[Cite as *Johansen v. Ohio Dept. of Mental Health*, 2012-Ohio-4834.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Dr. Leland Johansen,	:	
Plaintiff-Appellant,	:	
v.	:	No. 12AP-39 (C.C. No. 2010-10785)
Ohio Department of Mental Health,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on October 18, 2012

Jacobs, Kleinman, Seibel & McNally, and *Mark J. Byrne*, for appellant.

Michael DeWine, Attorney General, and *Eric A. Walker*, for appellee.

APPEAL from the Court of Claims of Ohio

CONNOR, J.

{¶ 1} Plaintiff-appellant, Dr. Leland Johansen, appeals from a judgment of the Court of Claims of Ohio granting summary judgment in favor of defendant-appellee, the Ohio Department of Mental Health ("ODMH") in this case arising from Dr. Johansen's termination from his position with ODMH.

{¶ 2} Dr. Johansen worked from March 2000 to January 2006 as a staff psychiatrist at Summit Behavioral Healthcare ("Summit"), which is owned and operated by ODMH. On January 18, 2006, the chief executive officer of Summit, Liz Banks, reassigned Dr. Johansen to another unit because the institution had commenced an investigation of an incident involving Dr. Johansen and a patient the previous day. On

January 23, 2006, Dr. Johansen attended a pre-disciplinary conference with Summit. On January 27, 2006, Summit terminated Dr. Johansen's employment.

{¶ 3} Dr. Johansen filed a union grievance pursuant to the applicable collective bargaining agreement. On February 21, 2006, Dr. Johansen, his bargaining unit, and Summit, executed a written settlement agreement resolving the grievance and providing that the termination would be changed to a resignation effective January 27, 2006. Underlying the present case is Dr. Johansen's belief that execution of the February 21, 2006 settlement was predicated on a verbal agreement that no action would be taken against Dr. Johansen with respect to his medical privileges.

{¶ 4} In contravention of Dr. Johansen's expectations, by letter dated April 13, 2006, he learned that Summit's credentialing and privileging committee had voted to abridge his professional privileges effective February 20, 2006. This was followed by a second letter informing Dr. Johansen that his privileges were deemed abridged as of January 20, 2006 rather than February 20, 2006. On or about May 4, 2006, Summit filed an adverse report with the National Practitioner Data Bank ("NPDB"), stating that it had abridged Dr. Johansen's privileges on January 20, 2006 for unprofessional conduct. The NPDB is a federally-established board that collects and disseminates information concerning sanctions imposed by state licensing authorities against health care providers. Summit filed a similar report with the Ohio State Medical Board ("OSMB") on May 9, 2006.

{¶ 5} As a result, Dr. Johansen pursued an appeal to an ad hoc hospital committee appointed pursuant to the Summit's Medical Staff Bylaws. This committee then rendered a report on June 8, 2006 concluding that Summit and ODMH representatives had verbally promised Dr. Johansen that if he voluntarily resigned there would be no further actions reported that would affect his credentials. Based on the ad hoc panel's conclusions, Sidney F. Herndon, the Deputy Director of ODMH, sent a letter on July 30, 2006 to Dr. Johansen stating that Summit had considered his appeal and rescinded the notification sent to the NPDB and the OSMB. This rescission was confirmed by notices from the NPDB.

{¶ 6} In the interim, Dr. Johansen sought employment with a hospital in North Carolina, which declined to hire him when it learned of the adverse report on file with the NPDB.

{¶ 7} Dr. Johansen then filed the present action in the Court of Claims of Ohio asserting a single claim for promissory estoppel based upon representations by Summit staff and alleging damages based upon his loss of potential employment with the institution in North Carolina pursuant to the NPDB report. The Court of Claims eventually granted summary judgment for ODMH, finding that the terms of the settlement agreement resulting from Dr. Johansen's union grievance were unambiguous and comprehensive, and that parole evidence could not be used to invoke promissory estoppel and alter the unambiguous terms of that agreement.

{¶ 8} Dr. Johansen has timely appealed and brings the following assignment of error:

> THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF ODMH AS ISSUES OF MATERIAL FACT EXIST RELATING TO WHETHER JOHANSEN STATED A VALID CLAIM FOR PROMISSORY ESTOPPEL.

{¶ 9} We initially note that this matter was decided in the trial court by summary judgment which, under Civ.R. 56(C), may be granted only when there remains no genuine issue of material fact, the moving party is entitled to judgment as a matter of law, and reasonable minds can come to but one conclusion, that conclusion being adverse to the party opposing the motion. *Tokles & Son, Inc. v. Midwestern Indemn. Co.*, 65 Ohio St.3d 621, 629 (1992), citing *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64 (1978). Additionally, a moving party cannot discharge its burden under Civ.R. 56 simply by making conclusory assertions that the nonmoving party has no evidence to prove its case. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). Rather, the moving party must point to some evidence that affirmatively demonstrates that the nonmoving party has no evidence to support each element of the stated claims. *Id*.

{¶ 10} An appellate court's review of summary judgment is de novo. *Koos v. Cent. Ohio Cellular, Inc.*, 94 Ohio App.3d 579, 588 (8th Dist.1994); *Bard v. Soc. Natl. Bank, nka KeyBank*, Tenth Dist. No. 97APE11-1497 (Sept. 10, 1998). Thus, we conduct an

independent review of the record and stand in the shoes of the trial court. *Jones v. Shelly Co.*, 106 Ohio App.3d 440, 445 (5th Dist.1995). As such, we have the authority to overrule a trial court's judgment if the record does not support any of the grounds raised by the movant, even if the trial court failed to consider those grounds. *Bard*.

{¶ 11} Dr. Johansen raises two distinct legal issues under his assignment of error. The first is whether the settlement agreement that terminated his union grievance represented a comprehensive agreement between the parties that governed all aspects of his separation from employment with Summit. The second is whether there remains a genuine issue of material fact regarding his reliance on representations allegedly made by Summit representatives that no further adverse action would be taken against Dr. Johansen's clinical privileges or a negative report made to the NPDB in exchange for withdrawal of the grievance. Because we find that the trial court correctly decided the first issue, we do not go further and examine the aspects of the case related to reliance and damages resulting from the alleged representations by Summit's representatives.

{¶ 12} A plaintiff bringing a promissory estoppel claim must show: (1) a clear and unambiguous promise; (2) reasonable and foreseeable reliance by the plaintiff on that promise; and (3) injury proximately resulting from that reliance. *Mers v. Dispatch Printing Co.*, 19 Ohio St.3d 100 (1985). Where the parties enter into a written contract after the alleged promise is made, such oral statements will not give rise to a promissory estoppel claim if the written contract covers the same subject matter. *Woods v. Capital Univ.*, 10th Dist. No. 09AP-166, 2009-Ohio-5672, ¶ 67, citing *Borowski v. State Chem. Mfg. Co.*, 97 Ohio App.3d 635, 643 (8th Dist.1994).

{¶ 13} Dr. Johansen asserts that prior to agreeing to settle his grievance on February 21, 2006, he received verbal assurance that no negative action would be taken against his credentials. This was despite the fact that prior to receiving such assurances, on January 20, 2006, the credentials and privileges committee had already suspended or abridged his privileges with Summit, and that subsequently Summit filed in May 2006 its adverse reports with the NPDB and the OSMB. Dr. Johansen further points out that in the subsequent proceedings before the ad hoc committee, appointed pursuant to the Summit Medical Staff Bylaws, his assertions in this respect were found credible by that

committee and corroborated by testimony of other persons, causing Summit to rescind the notifications to the NPDB and OSMB.

{¶ 14} In response, Summit points out that the written agreement that led to withdrawal of the grievance contains no reference to any prohibition against Summit pursuing further credentialing measures, and that Dr. Johansen's own testimony establishes that he had attempted to seek such written assurances and been told by Summit that they would not be forthcoming.

{¶ 15} The written settlement agreement governing the withdrawal of the union grievance is extremely concise. It contains a handwritten notation that "[t]he removal will be changed to a resignation * * * effective January 27, 2006." Below this, the settlement agreement contains the following form language:

> 2. The Union and the Grievant agree that this is a full and final settlement of the above-referenced grievance, and that it shall not be pursued to arbitration; and that there shall be no further claim arising from this grievance under the collective bargaining agreement.
>
> 3. The parties to this agreement agree that it shall not be precedent setting and that it shall not be used in any future arbitration, except to enforce the terms of this agreement.

{¶ 16} Dr. Johansen now argues that the settlement agreement governs only the resolution of his union grievance and not other aspects of his departure from Summit.

{¶ 17} Dr. Johansen further argues that, despite the existence of a collective bargaining agreement covering his position, he was an at-will employee and questions relating to his privileges and medical status are governed by the Summit Medical Staff Bylaws and outside the scope of the settlement of his union grievance. Dr. Johansen points to the fact that the ad hoc committee in fact undertook an inquiry into the circumstances of his termination, which would have been duplicative and unnecessary had all circumstances of his termination been governed by the resolution of his union grievance.

{¶ 18} Dr. Johansen's testimony at his deposition, however, undermined this position. Dr. Johansen testified that he signed the settlement agreement "with the understanding that no - - nothing derogatory was going to be made. I couldn't get it in

writing but, I had the statement where he had marked down the thing there. And I figured, well, that's better than nothing. * * * I don't have to mark down some place that I was fired." Dr. Johansen's deposition, at 142-43.

{¶ 19} We find that the execution of the settlement agreement that terminated the union grievance effectively covers the subject matter of the present lawsuit and the terms of that agreement cannot be contravened by introduction of parole evidence concerning oral promises that may or may not have been made to Dr. Johansen. True, the starting point of the grievance may be defined by the scope of the collective bargaining agreement, but it is evident that for both sides the agreement encompassed the terms of Dr. Johansen's *resignation*, and the consideration for that agreement on one side was that Dr. Johansen would be allowed to resign, rather than be fired, and on the other side for Summit, the consideration was that the grievance would be dropped. The settlement agreement therefore is broad enough in scope to cover all aspects of Dr. Johansen's resignation, and the introduction of additional factors that may have motivated his decision to accept that settlement agreement represents an effort to alter or introduce terms on matters within the scope of that agreement.

{¶ 20} Because the terms of the settlement agreement are unambiguous in their omission of any representation regarding further action against Dr. Johansen's professional license and credentials, he cannot introduce parole evidence to invoke the doctrine of promissory estoppel to alter the unambiguous terms of that settlement agreement, which make no such representation. *Woods* at ¶ 6.

{¶ 21} As a collective bargaining employee, Dr. Johansen had the right to negotiate with Summit through a union grievance all concerns he had about his separation from employment. Dr. Johansen in fact had concerns regarding whether Summit would make an adverse report to the NPDB and OSMB, and by his own testimony attempted to negotiate that as a written term in the agreement. Summit declined to do so. Because the settlement agreement represents the comprehensive written expression of the parties' agreement, makes no reference to any restriction upon Summit in this respect, and grants to Summit and Dr. Johansen only the rights and obligations expressed therein, we find that an action for promissory estoppel will not lie and the Court of Claims did not err in granting summary judgment to Summit.

{¶ 22} In accordance with the foregoing, Dr. Johansen's assignment of error is overruled and the judgment of the Court of Claims of Ohio is affirmed.

Judgment affirmed.

KLATT and SADLER, JJ., concur.
