

NOTICE  
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2016 IL App (5th) 150259-U

NO. 5-15-0259

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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CHRISTINA WESSEL,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Clinton County.
	)	
v.	)	No. 14-L-7
	)	
GREER MANAGEMENT SERVICES, INC.,	)	Honorable
	)	Martin W. Siemer,
Defendant-Appellee.	)	Judge, presiding.

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JUSTICE STEWART delivered the judgment of the court.  
Justices Chapman and Moore concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court properly dismissed the plaintiff's complaint alleging breach of an employment contract and breach of the implied covenant of good faith and fair dealing pursuant to section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)) because the plaintiff could not prove a set of facts in which she would be entitled to recover because the contract, when read as a whole, provided for at-will employment.

¶ 2 The plaintiff, Christina Wessel, filed a complaint against the defendant, Greer Management Services, Inc. (Greer Management), for breach of an employment contract and for breach of the implied covenant of good faith and fair dealing. Greer Management filed a motion to dismiss pursuant to section 2-615 of the Illinois Code of Civil Procedure

(735 ILCS 5/2-615 (West 2014)). The trial court dismissed Wessel's petition with prejudice. She filed a timely notice of appeal. We affirm.

¶ 3

### BACKGROUND

¶ 4 On October 17, 2011, Wessel and a representative of Greer Management signed an untitled document, which listed as its subject "Employment Summary." The document consists of nine paragraphs. The first paragraph states that Wessel will be the regional operations and compliance manager for Greer Management "and will perform the duties related to the position for the period of January 1, 2012 to December 31, 2014." Paragraphs 2 through 8 set out Wessel's pay structure, benefits, and bonus structure. Paragraph 9 reads: "Greer Management Services, Inc. reserves the right to change the above provisions at any time. The provisions of the policy manual govern the rights and obligations of the employee. The employee acknowledges that she is an employee at will." On September 29, 2013, Greer Management terminated Wessel's employment. On April 14, 2014, Wessel filed a complaint against Greer Management and Michael Greer, individually. She alleged that the employment summary was an employment contract, that Greer breached the contract, and that she suffered damages as a result of the breach.

¶ 5 On September 22, 2014, Greer Management filed a section 2-615 motion to dismiss. It argued that Wessel's allegations were insufficient to state a cause of action for breach of an alleged employment contract and no set of facts could be proven that would entitle her to recovery. Wessel filed a response.

¶ 6 On March 5, 2015, the trial court heard arguments on Greer Management's motion to dismiss. The court found that based on the record before it, Greer Management

"reserved the right to change provisions, any provisions at any time[,] and they did so in the extreme; termination being a change of the provisions of Paragraph 1 that the employment would be for the period from January 1, 2012, to December 31, 2014." It found that the employment summary was not sufficient to overcome the presumption of an employment at will. The court dismissed the complaint without prejudice with leave to amend.

¶ 7 On April 16, 2015, Wessel filed an amended complaint. In count I, Wessel contended that she entered into a valid and enforceable employment contract with Greer Management and that, pursuant to the contract, she was to be the regional operations and compliance officer from January 1, 2012, to December 31, 2014. Wessel alleged that she properly performed and abided by the contract and that Greer Management breached the contract by terminating her employment on September 29, 2013. She asserted that at no time, up to and including the time of her termination, did Greer Management change any provision of the contract. She did not reassert her claim against Michael Greer personally. In count II, she alleged that Greer Management breached the implied covenant of good faith and fair dealing by terminating her employment without notice, warning, or explanation, contrary to her expectations.

¶ 8 Greer Management again filed a section 2-615 motion to dismiss. Wessel filed a response to the motion to dismiss, and Greer Management filed a reply to her response.

¶ 9 On June 15, 2015, the trial court heard argument on the section 2-615 motion to dismiss. The trial court found that there was no ambiguity in the employment summary. The court found that the first sentence of paragraph 9 clearly and unambiguously stated

that Greer Management had the right to change the duration of employment. Thus, the employment summary was not sufficient to overcome the presumption of an employment at will. Additionally, the court found that, in the last sentence of paragraph 9, Wessel specifically acknowledged that she was an at-will employee. The court held that the employment summary did not rise to the level of a valid and enforceable contract of employment. The court dismissed count I with prejudice for failure to state a cause of action for breach of an employment contract. The court dismissed count II with prejudice because breach of an implied covenant of good faith and fair dealing relied on the existence of a valid and enforceable contract of employment.

¶ 10 Wessel filed a timely notice of appeal.

¶ 11 ANALYSIS

¶ 12 Wessel argues that the trial court erred in finding that there was no set of facts she could prove that would entitle her to recover.

¶ 13 A section 2-615 motion to dismiss attacks the legal sufficiency of a complaint based on defects appearing on its face. *Horwitz v. Sonnenschein Nath & Rosenthal, LLP*, 399 Ill. App. 3d 965, 973 (2010). "Thus, the question presented by a section 2-615 motion is whether the allegations of the complaint, when viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted." *Borowiec v. Gateway 2000, Inc.*, 209 Ill. 2d 376, 382 (2004). A cause of action should not be dismissed, pursuant to a section 2-615 motion, unless it is clearly apparent that no set of facts can be proven that will entitle the plaintiff to recovery. *Id.* at 382-83. A reviewing court applies a *de novo* standard of review. *Id.* at 383.

¶ 14 Wessel argues that the trial court erred in finding that the employment summary was not a valid and enforceable contract. This court reviews the trial court's judgment, not its reasoning, and we may affirm on any grounds in the record, regardless of whether the trial court relied on those grounds or whether the trial court's reasoning was correct. *Suchy v. City of Geneva*, 2014 IL App (2d) 130367, ¶ 19. The trial court found that "[v]iewing the Amended Complaint in a light most favorable to [Wessel], the allegations of the Amended Complaint are insufficient to state a cause of action upon which relief can be granted."

¶ 15 To establish a breach of contract, the plaintiff must show the existence of a valid and enforceable contract, the plaintiff's performance of all contractual conditions required of her, the defendant's breach of the contract, and resulting injury to the plaintiff. *Finch v. Illinois Community College Board*, 315 Ill. App. 3d 831, 836 (2000). Traditional contract interpretation principles, also known as the four corners rule, require that a written agreement must be presumed to speak the intention of the parties as evidenced by the language used, without consideration of extrinsic evidence. *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 462 (1999). The court first looks at the language of the contract alone to see if it is facially unambiguous. *Id.* "A contract is ambiguous if, and only if, it is reasonably or fairly susceptible of different constructions, and it is not ambiguous if a court can determine its meaning without any guide other than a knowledge of the simple facts on which, from the nature of the language in general, its meaning depends." *Berutti v. Dierks Foods, Inc.*, 145 Ill. App. 3d 931, 934 (1986). Clear and unambiguous contract terms will be given their natural and ordinary meaning. *Id.*

Contract language is not ambiguous simply because the parties do not agree upon its meaning. *Id.* If no ambiguity exists, the contract is interpreted by the trial court as a matter of law without the use of parol evidence. *Air Safety, Inc.*, 185 Ill. 2d at 462. "A court may not add provisions to an unambiguous contract even if they make the contract more equitable." *Suburban Insurance Services, Inc. v. Virginia Surety Co.*, 322 Ill. App. 3d 688, 691 (2001).

¶ 16 Employment contracts are presumed to be at-will and are terminable by either party. *McInerney v. Charter Golf, Inc.*, 176 Ill. 2d 482, 485 (1997). This rule is one of construction, which may be overcome by showing that the parties agreed otherwise. *Id.* At-will employment may be terminated for a good cause, a bad reason, or no reason at all. *Daymon v. Hardin County General Hospital*, 210 Ill. App. 3d 927, 930 (1991). A contract is to be construed as a whole, giving meaning and effect to every provision because it is presumed that every clause in the contract was inserted deliberately and for a purpose. *Platt v. Gateway International Motorsports Corp.*, 351 Ill. App. 3d 326, 329 (2004).

¶ 17 Wessel argues that the trial court erred in finding that there was no ambiguity in the contract. Paragraph 1 of the employment summary provides:

"It is understood that Ms. Tina Wessel will [be] the Regional Operations & Compliance Manager of Greer Management Services, Inc. and will perform the duties related to the position for the period of January 1, 2012 to December 31, 2014."

Wessel asserts that, by specifying a definite term of duration for the contract, she and Greer Management agreed that she was not an at-will employee, but was employed for a fixed term. Paragraph 9 of the employment summary provides:

"Greer Management Services, Inc. reserves the right to change the above provisions at any time. The provisions of the policy manual govern the rights and obligations of the employee. The employee acknowledges that she is an employee at will."

Wessel asserts that paragraph 9 contradicts paragraph 1, is contradictory, and creates ambiguity in the contract. She argues that the interpretation of these contradictory and ambiguous paragraphs is a question of fact, which cannot be properly determined under a section 2-615 motion to dismiss.

¶ 18 A contract that specifies a term of employment can be a contract for at-will employment. In *Ohlemeier v. Community Consolidated School District No. 90*, 151 Ill. App. 3d 710, 711 (1987), the plaintiff had been employed by the school district for a number of years. In May 1984, she received a letter from the school board informing her that it had voted to employ her for the 1984-85 school year. *Id.* In the letter, the board indicated that her job duties were set out in the job description made part of the school district's manual of policies and procedures; that the term of her employment was for nine months from August 27, 1984, until the last full day of pupil attendance; and that paid holidays would be granted in accordance with the school district's policies. *Id.* at 711-12. The board's policy manual provided that letters of employment shall be written for the period decided by the board but may be terminated by either party upon two weeks'

notice. *Id.* at 712. The board sent the plaintiff a letter dated August 23, 1984, stating that, due to budgetary restrictions, the plaintiff's normal work day would be reduced from six hours per day to five hours per day. *Id.* She started work in August 1984 and began working a five-hour day. *Id.* In October, the board changed its policies regarding holidays. *Id.* The plaintiff filed suit for breach of contract, seeking damages for the number of hours lost because of the board's reduction in her work hours and because of its change in policy regarding holidays. *Id.* The trial court ruled in favor of the school district, finding that the letter of employment was subject to the terms and provisions of the district's policies and procedures manual, the contract was subject to termination by either party upon giving two weeks' notice, and the ability to terminate the contract included the ability to modify it by giving the required notice. *Id.* at 714.

¶ 19 On appeal, the plaintiff argued that the trial court erred in considering the May 1984 letter an at-will contract because it specified a duration with a beginning and ending date. *Id.* The appellate court found that although the policy manual was never discussed or bargained for with the plaintiff or other school employees, it was still a part of the contract because it contained obligations binding both the employer and the employee. *Id.* at 716. The appellate court held that because the plaintiff's employment contract was subject to the two-week termination provision of the school district's policy manual, it constituted an at-will contract that could be modified at will despite the specific term stated in the plaintiff's May 1984 letter. *Id.*

¶ 20 In *Ohlemeier*, even though part of the contract stated a specific term, the court looked to the entire contract to determine whether the employment was intended to be at

will. "A contract should be given a fair and reasonable construction based upon all of its provisions, read as a whole." *Dowling v. Chicago Options Associates, Inc.*, 226 Ill. 2d 277, 296 (2007). "[W]hen parties agree to and insert language into a contract, it is presumed that it was done purposefully, so that the language employed is to be given effect." *Thompson v. Gordon*, 241 Ill. 2d 428, 442 (2011). In the instant case, an examination of the contract as a whole clearly shows that it was for at-will employment. The language in paragraph 9 that Greer Management reserved the right to change the above contract provisions at any time clearly gave it the power to modify paragraph 1 setting out the expected term of employment. As in *Ohlemeier*, because it contained a provision allowing modification at will, the contract constituted an at-will contract of employment despite the specific term. This is confirmed by the last sentence in paragraph 9, in which Wessel acknowledges that she is an at-will employee.

¶ 21 Wessel cites *Klein v. Caremark International, Inc.*, 329 Ill. App. 3d 892 (2002), and *Bishop v. Lakeland Animal Hospital, P.C.*, 268 Ill. App. 3d 114 (1994), as the most factually similar cases to the instant case. In *Klein*, the employee and the employer executed an employment agreement, which expressly stated that the employee was an at-will employee. *Klein*, 329 Ill. App. 3d at 895. A few years later, the parties entered into another agreement, which provided that the employee would continue as an executive starting December 1, 1995, and ending November 30, 1996. *Id.* The agreement set out four events that would result in the automatic termination of the contract. *Id.* at 895-96. In July 1996, the employee was terminated. *Id.* at 896. The employee filed a complaint alleging breach of contract. *Id.* at 894. The parties filed cross-motions for summary

judgment. *Id.* The trial court found that the agreement created a fixed term of employment for one year and that the employer's termination of the employee constituted a material breach of the agreement. *Id.* at 899. The employer appealed. *Id.*

¶ 22 The appellate court examined whether the trial court correctly ruled that the agreement provided the employee with a fixed term of employment. *Id.* at 901-02. The employer argued that the employee was not employed for a fixed term because he could be terminated at will under his original employment agreement. *Id.* at 902. The court found that the fact that the employee's original employment contract was an at-will contract did not impact the validity of the agreement. *Id.* The agreement provided that "[e]xcept as specifically changed by this Agreement all terms and conditions of your current Employment Agreement with the Company shall remain in full force and effect." *Id.* In the next paragraph, it provided that the term of employment " 'shall be the one year period commencing on December 1, 1995 and ending on November 30, 1996.' " *Id.* The court found that the agreement was for a fixed term. *Id.*

¶ 23 The *Klein* court found that the agreement was for employment for a specific duration based on the contract as a whole. *Id.* The contract provided that the terms and conditions of the original employment contract would remain in full force and effect "[e]xcept as specifically changed by this Agreement." *Id.* The next paragraph changed the at-will term of the original contract by providing that the term of employment was for a one-year period from December 1, 1995, through November 30, 1996.

¶ 24 In the instant case, paragraph 9 of the employment summary gives Greer Management the right to change the above provisions at any time. One of the above

provisions subject to change is paragraph 1, which states that Wessel shall perform the duties of the position for the period of January 1, 2012, to December 31, 2014. Furthermore, paragraph 9 specifically states that the "employee acknowledges that she is an employee at will." Thus, paragraph 9 modifies paragraph 1. When read as a whole, the employment summary clearly provides for at-will employment.

¶ 25 In *Bishop*, the employee worked as a veterinarian for the employer. *Bishop*, 268 Ill. App. 3d at 115. On July 1, 1992, she entered into an employment contract with the employer that provided that she was to be employed for a one-year term effective immediately unless the contract was terminated as provided in paragraph 7. *Id.* Paragraph 7 provided that either party could terminate employment with or without cause providing that the party so desiring to terminate gave the other party written notice at least 60 days prior to the date of the proposed termination. *Id.* It further provided that the employer could terminate employment without notice upon the happening of one of five delineated events. *Id.* The contract also contained a noncompete clause, in which the employee agreed that on the termination of her employment with the employer for any cause she would not engage in the practice of veterinary medicine within 15 miles of the city of McHenry for four years. *Id.* On February 19, 1993, the employer notified the employee that her employment was to be terminated on April 20, 1993. *Id.* She filed a complaint, seeking to have the noncompete clause of the contract declared unenforceable. *Id.* at 116. The employer moved to dismiss the complaint, alleging that the clause was enforceable even if the employee was terminated without cause. *Id.* The trial court ruled

that the employment contract was not ambiguous and that the plain language required the enforcement of the restrictive covenant. *Id.*

¶ 26 On appeal, the employee argued that the contract was a term contract that could only be terminated for cause. *Id.* The appellate court found that the plain language of the contract indicated that the parties did not intend to enter into a fixed-term contract because it provided that she would be employed for a term of one year or until employment was terminated as provided in paragraph 7. *Id.* at 116-17. Because paragraph 7 allowed either party to terminate the contract with or without cause, the court held that the plain language of the contract indicated that both parties intended for the possibility of early termination without cause. *Id.* at 117.

¶ 27 In the instant case, paragraph 9 of the employment summary provided that the term of employment set out in paragraph 1 could be modified by Greer Management at any time. In paragraph 9, Wessel also acknowledged her status as an at-will employee. The parties agreed to and inserted paragraph 9 into the contract. When the employment summary is read as a whole, it clearly provided for at-will employment.

¶ 28 Wessel argues that the trial court erred in dismissing count II of her amended complaint alleging that Greer Management breached the implied covenant of good faith and fair dealing by terminating her employment without notice, warning, or explanation, contrary to her expectations. In Illinois, no independent action sounding in contract for breach of an implied covenant of good faith and fair dealing exists in the employment at-will setting. *Harrison v. Sears, Roebuck & Co.*, 189 Ill. App. 3d 980, 993 (1989). When a contract is terminable at will, no obligation can be implied that would be inconsistent

with that right; therefore, the duty of good faith and fair dealing will not override the right to terminate the contract at-will. *Mid-West Energy Consultants, Inc. v. Covenant Home, Inc.*, 352 Ill. App. 3d 160, 164 (2004). Because Wessel was an at-will employee and no independent cause sounding in contract for breach of an implied covenant of good faith and fair dealing exists in an employment at-will setting, the trial court properly dismissed count II of her complaint.

¶ 29 The trial court properly dismissed Wessel's complaint because there was no set of facts that could be proven that would have entitled her to recover. The language in the employment summary was unambiguous. Paragraph 9 provided that Greer Management could change any of the above provisions, which gave Greer Management the right to change the term set out in paragraph 1. Furthermore, in paragraph 9, Wessel acknowledged that she was an at-will employee. Thus, pursuant to the unambiguous language of the employment summary, Greer Management had the right to terminate Wessel's employment at any time with or without cause. Because Greer Management had this right, there was no set of facts where Wessel could prove that it breached her contract by terminating her before the term set out in paragraph 1 of the employment summary. Additionally, because she was an at-will employee, she could not prove an action for breach of an implied contract of good faith and fair dealing.

¶ 30 CONCLUSION

¶ 31 For the reasons stated, we affirm the judgment of the circuit court of Clinton County.

¶ 32 Affirmed.