THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2008-0344, Floyd P. Graham v. Town of Epsom, the court on December 22, 2008, issued the following order:

The plaintiff, Floyd P. Graham, appeals the trial court's order granting summary judgment to the defendant, Town of Epsom, on his breach of contract claim and his claim for unlawful termination contrary to RSA 154:1, I(a) (2002). We affirm in part, reverse in part and remand.

When we review a trial court's grant of summary judgment, we consider the affidavits and other evidence, and all inferences properly drawn from them, in the light most favorable to the non-moving party. Carter v. Concord Gen. Mut. Ins. Co., 155 N.H. 515, 517 (2007). If our review of the evidence does not reveal any genuine issue of material fact, and if the moving party is entitled to judgment as a matter of law, we will affirm the trial court's decision. Id. We review the trial court's application of the law to the facts de novo. Id.

We first address the trial court's ruling on the plaintiff's breach of contract claim. The trial court ruled that because the Town's employee handbook lacked a disclaimer, it became part of the plaintiff's employment contract, and obligated the Town to follow the discipline process contained therein. See Butler v. Walker Power, 137 N.H. 432, 435-37 (1993); Panto v. Moore Business Forms, Inc., 130 N.H. 730, 730-31 (1988). As the Town has not filed a cross-appeal, we assume, without deciding, that this ruling is correct. The plaintiff argues that the trial court erroneously interpreted the Town's employee handbook to require the Town to follow all of the steps in its progressive discipline process only for discipline that does not include termination. We agree.

The interpretation of a contract is a question of law for this court to resolve. Butler, 137 N.H. at 435. When interpreting a contract, we give the language used by the parties its reasonable meaning, considering the circumstances and the context in which the agreement was negotiated, and reading the document as a whole. Ryan James Realty v. Villages at Chester Condo. Assoc., 153 N.H. 194, 197 (2006). Absent ambiguity, the parties' intent will be determined from the plain meaning of the language used in the contract. Id.

The pertinent sections of the employee handbook are as follows:

DISCIPLINE/DISCHARGE

Disciplinary action may be initiated for reasons which include, but are not limited to, the following:

. . . .

n. failure to comply with department rules and regulations and general orders.

The disciplinary process shall include the following steps:

VERBAL WARNING Board of Selectmen or department head verbally warns employee of area which needs improvement with remedial suggestion(s) offered. . . .

WRITTEN WARNING Board of Selectmen or department head gives written warning to employee for repeat of offense which was source of verbal warning or for an offense the seriousness of which dictates more than verbal warning. . . .

SUSPENSION Board of Selectmen or department head, on the authorization of the Board of Selectmen, suspends employee without pay for recurring offense, which merits suspension. Before suspension the department head will notify the Board of Selectmen of the action recommended and will receive authority from the Board before proceeding. Length of suspension, one (1) to thirty (30) workdays, determined by the Board of Selectmen. Suspension comes within ten (10) work days of knowledge of offense. . . .

DISCHARGE After compiling all pertinent facts, which can include termination recommendations from department head, the Board of Selectmen discharges employee and confirms action in writing to employee. Action will be taken as soon as possible after all facts have been compiled. . . .

APPEAL Employee may request an appeal, in writing, to the Board of Selectmen within five (5) work days of initiation of suspension or discharge.

In case of verbal and/or written warnings, employee may appeal to department head [or] Board of Selectmen within three (3) work days of the action. . . .

> TERMINATION Should an employee desire to terminate his/her employment with the Town . . . , it is expected that a two-week notice will be given. . . .
>
> When the employment of an employee is terminated by the Board of Selectmen an advance notice may be given. However, an employee's services may be terminated immediately should circumstances warrant immediate dismissal.
>
> Correct procedure for termination, per the Personnel Handbook, is necessary for a permanent employee. However, an employee who is serving his/her probationary period may be terminated following one verbal or written warning without any further notice.

The trial court ruled that these provisions allowed the Town either to impose progressive discipline up to and including suspension or to terminate an employee. The trial court ruled that the progressive discipline steps outlined in the handbook applied only when the Town elected not to terminate an employee. The trial court stated: "Had the Town undertaken non-termination disciplinary actions in the petitioner's case, it would have had to comply with the non-termination process outlined in the handbook." Because the Town decided to terminate the plaintiff, the trial court ruled, this process did not apply.

The plaintiff contends that "the plain language of the termination provision requires at least some process before a permanent employee can be terminated." The termination provision states that "[c]orrect procedure for termination, per the Personnel Handbook, is necessary for a permanent employee," while, by contrast, "an employee who is serving his/her probationary period may be terminated following one verbal or written warning without any further notice." The plaintiff argues that this provision implies that "something more than one verbal or written warning without any further notice is required before a permanent employee may be terminated."

Because we find both the trial court's interpretation and the plaintiff's interpretation to be reasonable, we conclude that the language of the discipline section of the employee handbook is ambiguous. See Contoocook Valley Sch. Dist. v. Graphic Arts Mut. Ins. Co., 147 N.H. 392, 395 (2001). "An argument between the parties about the meaning of an ambiguous contractual term is typically an argument about a material fact, and summary judgment will generally have been improperly granted, unless the extrinsic evidence presented about the parties' intended meaning is so one-sided that no reasonable person could decide to the contrary." Hopkins v. Fleet Bank-NH, 143 N.H. 385, 389-90 (1999) (quotations omitted). In Hopkins, the court ruled

that summary judgment was improperly granted because neither party presented extrinsic evidence that was so one-sided that no reasonable person could decide to the contrary. Id. at 390. Similarly, here, to the extent that extrinsic evidence was presented, it was not so one-sided that no reasonable person could have decided that the Town's interpretation was incorrect. Accordingly, we conclude that the trial court erred by granting summary judgment to the Town on the plaintiff's breach of contract claim.

We next address the trial court's ruling on the plaintiff's RSA 154:1, I(a) claim. The plaintiff argues that the Town chose a form of governance under RSA 154:1, I(a) that vested the fire chief with the exclusive authority to terminate firefighters. As evidence, the plaintiff points to the Town's position in another termination case in which the Town had argued that the fire chief had the sole authority to terminate firefighters. The plaintiff contends that the Town's position in the other termination case created a material issue of disputed fact regarding the form of governance the Town chose. We disagree.

To the contrary, based upon our review of the record submitted on appeal, we conclude that the Town's position in the other termination case was not evidence of the form of governance it chose, but, instead, was its interpretation of RSA 154:1, I(a), which, as the trial court aptly ruled, was not binding upon the court. Accordingly, the Town's position in the other termination case did not create a material issue of disputed fact that precluded the court from granting summary judgment to the Town. We, therefore, affirm the trial court's ruling upon the plaintiff's RSA 154:1, I(a) claim.

Affirmed in part; reversed in part; remanded.

DUGGAN, GALWAY and HICKS, JJ., concurred.

Eileen Fox,
Clerk