no issue of fact to be determined.” *Inland Refuse Transfer Co. v. Browning-Ferris Industries of Ohio, Inc.*, 15 Ohio St.3d 321, 322 (1984).

{¶20} Although applicant contends that the employment contract provides for a five-year term of employment, the court finds that the reference to a five-year period clearly pertains to the initial grant funding for the position, rather than the duration of employment. Therefore, the court finds that the contract does not specifically state a duration of employment.

{¶21} “If a term stating the duration of an employment contract is omitted, then ‘a strong presumption in favor of a contract terminable at will’ arises ‘unless the terms of the contract or other circumstances clearly manifest the parties’ intent to bind each other’ to a definite durational term.” *Miller v. Lindsay-Green, Inc.*, 10th Dist. No. 04AP-848, 2005-Ohio-6366, ¶ 40, quoting *Henkel v. Educational Research Council*, 45 Ohio St.2d 249, 255

(1976). An employment contract that omits a durational term is partially integrated, in which case, extrinsic evidence is admissible to prove whether the parties intended to contract for a specific period. *Id.*

{¶22} Inasmuch as the employment contract at issue did not contain a durational term, the contract was incomplete on its face and only partially integrated. *Id.* ¶ 43.

{¶23} In support of its motion, defendant submitted the affidavit of Tamara Jones, Director of IT Services in WSU's Human Resources Operations, which authenticates several of the records contained in plaintiff's personnel file that are titled "personnel action forms." (Defendant's Exhibit C.) The personnel action forms list information relative to plaintiff's employment including "employment type," "contract type," and "employment status." According to the plaintiff's personnel action form for 2009, her "job start date" and "job stop date" were January 1, 2009 and December 31, 2009, respectively. The "employment type" is listed as unclassified; the "contract type" is listed as "special contract"; "employment status" is listed as "new hire/re-hire" and the "funding source" is listed as "grant funds." The personnel action form from 2010 is identical with the exception of job start and stop dates of January 1, 2010 to December 31, 2010, and employment status as "renewal."

{¶24} The court notes that the personnel action forms supplement, but do not contradict, the terms of the employment contract that plaintiff signed. Based upon the evidence submitted, including the documents from plaintiff's personnel file, the court finds that plaintiff was employed under a special contract with a one-year term, that her position was contingent upon grant funding, and that she was paid an annual salary for a period that ended on December 31 for both calendar years she held the position at issue.

{¶25} Although plaintiff argues that Policy Number 4004 applies to her employment, the plain language of Wheatly's letter states that the position was funded by a grant. Furthermore, Meltem Kokaly, a WSU human resources employment manager, testified by way of deposition that the term "continuing employment" means that the position has neither a beginning nor an end date. (Kokaly deposition, page 15.) Kokaly explained that a special contract position has both a beginning and end date and that all grant-funded positions are under a special contract. According to Kokaly, every position at WSU is either a continuing or special contract job.

{¶26} Kokaly testified that Policy Number 4004 applies to any continuing employment position and that Policy Number 4101 applies to all grant-funded positions.

(Kokaly deposition, pages 28-29.) Although plaintiff argues that the reference to Policy Number 4004 in the subject line of the November 16, 2010 notice that her contract would not be renewed shows that the policy applied to her position, the court notes that the body of the notice clearly states that the notice was provided “pursuant to Wright Way Policy 4101 Employment Specifications for Grant/Contract Funded Positions.” Considering Kokaly’s testimony and the plain language of the policies, the subject line reference is inconsistent with the body of the notice and appears to be a clerical error which does not raise a genuine issue of material fact. Inasmuch as plaintiff’s position was a grant-funded position under a special contract, the court finds that Policy Number 4004 does not apply to her employment contract.

{¶27} Additionally, plaintiff argues that “the usual notice” as provided in Section 4101.4 refers to the notice provision in Policy Number 4004. Policy Number 4101, titled “Employment Specifications for Grant/Contract Funded Positions” states, in pertinent part:

{¶28} “4101.1 Required Information about Funding and Contracts

{¶29} “All personnel requests, position announcements, contracts, and salary notices for positions funded by grants or contracts for faculty and staff must specify that the position is dependent on funding from non-university sources and that continued employment is contingent on that grant or contract. All contract personnel will be employed on special contracts, and faculty on such contracts will not be eligible for tenure.

{¶30} “* * *

{¶31} “4101.4 Personnel Regulations

{¶32} “Even though a position may be funded by a grant, the employee will be subject to all Wright State University personnel regulations. Supervisors must give *the usual notice* before the employee is terminated, and vacation time is expected to be taken before the end of the contract period.” (Emphasis added.)

{¶33} To the extent that plaintiff argues that Policy Number 4101 requires timely notice of the non-renewal of her contract pursuant to Policy Number 4004.1(a) (Termination Notification), such argument is not persuasive because the policy states that notification applies only to employees “who have been hired on a Continuing Employment Agreement.”

{¶34} Upon review of the motion and the memoranda presented, and construing the evidence most strongly in favor of plaintiff, the court finds that there are no genuine issues

of material fact and that defendant is entitled to judgment as a matter of law. Accordingly, defendant's motion for summary judgment shall be granted.

PATRICK M. MCGRATH
Judge

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JUDGMENT ENTRY

{¶35} A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge

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Filed May 15, 2014
Sent To S.C. Reporter 10/23/15