2013 IL App (2d) 121005-U
No. 2-12-1005
Order filed September 16, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

FAIRVIEW NURSING PLAZA, Plaintiff-Appellant, v. LACY NELSON, Defendant-Appellee.	)))))))))	Appeal from the Circuit Court of Winnebago County. No. 11-SC-2792 Honorable Lisa R. Fabiano, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgment, that defendant did not resign and thus did not owe plaintiff under their contract, was not against the manifest weight of the evidence: the evidence supported a finding that defendant's "resignation" was conditional or that plaintiff terminated defendant before her resignation, if unconditional, took effect.

¶ 2 Plaintiff, Fairview Nursing Plaza, appeals from an order of the circuit court of Winnebago County ruling that defendant, Lacy Nelson, did not resign from her employment with plaintiff and, therefore, was not obligated to pay plaintiff $8,000 pursuant to a written contract between the parties. Because the trial court's finding that defendant did not resign is not against the manifest weight of the evidence, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff filed a small claims complaint against defendant, alleging that the parties entered into a written contract whereby defendant was obligated to pay plaintiff $8,000 in the event she resigned within the first year of her employment with plaintiff. The following facts are taken from the exhibits admitted at the bench trial and from the bystander's report filed pursuant to Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005).

¶ 5 Before being employed by plaintiff, defendant worked as a nurse for SilverCare, a staffing company. For several years, she was assigned to work at plaintiff's residential facility as a wound care nurse. At one point, plaintiff offered defendant a position as a wound care manager. Before she could accept the offer, defendant needed to pay SilverCare a $10,000 "buyout" to allow her to leave her employment. Plaintiff's administrator, Mark Thompson, negotiated a buyout of $8,000, and plaintiff paid that amount to SilverCare on behalf of defendant.

¶ 6 Defendant was eligible for a $10,000 hiring bonus when she went to work for plaintiff. However, because plaintiff had paid the $8,000 buyout on her behalf, defendant accepted $2,000 as her bonus.

¶ 7 In early February 2011, at about the time defendant began working for plaintiff, the parties entered into a written contract in which defendant agreed that, in the event she were to resign within her first year of employment, she would be obligated to pay plaintiff $8,000 to reimburse it for having paid SilverCare for her buyout. At trial, both parties submitted copies of the contract. Defendant's version was identical to plaintiff's, except it contained defendant's handwritten note stating that she did "not agree with the above to pay back the $8,000."[1]

[1]The trial court ruled that the provision was enforceable, and that ruling is not challenged in

¶ 8 On July 25, 2011, defendant submitted a two-page letter to Thompson, which stated that she was "respectfully requesting to resign without consequence of [her] one year contract and not [to] have to pay back [plaintiff] the $8,000.00 that was paid to SilverCare to buy out [her] contract." The bulk of the letter contained a series of complaints and concerns about defendant's working conditions. Near the end of the letter, defendant stated that she was "[r]egretfully *** requesting this because [she felt] there [was] not another option." Defendant closed by writing that "[i]f there are other remedies that could work, [she] would be happy to discuss them, otherwise, please consider this [her] two week notice of resignation." The upper right corner of page one contained a handwritten notation that the letter was submitted on July 25, 2011, and that defendant's last day would be August 5, 2011.

¶ 9 Defendant denied that she intended the letter to be her resignation. According to defendant, she wrote the letter on the advice of Marsha Manthei, the director of nursing, who asked defendant to detail in writing how she needed help in performing her job duties. Manthei told her that such a letter would be used to motivate "corporate" to authorize hiring help for defendant.

¶ 10 After receiving the letter, Thompson and Manthei, who both considered the letter to be defendant's resignation, offered solutions to defendant's complaints. None were acceptable to defendant, however. Defendant was also offered a floor nurse position, but she declined the offer. Several days after defendant submitted the letter, but before her stated date to resign, she was told to turn in her keys and was escorted from the facility because of her negative comments and behavior.

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this appeal.

¶ 11 Lyric Cade, a nurse consultant for plaintiff, heard defendant, on several occasions, complain to Thompson about her job and threaten to quit. Cade was also present when defendant gave her letter to Thompson. Upon receiving the letter, Thompson asked if he could do anything to convince defendant to stay, but defendant responded that the job was too much work and that she would "give him two weeks."

¶ 12 According to April Braswell, then the assistant director of nursing, Manthei seemed surprised to receive the letter from defendant and did not want to accept it. Braswell overheard Manthei later state that defendant "had been fired."

¶ 13 A former consulting wound care physician, Dr. Pryor, understood that, based on what defendant had told him, defendant was "terminated from employment." Dr. Pryor also spoke to Thompson, who told him that they had let defendant go. Defendant never told Dr. Pryor about the letter she submitted. Had she done so, that might have changed his understanding of whether defendant had been terminated.

¶ 14 After considering the evidence and arguments in the case, the trial court ruled, based on the contract, that if defendant resigned, she was obligated to pay plaintiff $8,000. However, the trial court found that the letter was not clear as to defendant's intent to resign, that plaintiff fired defendant, and that plaintiff failed to prove that defendant resigned. Thus, the trial court entered judgment in favor of defendant.

¶ 15 II. ANALYSIS

¶ 16 On appeal, plaintiff contends that the trial court erred in ruling in favor of defendant on the issue of whether she had resigned as opposed to being terminated. To that end, plaintiff maintains

that the "only reasonable deduction" that could be made from the evidence is that defendant resigned.

¶ 17 A condition precedent is one that must be met before a contract becomes effective, or that is to be performed by one party to an existing contract before the other is obligated to perform. *Carollo v. Irwin*, 2011 IL App (1st) 102765, ¶ 23. Where a contract contains a condition precedent, the contract is neither enforceable nor effective until the condition is performed or the contingency occurs. *Carollo*, 2011 IL App (1st) 102765, ¶ 25. If the condition remains unsatisfied, the obligations of the parties are at an end. *Carollo*, 2011 IL App (1st) 102765, ¶ 25.

¶ 18 In our case, the contract contained a condition precedent. That is, it provided that defendant was to pay $8,000 to plaintiff, but only if a condition was met, that she resigned within the first year of her employment. Thus, the dispositive factual issue before the trial court was whether that condition occurred.

¶ 19 Whether a contractual condition occurred, thereby obligating a party to perform under the contract, is a question of fact. *Illinois Founders Insurance Co. v. Barnett*, 304 Ill. App. 3d 602, 607 (1999). Where a trial court heard testimony and made factual determinations, its decision will not be reversed unless it is against the manifest weight of the evidence. *Illinois Founders Insurance Co.*, 304 Ill. App. 3d at 607. A factual finding is against the manifest weight of the evidence only if it is unreasonable, arbitrary, and not based on the evidence, or if the opposite conclusion is clearly evident from the record. *In re Estate of Savio*, 388 Ill. App. 3d 242, 247 (2009). Under the manifest-weight-of-the-evidence standard, we defer to the trial court as the finder of fact, because it is in the best position to observe the conduct and demeanor of the parties and the witnesses. *In re D.F.*, 201 Ill. 2d 476, 498-99 (2002).

¶ 20 In applying a manifest-weight-of-the-evidence standard here,[2] we must affirm. The evidence was mixed on the issue of whether defendant resigned, such that there was ample evidence to support the trial court's ruling that defendant did not resign.

¶ 21 Defendant, Braswell, and Dr. Pryor all testified that defendant had been terminated as opposed to having resigned. Although plaintiff's witnesses testified to the contrary, the trial court was best suited to assess the demeanor and credibility of the various witnesses and to sort out the conflicting testimony. See *In re Abel C.*, 2013 IL App (2d) 130263, ¶ 19.

¶ 22 Plaintiff relied heavily on defendant's letter, characterizing it as a "resignation letter." Although the letter did refer to defendant's resignation, it also contained qualifying language that supported the conclusion that defendant intended to merely express concerns about her working conditions and to solicit plaintiff's cooperation in remedying those conditions. That is reflected by

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[2]Plaintiff contends that, because the evidence here was of "such character that but one reasonable deduction can be made," what was ordinarily a question of fact became a question of law. Therefore, relying on *Giannoble v. P & M Heating & Air Conditioning, Inc.*, 233 Ill. App. 3d 1051 (1992), and *Brill v. Davajon*, 51 Ill. App. 2d 445 (1964), plaintiff maintains that we should apply *de novo* review. Those two cases are readily distinguishable from our case, however, as they involved whether an evidentiary presumption had been overcome and whether a plaintiff had otherwise introduced any evidence to sustain the burden of proof. See *Giannoble*, 233 Ill. App. 3d at 1058; *Brill*, 51 Ill. App. 2d at 450. Here, there was no such presumption at play, nor was there an issue as to whether plaintiff submitted at least some evidence to meet its burden of proof. The decision at issue in our case involved a classic example of a pure factual determination by the trial court, and we accordingly apply a manifest-weight-of-the-evidence standard in reviewing that decision.

the last sentence of the letter, in which defendant stated that she would be "happy to discuss" any "other remedies that could work," but otherwise plaintiff was to consider the letter to be her two-week notice of resignation. The letter reasonably could be interpreted as a contingent resignation, depending upon what response, if any, plaintiff made to defendant's concerns.

¶ 23 Moreover, even if the letter were considered an expression of defendant's unconditional intent to resign, it stated that the resignation would not be effective until two weeks after its submission. In other words, under the terms of the letter, the condition precedent under the contract, defendant's resignation, would not come to fruition until two weeks after defendant submitted the letter. That resignation never occurred, however, as the evidence showed that plaintiff terminated defendant before the two-week period expired. Although plaintiff contended that defendant effectively "terminated herself," because of her conduct after submitting the letter, plaintiff expressly conceded at oral argument that defendant did not leave of her own volition. Thus, the evidence clearly supported the trial court's finding that defendant did not resign. Absent such a resignation, the condition precedent never occurred, and defendant was not obligated under the contract to pay plaintiff $8,000. Accordingly, the trial court's ruling that defendant was terminated and did not resign is not against the manifest weight of the evidence.

¶ 24 Plaintiff's reliance on *Addis v. Exelon Generation Co.*, 378 Ill. App. 3d 781 (2007), is misplaced. The court in *Addis* concluded that there was sufficient evidence to support the jury's finding that the plaintiff was not discharged for purposes of a retaliatory discharge claim. *Addis*, 378 Ill. App. 3d at 788. The evidence of the plaintiff's resignation in *Addis* was far more compelling than in our case. The plaintiff in *Addis* submitted an unequivocal letter of resignation, specifically stated to a friend that she had resigned, and attempted to rescind her resignation. *Addis*, 378 Ill. App.

3d at 788. In our case, unlike in *Addis*, there was sufficient evidence to find that plaintiff did not resign before being terminated.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County in favor of defendant.

¶ 27 Affirmed.