STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH WALLACE,

Plaintiff-Appellant,

v

FARMERS INSURANCE EXCHANGE, TRUCK INSURANCE EXCHANGE, FIRE INSURANCE EXCHANGE, MID-CENTURY INSURANCE COMPANY, and FARMERS NEW WORLD LIFE INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
March 1, 2007

No. 271633
Genesee Circuit Court
LC No. 2005-082552-CK

Before: Hoekstra, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, an independent insurance agent, alleges that defendants terminated an agency agreement that the parties executed in 1984 without just cause. Defendants advised plaintiff in August 2005 that the agreement would be terminated, effective November 2005. The trial court agreed with defendants that the agreement was terminable at the will of either party upon three months' written notice and, accordingly, granted defendants' motion for summary disposition under MCR 2.116(C)(10).

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual support for a claim. Summary disposition should be granted if, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995).

In general, employment contracts are presumed to terminate at the will of either party for any reason or no reason at all. *Rood v Gen Dynamics Corp*, 444 Mich 107, 116; 507 NW2d 591 (1993); see also *Psaila v Shiloh Industries, Inc*, 258 Mich App 388, 391; 671 NW2d 563 (2003).

A plaintiff may overcome this presumption with sufficient proof that the contract allows for just-cause termination only. *Rood*, *supra* at 117.

> Courts have recognized the following three ways by which a plaintiff can prove such contractual terms: (1) proof of a "contractual provision for a definite term of employment or a provision forbidding discharge absent just cause;" (2) an express agreement, either written or oral, regarding job security that is clear and unequivocal; or (3) a contractual provision, implied at law, where an employer's policies and procedures instill a "legitimate expectation" of job security in the employee. [*Lytle v Malady (On Rehearing)*, 458 Mich 153, 164; 579 NW2d 906 (1998) (citations omitted).]

In this case, the parties' agreement expressly allows either party to terminate it with three months' written notice. The agreement provides:

> This Agreement terminates upon the death of the Agent and may be terminated by either the Agent or the Companies on three (3) months written notice.
>
> If the provisions of this Agreement are breached by either the Agent or the Companies, the Agreement may be terminated by the other party on thirty (30) days written notice. This Agreement may be terminated immediately by mutual consent or by the Companies for the following reasons:
>
> 1. Embezzlement of monies belonging to the Companies.
>
> 2. Switching insurance from the Companies to another carrier.
>
> 3. Abandonment of the Agency.
>
> 4. Conviction of a felony.
>
> 5. Willfull misrepresentation that is material to the operation of the Agency.

The parties' agreement also provides that an agent may request review of a decision to terminate an agreement:

> In the event this Agreement is terminated by the Companies, the Agent may within ten (10) days of receiving the notice of termination request a review of the termination by a termination review board.
>
> The termination review board will be composed of:
>
> 1. An Agent of the Companies selected by the terminated Agent, such Agent must be a member of the President's Council from the same Region as the terminated Agent;
>
> 2. The Regional Manager or a representative of said Regional Manager, and

3. A third party to be mutually selected by the other two members of the board.

> The Review Board will convene within twenty (20) days of the request by the Agent at the Regional Office or such other convenient place selected by the Regional Manager.
>
> The Board will submit a summary of the hearing and its recommendations to the Executive Home Office.
>
> The chief executive officer and staff will review the summary and recommendations, reach a decision and promptly advise the Agent of that decision.

It is apparent that the parties' agreement allows the parties to terminate it at will. The contract provides that it could be terminated by either the agent or the companies with three months' written notice. In *Kocenda v Archdiocese of Detroit*, 204 Mich App 659, 666; 516 NW2d 132 (1994), this Court held that "[t]he mutual right to terminate the employment following such notice [(30 days)] is incompatible with a 'just cause' employment relationship." See also *Patillo v Equitable Life Assurance Society of the United States*, 199 Mich App 450, 454; 502 NW2d 696 (1992).

We disagree with plaintiff's argument that the inclusion of a review procedure whereby plaintiff could request review of the termination decision by a review board is sufficient to overcome the presumption of an at-will relationship. An employer's adoption of disciplinary procedures does not alone establish that an employee will be subject only to just-cause termination. *Stopczynski v Ford Motor Co*, 200 Mich App 190, 193-195; 503 NW2d 912 (1993); *Biggs v Hilton Hotel Corp*, 194 Mich App 239, 241-242; 486 NW2d 61 (1992). See also *Dolan v Continental Airlines/Continental Express*, 454 Mich 373, 387-388; 563 NW2d 23 (1997). Here, the agreement provides that plaintiff may request review of a termination decision by a review board, but there is nothing in that review procedure that gives rise to a legitimate expectation that defendants intended to implement a policy of termination only for just cause.

Plaintiff also relies on a statement in an "Explainer," which plaintiff alleges is intended to clarify the provisions of the parties' agency agreement. The Explainer states:

> Any time two people disagree, there's a possibility of a misunderstanding. Although we hope it doesn't happen, it's possible an Agent may feel the termination of his Appointment Agreement was not justified. If this happens, the Termination Review Procedure gives the Agent an opportunity to ask for reconsideration.

Initially, it is not apparent that the Explainer applies to the parties' agency relationship. The parties' agency agreement was signed in 1984. Plaintiff received the Explainer in 1978, when he signed an earlier agreement with defendants. Plaintiff has not established that the 1978 Explainer applies to the 1984 agreement.

Furthermore, even if the Explainer applies to the 1984 agreement, it fails to establish a genuine issue of material fact regarding the existence of a legitimate expectation that the 1984 agency agreement could be terminated only for just cause. At most, the Explainer creates an expectation that the termination review procedure would allow plaintiff an opportunity to ask for reconsideration, to alleviate the possibility of a misunderstanding. The Explainer is not so clear and unequivocal to show that defendants intended to change the agency relationship from allowing at will termination to require just cause to terminate the agreement.

Accordingly, the trial court properly granted defendants' motion for summary disposition of plaintiff's breach of contract claim.

In a supplemental brief, plaintiff argues that his agreement could only be terminated for just cause based on MCL 500.1209, which provides, in relevant part, as follows:

> (2) As a condition of maintaining its authority to transact insurance in this state, an insurer transacting automobile insurance or home insurance in this state shall not cancel an insurance producer's contract or otherwise terminate an insurance producer's authority to represent the insurer with respect to automobile insurance or home insurance, except for 1 or more of the following reasons:
>
> (a) Malfeasance.
>
> (b) Breach of fiduciary duty or trust.
>
> (c) A violation of this act.
>
> (d) Failure to perform as provided by the contract between the parties.
>
> (e) Submission of less than 25 applications for home insurance and automobile insurance within the immediately preceding 12-month period.
>
> * * *
>
> (4) Subsection (2) and the written notice requirement under [MCL 500.1208b(4)] do not apply with respect to an insurance producer who is an employee of an insurer or to an insurance producer who by contractual agreement represents only 1 insurer or group of affiliated insurers, if the property rights in the renewal are owned by the insurer or group of affiliated insurers and the cancellation or termination of the insurance producer's contract does not result in the cancellation or nonrenewal of any home or automobile insurance policy.

Because plaintiff did not raise this issue in the trial court, appellate relief is precluded absent a plain error affecting his substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

Plaintiff has not established a plain error because he has not shown that MCL 500.1209(2) applies to him. MCL 500.1209(4) provides that certain agents are exempt from the requirements in MCL 500.1209(2). Specifically, MCL 500.1209(4) provides that MCL 500.1209(2) does not apply to an agent for a group of affiliated insurers if the property rights of

the polices are owned by the insurers and termination of the agent's contract does not result in any cancellations or nonrenewals of policies. Because plaintiff has not preliminarily established that he falls within the category of agents protected by MCL 500.1209(2), plaintiff has not shown a plain error. See *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 683-685; 599 NW2d 546 (1999).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jane E. Markey
/s/ Kurtis T. Wilder