STATE OF MICHIGAN

COURT OF APPEALS

THOMAS TROMPETER,

Plaintiff-Appellant/Cross-Appellee,

v

CATHOLIC FAMILY SERVICES,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED
September 25, 2001

No. 221658
Saginaw Circuit Court
LC No. 95-007773-NZ

Before: Neff, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

The trial court originally entered a judgment on the jury's verdict in favor of plaintiff on his wrongful termination claim in the amount of $648,317.92. Thereafter, the trial court granted defendant's motion for judgment notwithstanding the verdict, concluding that it should have granted defendant's earlier motion for summary disposition. Plaintiff appeals, and defendant cross appeals. We reverse and reinstate the original jury verdict.

Plaintiff was employed by defendant as the executive director for Catholic Family Services of the Diocese of Saginaw (CFS). His employment was terminated in 1992 and in 1995, he filed the instant action, alleging wrongful termination/breach of contract and age discrimination (plaintiff was sixty-one years old at the time of his termination). Defendant moved for summary disposition, arguing that the employment manual compelled arbitration. The trial court denied the motion, concluding that an arbitration provision is enforceable in an employment contract only if the contract is mutually binding, relying on *Heurtebise v Reliable Business Computers, Inc*, 452 Mich 405; 550 NW2d 241 (1996). The trial court concluded that, because the employment manual in the case at bar could be modified at any time by defendant, there was not a mutually binding contract and, therefore, the arbitration provision in the employment manual was not enforceable.

However, after the trial court's denial of summary disposition, this Court issued its opinion in *Rushton v Meijer, Inc (On Remand)*, 225 Mich App 156; 570 NW2d 271 (1997), overruled in part on other grounds *Rembert v Ryan's Family Steak Houses, Inc*, 235 Mich App 118; 576 NW2d 208 (1999). In *Rushton*, we held that parties may be contractually bound to an employment manual even where the employer reserves the right to unilaterally change the manual. *Id.* at 163-164. Thus, in light of *Rushton*, the trial court concluded that it had

previously erred in denying summary disposition and, therefore, granted defendant's motion for judgment NOV and concluded that the matter should have been submitted to binding arbitration.

On appeal, plaintiff raises a number of challenges to the arbitration issue, one of which we find persuasive. Plaintiff argues that because the arbitration agreement contains no provision for enforcement of the arbitration award in circuit court, it constituted common-law arbitration rather than statutory arbitration and, as such, was revocable by either party at any time before the announcement of an arbitration award. We agree.

This Court reviewed the differences between statutory and common-law arbitration in *Hetrick v David A Friedman, DPM, PC*, 237 Mich App 264, 268-269; 602 NW2d 603 (1999):

> According to this Court's interpretation of the Michigan arbitration act (MAA) [MCL 600.5001 *et seq.*], parties that want their arbitration agreement to be a statutory arbitration agreement must " 'clearly evidence that intent by a contract provision for entry of judgment upon the award by the circuit court.' " *Tellkamp* [*v Walverine Mut Ins Co*, 219 Mich App 231, 237; 556 NW2d 504 (1996)], quoting *EE Tripp Excavating Contractor, Inc v Jackson Co*, 60 Mich App 221, 237; 230 NW2d 556 (1975). Statutory arbitration agreements are irrevocable except by mutual consent. MCL 600.5011; MSA 27A.5011.
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> In contrast, if the arbitration agreement does not provide "that judgment shall be entered in accordance with the arbitrators' decision," the contract involves common-law arbitration rather than statutory arbitration. *Eattie v Autostyle Plastics, Inc*, 217 Mich App 572, 578 ; 552 NW2d 181 (1996) (citing MCL 600.5001 *et seq.*; MSA 27A.5001 *et seq.*). Under the "unilateral revocation rule," when the agreement is for common law arbitration, either party may unilaterally revoke the arbitration agreement at any time before the announcement of an award, regardless of which party initiated the arbitration. *Tony Andreski, Inc v Ski Brule, Inc*, 190 Mich App 343, 347-348; 475 NW2d 469 (1991).

The arbitration provisions in the employment manual in the case at bar do not provide for an entry of judgment upon the arbitration award in circuit court. Therefore, under *Hetrick*, this case involves a common-law arbitration agreement which plaintiff may revoke at any time before the announcement of an arbitration award. Because no such award has been announced, plaintiff has effectively revoked the arbitration agreement. Accordingly, the trial court should not have granted judgment NOV and ordered arbitration.

In light of our resolution of the above issue, we need not address the remaining issues raised by plaintiff. It is, however, necessary to address the issues raised by defendant on cross appeal.

First, defendant argues that the trial court erred in denying its motion for directed verdict on plaintiff's breach of contract claim. Defendant claims that, because plaintiff admitted during his testimony that there was no promise of guaranteed employment, plaintiff's claim must fail. We disagree.

Defendant points to testimony by plaintiff which admits that no one made any promise of a guaranteed job, that is, that plaintiff could never be separated or fired from his job as area director for the Saginaw area. Defendant's argument, however, is based on the assumption that the basis for plaintiff's breach of contract claim is that defendant agreed never to again combine the positions of executive director and area director and, as part of that agreement, to never fire plaintiff from the area director position. Plaintiff's claim, however, is broader than that. Plaintiff's complaint alleges that he was a just cause employee and that he was discharged without just cause. Indeed, defendant admitted that plaintiff was a just cause employee. Accordingly, resolution of the issue whether defendant had made a promise not to again combine the positions of executive director and area director, and whether plaintiff relied on such a promise in 1989 when deciding to step down as executive director and continue on as area director, is not dispositive of plaintiff's claim. That is, plaintiff's claim could be successful even without a promise of a guaranteed job by defendant. Therefore, the trial court did not err in denying defendant's motion for directed verdict on this issue. *Matras v Amoco Oil Co*, 424 Mich 675, 681-682; 385 NW2d 586 (1986).

Next, defendant argues that the trial court erred in denying its request to give the following supplemental instruction:

> You are instructed that an employer has good cause to lay off or terminate an employee where the employer lays off or terminates the employee because of legitimate economic reasons. Moreover, although the economic reasons must be legitimate to justify the layoff or termination, the economic reasons need not rise to the level of necessity to justify the layoff or termination.

The trial court denied the request, concluding the point was adequately covered by the general or standard instructions the court was going to give. In fact, the trial court gave the following instruction on this point:

> The defendant has the burden of proving that it had a good or just cause to cease employing the plaintiff. In order to decide whether there was good or just cause to cease employing the plaintiff, you must determine whether the defendant had legitimate economic reasons for ceasing to employ the plaintiff and whether those economic reasons where the actual reason for ceasing to employ the plaintiff. If the defendant did not have legitimate economic reasons or if those economic reasons were not the actual reason for ceasing to employ the plaintiff, then there was not good or just cause.

Defendant's requested instruction accurately stated the law, *McDonald v Stroh Brewery Co*, 191 Mich App 601, 608; 478 NW2d 669 (1991), and we are satisfied that the instruction given by the trial court adequately and fairly instructed the jury. *Id.*

Finally, defendant argues that the damage award should have been limited to six (6) months' wages as provided for in the personnel policy manual. We disagree. The damage limitation provision is part of the arbitration provisions of the manual. Therefore, revocation of the arbitration agreement necessarily includes revocation of the damage limitation provision.

Reversed and remanded to the trial court with instructions to enter judgment on the jury verdict as rendered. We do not retain jurisdiction. Plaintiff may tax costs.

/s/ Janet T. Neff
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald