

# Court of Claims of Ohio

The Ohio Judicial Center  
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Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
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MICHAEL Q. GARLAND

Plaintiff

v.

CLEVELAND STATE UNIVERSITY

Defendant

Case No. 2006-04776

Judge Clark B. Weaver Sr.

## DECISION

{¶ 1} Plaintiff brought this action against defendant, Cleveland State University (CSU), alleging that CSU committed a breach of his employment contract when he was removed from his position as head men's basketball coach in March 2006. Upon agreement of the parties, the case proceeded to trial on the issues of liability and damages.

{¶ 2} By way of background, plaintiff testified that he attended Northern Michigan University where he played basketball on scholarship from 1972 through 1977. He graduated with a bachelor's degree in physical education and community recreation. After a brief stint working as a supervisor in a landscaping business, plaintiff began his teaching and coaching career at Belleville High School, in Michigan. In 1986, plaintiff accepted a position as assistant men's basketball coach at Michigan State University where he stayed until 2003.

{¶ 3} Plaintiff stated that in April 2003, after he had interviewed with Athletic Director Lee Reed, and with both the search committee and the board of trustees, he

was hired as the head men's basketball coach for CSU. The terms of plaintiff's employment were contained in a written three-year contract that provided for a base salary of \$130,000 plus benefits, the use of a car, and a financial package that allowed plaintiff to run a basketball camp and to retain any profits from such endeavor. In addition, plaintiff was permitted to enter into written contracts with athletic apparel companies. Upon satisfactory completion of the initial year, the contract could then be extended for an additional two years for a total contract period spanning five years.

{¶ 4} Plaintiff acknowledged that the men's basketball team struggled during the first season and ended with a 4 and 25 win/loss record. Plaintiff attributed the poor performance, in part, to player injuries and to the loss of a key player due to changes in academic requirements of CSU. Nevertheless, plaintiff received the contract extension and a new contract was signed in April 2004. This contract included a clause that allowed CSU, at its discretion, to reassign plaintiff to another position within the university, as long as the duties were consistent with his training and education. The second season ended with a team record of 9 and 17, which plaintiff described as the result of poor performance on road trips. The following summer, the men's basketball program invested in a strength and conditioning coach to attempt to improve overall performance and stamina of CSU's players. Plaintiff testified that for the 2005-2006 season, the men's basketball team won half of their away games but struggled at home. It is undisputed that the season ended with a dismal performance in a playoff game against the University of Detroit.

{¶ 5} Plaintiff stated that shortly after that loss, he was summoned to a meeting in early March 2006 with Reed. According to plaintiff, they had a discussion about ways to improve the team's performance and they parted on cordial terms, with the understanding that plaintiff would prepare a plan over the next few weeks and then meet again with Reed. A few days later, plaintiff was again asked to meet with Reed; however, at this time the atmosphere was less cordial. Plaintiff recalled that he was taken aback inasmuch as he had been putting together a plan to effectuate a more positive outcome for the coming season. Plaintiff testified that, despite the tenor of this conversation, he left the meeting with the expectation that he would finalize his plan and present it to Reed at their next meeting.

{¶ 6} Plaintiff related that he next met with Reed on March 30, 2006, at which time Reed informed plaintiff that he intended to make a change even though plaintiff had conveyed his belief that the program was moving in the right direction and that the upcoming season could be a winning season. Plaintiff recalled that Reed pondered why plaintiff and his staff were unable to produce a winning season. Ultimately, Reed told plaintiff that he lacked confidence in plaintiff's ability and that he had decided to make a change. Plaintiff testified that he interpreted this statement to mean that he was fired.

{¶ 7} Plaintiff brought this action against defendant alleging a single claim for breach of contract. In order to recover for breach of contract, plaintiff must prove the following elements: existence of a contract, performance by the plaintiff, breach by the defendant, and damages or loss as the result of the breach. *Samadder v. DMF of Ohio, Inc.*, 154 Ohio App.3d 770, 2003-Ohio-5340; *Doner v. Snapp* (1994), 98 Ohio App.3d 597, 600.

{¶ 8} There is no dispute in this case that the relationship between the parties is governed by plaintiff's April 2004 employment contract. The April 2004 contract as set forth in Plaintiff's Exhibit 2 states, in relevant part:

{¶ 9} "1.0 TERM

{¶ 10} "1.1 This is a fixed term appointment, for a term of four (4) years, commencing on May 1, 2004 and terminating on April 30, 2008, without further notice to you.

{¶ 11} "\* \* \*

{¶ 12} "2.0 DUTIES

{¶ 13} "2.1 You shall \* \* \* perform the coaching duties of Head Coach of the men's basketball program, as may be assigned by the Athletic Director and the President, within the budget allocated by the University.

{¶ 14} "2.2 You shall devote full-time attention and energy to the duties of Head Coach and to the promotion of the University's Athletics program; \* \* \*.

{¶ 15} "2.3 You shall reasonably participate in Athletic Department fundraising efforts and corporate sponsorship sales, provided such participation shall not otherwise conflict or interfere with your primary duties as Head Coach.

{¶ 16} “2.4 You shall work in cooperation with and support of the University’s faculty and administrative staff to ensure that all student-athletes’ academic requirements are met; and you shall encourage student athletes to \* \* \* graduate.

{¶ 17} “\* \* \*

{¶ 18} “2.6 The University has the right to reassign you without cause and at *its discretion* to another position within the University with duties different from those of Head Coach during the term of this Agreement. In no event, however, will you be assigned to any position which is not consistent with your education and experience as *determined by the University.*” (Emphasis added.)

{¶ 19} Defendant contends that plaintiff was not terminated from CSU’s employ in March 2006 and that he continued to receive his salary and benefits accordingly. Defendant maintains that it exercised its contractual discretion to reassign plaintiff and that after such action was taken by CSU, plaintiff declined to accept reassignment. Even after CSU presented plaintiff with both a notice of reassignment and a job description, plaintiff refused to accept the position and refused to return to work. (Defendant’s Exhibits B-E.) CSU then notified plaintiff that his failure to appear for work on July 5, 2006, would be construed as his decision to voluntarily terminate his employment. (Defendant’s Exhibit F.)

{¶ 20} In this case, the court looks to the testimony of plaintiff and the language used in the contract to determine whether the reasonable expectations of the parties were met. Upon review of the testimony and evidence presented, the court finds that plaintiff has failed to prove that CSU committed a breach of his employment contract in March 2006. According to plaintiff’s recollection, when Reed asked plaintiff how he wanted the coaching change portrayed to the media, plaintiff instructed Reed to merely tell the truth which was that he had been fired. Plaintiff testified that Reed responded by stating it would be better both for plaintiff and the university if the change was explained as a reassignment.

{¶ 21} Based upon plaintiff’s testimony, the court finds that the scenario described by plaintiff did not signify that he had been fired or that his termination was imminent. There was no evidence presented that plaintiff had been removed from the premises or that his access either to CSU or to his office had been restricted. Indeed,

plaintiff was allowed to complete his travel plans to the Final Four Competition the very next day, at the expense of CSU. Moreover, plaintiff continued to receive his salary and benefits. All of this convinces the court that plaintiff was not fired but that his position and title had been merely changed by CSU pursuant to Section 2.6 of the contract.<sup>1</sup>

{¶ 22} Apparently, plaintiff failed to communicate with Reed and others as to the particulars of his interim job duties and responsibilities. Indeed, plaintiff admitted that he sought legal counsel and immediately began searching for another head men's basketball position. Ohio courts have held that an "employee has an obligation not to jump to conclusions and assume that every conflict with an employer evidences a hidden intent by the employer to terminate the employment relationship." *Simpson v. Dept. of Rehab & Corr.*, Franklin App. No. 02AP-588, 2003-Ohio-988, ¶ 25 citing *Jackson v. Champaign Nat'l. Bank & Trust Co.* (Sept. 26, 2000), Franklin App. No. 00AP-170. The court finds that plaintiff acted precipitously and without due consideration of the terms of his contract with CSU.

{¶ 23} Once plaintiff was being represented by counsel, CSU had no opportunity to communicate with plaintiff other than through his attorneys. Defendant notified plaintiff's counsel on May 19, June 2, and June 22, 2006, of its intention to reassign plaintiff to a newly created position of Special Assistant to the Athletic Director. Plaintiff testified that he had knowledge of the terms of the contract, that he was aware of the fact that his contract did not include a buy-out clause, and that CSU retained the right to reassign him at CSU's discretion to another position within the university. Although plaintiff faults CSU for the delayed notice, the court does not find any language in the contract that mandates the length of time required to effectuate reassignment. Indeed, even the most casual reading of plaintiff's April 2004 employment agreement reveals that the pertinent provision authorizes CSU to act at "its discretion." (Plaintiff's Exhibit 2.)

{¶ 24} "Common words appearing in a contract will be given their ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly evidenced from the four corners of the documents. *Cochran v. Cochran* (Aug. 12,

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<sup>1</sup>Inasmuch as the court finds that plaintiff was not fired in March 2006, the court has not addressed CSU's argument that only the Board of Trustees of CSU had the authority to terminate plaintiff's employment.

1982), Franklin App. No. 82AP-31, 1982 Ohio App. LEXIS 13133, citing *Alexander v. Buckeye Pipe Line Co.* (1978), 53 Ohio St.2d 241, 374 N.E.2d 146, syllabus at P2.” *Stolls v. United Magazine Co.*, Franklin App. No. 03AP-752, 2004-Ohio-2523, ¶ 8.

{¶ 25} “Contractual terms are ambiguous if the meaning of the terms cannot be deciphered from reading the entire contract, or if the terms are reasonably susceptible to more than one interpretation. *United States Fid. & Guar. Co. v. St. Elizabeth Med. Ctr.* (1998), 129 Ohio App.3d 45, 55, 716 N.E.2d 1201. Where the contract is clear and unambiguous, the intent of the parties must be determined from the contract itself. *Mattlin-Tiano v. Tiano* (Jan. 9, 2001), Franklin App. No. 99 AP-1266, 2001 Ohio App. LEXIS 32. The terms of the contract must simply be applied without resorting to methods of construction and interpretation. *Chirchiglia v. Ohio Bur. of Workers’ Comp.* (2000), 138 Ohio App.3d 676, 679, 742 N.E.2d 180. ‘Only when the language of a contract is unclear or ambiguous, or when the circumstances surrounding the agreement invest the language of the contract with a special meaning will extrinsic evidence be considered in an effort to give effect to the parties’ intentions.’ *Shifrin v. Forest City Ent., Inc.* (1992), 64 Ohio St.3d 635, 1992 Ohio 28, 597 N.E.2d 499, syllabus. The decision as to whether a contract is ambiguous is a matter of law. *Ohio Historical Society v. General Maintenance & Engineering Co.* (1989), 65 Ohio App.3d 139, 146, 583 N.E.2d 340.” *Moody v. Ohio Rehab. Servs. Comm’n*, Franklin App. No. 02AP-596, 2002-Ohio-6965, ¶ 7.

{¶ 26} The court finds that the terms of the reassignment clause are clear and unambiguous. As such, the court finds that CSU did not violate the terms of the agreement with regard to the delay in notifying plaintiff of the specifics regarding his reassignment.

{¶ 27} Plaintiff also contends that he was within his rights to refuse the reassignment because the duties listed in his position description of Special Assistant to the Athletic Director were not consistent with his education and experience. The court disagrees.

{¶ 28} Plaintiff testified that in his capacity as head men’s basketball coach, he fulfilled many roles besides teaching and coaching. Plaintiff stated that he was responsible to oversee that academic compliance was in order, and that a significant

portion of his time was occupied by meetings with alumni, boosters, and others involved in fund raising. In addition, plaintiff alluded to making numerous appearances to promote the goodwill of the university in the community. Thus, upon review of Plaintiff's Exhibit 6, the court does not find the position of Special Assistant to the Athletic Director to be far removed from plaintiff's training and education, let alone distinct from the tasks he performed as part of the position description of men's head basketball coach. In addition, it is stated in Section 2.6 that plaintiff may be reassigned to any position consistent with plaintiff's education and experience "as determined by the University."

{¶ 29} For the foregoing reasons, the court finds that CSU did not violate the terms of the contract and, accordingly, judgment shall be rendered in favor of defendant.<sup>2</sup>

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### JUDGMENT ENTRY

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<sup>2</sup>To the extent that plaintiff's conduct constituted a breach of contract when plaintiff refused both to accept reassignment and to return to work, the court finds that Section 7.3 of the contract states that plaintiff is not liable to CSU for liquidated damages if he terminated the contract after having been reassigned by the university.

This case was tried to the court on the issues of liability and damages. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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CLARK B. WEAVER SR.  
Judge

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