STATE OF MICHIGAN

COURT OF APPEALS

DOUGLAS MULLEN and KALAMAZOO COUNTY EDUCATION ASSOCIATION MEA/NEA,

Plaintiffs-Appellants,

v

PARCHMENT SCHOOL DISTRICT BOARD OF EDUCATION and PARCHMENT SCHOOL DISTRICT,

Defendants-Appellees.

UNPUBLISHED
July 3, 2007

No. 275116
Kalamazoo Circuit Court
LC No. 05-000442-CL

Before: Kelly, P.J., and Markey and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal by right the trial court's order granting summary disposition to defendants on plaintiffs' complaint alleging that defendants breached the collective bargaining agreement (CBA) between the defendant Parchment School District (the district) and the Kalamazoo County Education Association (KCEA). We affirm but on grounds different from those on which the trial court based its decision.

I. Factual Background

Plaintiff Douglas Mullen (plaintiff) is a tenured elementary teacher the district employed for several years on a year-to-year basis under separate extra-duty agreements as the district's head cross country coach and head women's track coach. Plaintiffs assert that defendants breached the CBA by failing without just cause to renew plaintiff's coaching contracts after the end of the 2004-2005 school year. Plaintiffs allege the district's athletic director notified plaintiff by letter dated May 18, 2005 that his coaching contracts would not be renewed and that the district "will be posting the positions for 2005-06."

The CBA by its own terms was effective from July 1, 2002 through June 30, 2005. A "Schedule B – Extra Pay Schedule" is attached to the CBA; it sets forth the compensation for various extracurricular school activities, including coaching sports, drama, music, band, newspaper, cheerleading, student council, yearbook, and other activities. Regarding "extra-duty assignments," the CBA provides that "if two or more candidates possess equal qualifications for [a] position[], preference shall be given the bargaining unit member." (Art. 9, § F). But

bargaining unit members possessed no right to replace non-member incumbents holding extra-duty positions unless the incumbents resigned or were removed from their positions. Plaintiffs contend defendants breached Article 18, § F of the CBA by failing without just cause to renew his coaching contracts for the 2005-2006 school year. The CBA provides:

> A teacher who is dismissed or transferred from an extra-pay position may file a grievance; however, the grievance may not proceed past Step 2 of the grievance procedure. No such dismissal or transfer shall be made without just cause. Should a teacher be unable to fulfill a Schedule B position for whatever reason, including termination, said teacher shall be compensated proportionately to the contracted amount. [Art. 18, § F.]

Plaintiff contends that by not offering him the coaching positions he had held in prior years, the district "dismissed" him from those positions without just cause. Defendants counter that Art. 18, § F applies only to the termination or transfer of a coach during an athletic season.

On a yearly basis, the district enters into agreements with teachers to perform various extra-duty activities and compensates them according to "Schedule B". The extra-duty agreements are one-page documents that state the extra-pay activity, the approximate dates between which the activity will occur, the amount and method of paying compensation, and provides for the signatures of the employee, the principal or supervisor, and the district's superintendent or designee. Each agreement states that it is a "contract for compensation for performing extra duties on a non-tenure basis." The extra-duty agreements also specifically provide "[f]or a teacher who has attained continuous tenure, failure of the Board to re-employ such teachers in a capacity other than as a classroom teacher shall not be deemed a demotion within the provisions of Act 4 Michigan Public Acts of 1937 extra session as amended."

Plaintiff's last extra-duty contract as head cross country coach stated the approximate activity dates of August 9, 2004 to November 9, 2004, and set compensation at $3,159. Plaintiff's last extra-duty contract as head women's track & field coach stated the approximate activity dates of March 13, 2005 to June 6, 2005, and set compensation at $3,760. Plaintiff admits that he was permitted to complete each contract and that he was fully compensated as agreed.

Article 15 of the CBA provides for a four-step grievance process: (1) the filing of a written grievance and the employee's supervisor responding in writing; (2) a formal conference between the grievant, with union representation if desired, and the district's superintendent; (3) the grievant's either appearing before the grievance committee of the board of education and the board rendering a written decision, or the parties' submitting to mediation through the state mediation service; and (4) binding arbitration, provided neither party appeals to a court of competent jurisdiction within 10 days following receipt of the arbitrator's decision. An alleged dismissal or transfer from an extra-pay position without just cause may only be grieved through step two of this procedure.

Plaintiff filed a written grievance on June 3, 2005, which the district by its athletic director and high school principal denied. Plaintiff took his grievance to step two. The district's superintendent denied the grievance because plaintiff was compensated the full amount required by the extra-duty agreement and because the decision to notify plaintiff the district would not

hire him as a coach for the 2005-2006 school year did not violate the CBA. Subsequently, plaintiffs filed the instant breach of contract lawsuit.

After discovery, defendants moved for summary disposition under MCR 2.116(C)(7) and (10). In its written motion, defendants asserted plaintiffs' claim was within the exclusive jurisdiction of the Michigan Employment Relations Commission (MERC) because it alleged a violation of a collective bargaining agreement. Further, defendants asserted plaintiffs' sole and exclusive remedy for the alleged breach of the CBA was its grievance procedure. Finally, defendants asserted that plaintiffs' complaint must be dismissed because the district's failure to renew plaintiff's coaching contracts could not constitute a breach of contract as a matter of law.[1]

In an opinion and order filed December 1, 2006, the trial court agreed with defendants' first two arguments and granted their motion for summary disposition. The trial court, citing *Detroit Bd of Ed v Parks*, 417 Mich 268, 283; 335 NW2d 641 (1983), and *St Clair Intermediate School Dist v Intermediate Ed Ass'n/Michgan Ed Ass'n*, 458 Mich 540, 549; 581 NW2d 707 (1998), determined that the MERC has exclusive jurisdiction over charges of unfair labor practices. The court then reasoned that because plaintiff's "claim for unlawful discharge under the terms of a collective bargaining agreement amounts to an unfair labor practice, MERC is the appropriate authority to which [plaintiffs'] complaint should be made."

Next, citing *Breish v Ring Screw Works*, 397 Mich 586; 248 NW2d 526 (1976), the trial court ruled that plaintiffs could not seek judicial review of the adverse grievance decision. The trial court wrote that plaintiff and the KCEA "freely accepted the grievance procedure outlined in the CBA. They are bound by its terms and the resulting decisions." The trial court concluded there was no material issue of disputed fact regarding the adequacy of the CBA grievance procedure, and therefore, defendants were entitled to judgment as a matter of law.

Plaintiffs appeal by right.

II. Analysis

Plaintiffs first argue that because their claim is solely one for breach of contract that does not allege an unfair labor practice in violation of the Public Employment Relations Act (PERA), MCL 423.201, *et seq*., the trial court erred as matter of law by ruling the MERC has exclusive jurisdiction over it. Plaintiffs also argue that the trial court erred by ruling that the CBA grievance procedure was adequate, and in essence, plaintiffs' exclusive remedy. Finally, plaintiffs argue that their contract claim that defendants lacked "just cause" to dismiss plaintiff

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[1] In addition, defendants argued that the KCEA was not a proper party to this action because it had suffered no damages from the alleged breach of contract. Further, defendants argued that plaintiff was neither "dismissed" nor "transferred" by the districts decision not to reemploy him as a coach. And, although asserting it was not necessary for the district to have "just cause" for its decision, defendants claimed its athletic director had valid reasons for his decision not to continue employing plaintiff as a coach. These asserted reasons included failing to attend practices and failing to timely submit entries to qualify the team to participate in events.

from his coaching positions presents a question of material fact precluding granting summary disposition to defendants. Defendants, of course, contend the trial court ruled correctly. Further, defendants argue that even if the trial court erred, this Court should nevertheless affirm because defendants' failure to renew plaintiff's coaching contracts cannot constitute a breach of contract as a matter of law. We address the last issue first because even if we were to conclude plaintiffs' first two arguments have merit, we would still affirm if defendants are correct that plaintiffs' contract claim fails as a matter of law.

A. Standard of Review

The last issue the parties raise is whether plaintiffs' contract claim would survive a motion for summary disposition under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). The moving party must specifically identify the matters that are undisputed and has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3)(b). The party opposing the motion then has the burden of showing with admissible evidence that a genuine issue of disputed material fact exists. MCR 2.116(G)(4); *Maiden v Rozwood*, 461 Mich 109, 119-121; 597 NW2d 817 (1999). "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Id*. at 120.

This issue presents a question of contract interpretation. This Court reviews de novo as questions of law both whether contract language is ambiguous and its proper interpretation. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). The Court's main goal when interpreting a contract is to ascertain and enforce the parties' intent. *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003); *Burkhardt v Bailey*, 260 Mich App 636, 656; 680 NW2d 453 (2004). In doing so, the Court must first review the contract's language according to its plain meaning. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 61; 664 NW2d 776 (2003); *Schroeder v Terra Energy, Ltd*, 223 Mich App 176, 182; 565 NW2d 887 (1997). Also, courts "read contracts as a whole, giving harmonious effect, if possible, to each word and phrase." *Wilkie, supra* at 50 n 11. When the words of a contract are clear, they must be enforced as written unless a term is unlawful or violates public policy. *Id.* at 51; *Burkhardt, supra* at 656-657. The pertinent applicable public policy in this case is found in the PERA, "the dominant law regulating public employee labor relations." *Rockwell v Crestwood School Dist Bd of Ed*, 393 Mich 616, 629; 227 NW2d 736 (1975). A contract that violates a Michigan statute also violates Michigan public policy. See *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 239; 615 NW2d 241 (2000).

B. Discussion

We conclude that plaintiff's coaching contracts were for a definite term during which the CBA provided plaintiff "just cause" protection because he was also a teacher. On the undisputed facts of this case, defendants' failure to renew plaintiff's coaching contracts after they had expired by their own terms cannot be a breach of contract as matter of law. Therefore, the trial court properly granted defendants summary disposition even if for the wrong reason.

The essence of plaintiff's claim is that he held his coaching positions for an indefinite term, subject only to termination for just cause. In general, a contract of employment for an

indefinite term is terminable at will by either party. *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 621; 292 NW2d 880 (1980); *Bracco v Michigan Technological University*, 231 Mich App 578, 598; 588 NW2d 467 (1998). But "the presumption of at will employment may be overcome by proof of an express contract for a definite term or by a provision forbidding discharge without just cause." *Id*., citing *Rood v General Dynamics Corp*, 444 Mich 107, 117; 507 NW2d 591 (1993), and *Rowe v Montgomery Ward & Co*, 437 Mich 627, 636; 473 NW2d 268 (1991). Here, the parties entered into two coaching contracts for a definite term covering the sports season of a particular school year, and a collective bargaining agreement providing just cause protection to teachers who were also hired for "extra-pay" positions, such as the coaching positions at issue. As our Supreme Court has noted, "[w]here the employment is for a definite term--a year, five years, ten years--it is implied, if not expressed, that the employee can be discharged only for good cause and collective bargaining agreements often provide that discharge shall only be for good or just cause." *Toussaint*, *supra* at 611 (citation omitted).

Plaintiffs' effort to focus on the "just cause" provision in the CBA to the exclusion of the definite term provided for in the coaching contracts is unavailing. Plaintiffs' reading of the CBA and the coaching contracts would essentially create lifetime coaching positions. Lifetime employment contracts are extraordinary. Before a court will find that an employer intended to enter into such a weighty obligation the intent to do so must be expressed in clear and unequivocal terms. *Bracco, supra* at 595 n 11 (citations omitted). While the CBA provided plaintiff, as a teacher holding an extra-pay position, with just-cause protection, the CBA is not the contract by which defendants retained plaintiff as a coach. Rather, plaintiff was hired on an annual basis to serve as a coach for a definite term through a separate contract titled "Employment Agreement Extra Duty." Each coaching contract provided a specified definite period of time, duties to be performed, and compensation to be paid. Moreover, each of the annual contracts provided that teachers hired for extra-duty coaching enjoyed no vested right under the teacher tenure act to be re-employed in the extra-duty position after it expired by its own terms. Nothing in the CBA overcomes the clear and unambiguous language of the extra-duty contracts that the latter were for a definite term and contained no rights of renewal.

Moreover, even when the CBA "just cause" term is read as being part of the plaintiff's coaching contracts, as opposed to his contract with defendants as a teacher, plaintiffs' argument is still without merit. Courts must "read contracts as a whole, giving harmonious effect, if possible, to each word and phrase." *Wilkie, supra* at 50 n 11. When the CBA and extra-duty contracts are read together as a whole, effect is given to all parts of both contracts only when the "just cause" provision of the CBA applies only during the life of the extra-duty contract, i.e., during its unexpired term. This is consistent with the general rule that a contract of employment for a definite term implies that a discharge during the term of the contract will only be for just cause. It is also consistent with the teacher tenure act, which provides: "Continuing tenure does not apply to an annual assignment of extra duty for extra pay." MCL 38.91(8).

In sum, the undisputed facts of this case disclose that plaintiff completed and was fully compensated for the two extra-duty contracts he had with defendants during the 2004-2005 school year. There is no specific provision in the CBA that creates a lifetime right to employment in an extra-duty position. Rather, to the contrary, the extra-duty contracts specifically provide that the extra-duty positions are for a specified period of time without rights

to renewal. This is consistent with state law. MCL 38.91(8). Thus, plaintiff possessed no contract right to the renewal of his coaching contracts. Consequently, after the coaching contracts expired by their own terms, defendants cannot be in breach of contract by failing to re-hire plaintiff as a coach. See *Reisman v Regents of Wayne State Univ*, 188 Mich App 526, 531; 470 NW2d 678 (1991) (holding the non-renewal of a contract of employment for a definite term is not a breach of contract). Because the trial court reached the correct result albeit for the wrong reason, this Court will affirm the trial court's order granting summary disposition to defendants. See *Ellsworth v Hotel Corp*, 236 Mich App 185, 190; 600 NW2d 129 (1999).

We affirm.

/s/ Kirsten Frank Kelly
/s/ Jane E. Markey
/s/ Michael R. Smolenski