

IN THE SUPREME COURT OF TEXAS

No. 96-1077

MONTGOMERY COUNTY HOSPITAL DISTRICT
F/D/B/A MEDICAL CENTER HOSPITAL, PETITIONER

v.

VALARIE BROWN, RESPONDENT

ON APPLICATION FOR WRIT OF ERROR TO THE
COURT OF APPEALS FOR THE NINTH DISTRICT OF TEXAS

Argued on February 26, 1997

JUSTICE HECHT delivered the opinion of the Court, in which CHIEF JUSTICE PHILLIPS, JUSTICE ENOCH, JUSTICE SPECTOR, JUSTICE OWEN, JUSTICE BAKER, and JUSTICE ABBOTT joined.

JUSTICE GONZALEZ issued a concurring opinion.

JUSTICE HANKINSON did not participate in the decision.

The principal issue before us is whether at-will employment can be modified by nothing more than an employer's oral assurances that an employee whose work is satisfactory will not be terminated without good cause. We hold that an employer's oral statements do not modify an employee's at-will status absent a definite, stated intention to the contrary. We conclude that the court of appeals improperly reversed the summary judgment for the employer in this case. 929 S.W.2d 577.

For ten years Valarie Brown was employed by the Montgomery County Hospital District as laboratory systems manager for Medical Center Hospital. After her employment terminated, Brown brought this action against the District and its president and vice president (collectively, "the District") for breach of oral and written contracts of employment and deprivation of property and liberty interests protected by the Texas Constitution. The district court granted summary judgment for the District. The circumstances surrounding the termination of Brown's employment, vigorously

disputed by the parties, are largely irrelevant to the contract issues before us. Given the conflict in the summary judgment record, we accept as true Brown's assertion that she did not voluntarily resign but was fired without good cause. We assume that Brown is not estopped by acceptance of her severance pay to assert that she was wrongfully terminated. And we take Brown's word that:

At the time I was hired as well as during my employment, I was told by [the Hospital administrator] that I would be able to keep my job at the Hospital as long as I was doing my job and that I would not be fired unless there was a good reason or good cause to fire me. This representation was important to me since I was going to have to relocate from Houston to the Conroe area if I accepted the position with the Hospital.

The court of appeals held as a matter of law that the Hospital's employee manual was not an employment contract as Brown claimed, 929 S.W.2d at 583, and Brown has not appealed that ruling. But the appeals court held that fact questions subsisted concerning the existence of an oral employment contract, based on the hospital administrator's alleged assurances, that precluded summary judgment. 929 S.W.2d at 583-585. The court also held that such a contract was not, as a matter of law, barred by the Statute of Frauds, TEX. BUS. & COM. CODE § 26.01. 929 S.W.2d at 584-585. Because the effect of an employer's oral assurances on at-will employment is an important and recurring issue, we granted the District's application for writ of error. 40 TEX. SUP. CT. J. 255 (Jan. 31, 1997).

For well over a century, the general rule in this State, as in most American jurisdictions, has been that absent a specific agreement to the contrary, employment may be terminated by the employer or the employee at will, for good cause, bad cause, or no cause at all. *Federal Express Corp. v. Dutschmann*, 846 S.W.2d 282, 283 (Tex. 1993) (per curiam); *Schroeder v. Texas Iron Works*, 813 S.W.2d 483, 489 (Tex. 1991); *Winters v. Houston Chronicle Pub. Co.*, 795 S.W.2d 723, 723 (Tex. 1990); *Sabine Pilot Serv., Inc. v. Hauck*, 687 S.W.2d 733, 734-35 (Tex. 1985); *East Line & R.R.R. Co. v. Scott*, 72 Tex. 70, 10 S.W. 99, 102 (1888). The District argues that its assurances to Brown were too indefinite to constitute an agreement limiting the District's right to discharge Brown at will. We agree.

A promise, acceptance of which will form a contract, “is a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made.” RESTATEMENT (SECOND) OF CONTRACTS § 2(1) (1981). General statements like those made to Brown simply do not justify the conclusion that the speaker intends by them to make a binding contract of employment. For such a contract to exist, the employer must unequivocally indicate a definite intent to be bound not to terminate the employee except under clearly specified circumstances. General comments that an employee will not be discharged as long as his work is satisfactory do not in themselves manifest such an intent. Neither do statements that an employee will be discharged only for “good reason” or “good cause” when there is no agreement on what those terms encompass. Without such agreement the employee cannot reasonably expect to limit the employer’s right to terminate him. An employee who has no formal agreement with his employer cannot construct one out of indefinite comments, encouragements, or assurances.

This is the rule in other states. For example, in *Rowe v. Montgomery Ward & Co.*, 473 N.W.2d 268 (Mich. 1991), the court held that a supervisor’s assurance that employees would have their jobs “generally, as long as they generated sales and were honest” did not limit the employer’s right to discharge an employee at will. *Id.* at 270. Noting that a decade earlier it had “joined the forefront of a nationwide experiment in which, under varying theories, courts extended job security to nonunionized employees”, the court retreated from earlier decisions in which it had been more inclined to find an employment agreement in general assurances made by the employer. *Id.* at 269. “[C]alling something a contract that is in no sense a contract cannot advance respect for the law”, the court wrote. *Id.* It concluded: “[O]ral statements of job security must be clear and unequivocal to overcome the presumption of employment at will.” *Id.* at 275.

Likewise, in *Hayes v. Eateries, Inc.*, 905 P.2d 778 (Okla. 1995), the court held that oral assurances “satisfactorily” did not constitute “a binding agreement that protected him from discharge except for ‘just cause’.” *Id.* at 782. The court explained:

Courts “must distinguish between carefully developed employer representations upon which an employee may justifiably rely, and general platitudes, vague assurances,

praise, and indefinite promises of permanent continued employment.” Only when the promises are definite and, thus, of the sort which may be reasonably or justifiably relied on by the employee, will a contract claim be viable, not when the employee relies on only vague assurances that no reasonable person would justifiably rely upon. There is, thus, an objective component to the nature of such a contract claim in the form of definite and specific promises by the employer sufficient to substantively restrict the reasons for termination.

Id. at 783 (citations omitted).

There are scores of cases like these throughout the country, and courts in different jurisdictions have reached different conclusions, sometimes on the basis of the particular circumstances, and sometimes because of their view that oral, informal statements in the employment context should simply be given more effect. *See generally* Theresa Ludwig Kruk, Annotation, *Right to Discharge Allegedly “At-Will” Employee as Affected by Employer’s Promulgation of Employment Policies as to Discharge*, 33 A.L.R.4th 120 (1984). From our review of these cases we conclude that those we have cited are better reasoned.

Consistent with our holding in the case, the court in *Byars v. City of Austin*, 910 S.W.2d 520, 523-524 (Tex. App.—Austin 1995, writ denied), held that an employee handbook’s description of usual disciplinary procedures were not “clear and specific” so as to modify an employment at will. Three other decisions of our intermediate courts that have dealt with statements similar to those made to Brown in this case did not consider whether the statements made were definite enough to constitute an enforceable contract. *Hardison v. A. H. Belo Corp.*, 247 S.W.2d 167 (Tex. Civ. App.—Dallas 1952, no writ); *Johnson v. Ford Motor Co.*, 690 S.W.2d 90 (Tex. App.—Eastland 1985, writ ref’d n.r.e.); *Morgan v. Jack Brown Cleaners, Inc.*, 764 S.W.2d 825 (Tex. App.—Austin 1989, writ denied). To the extent these cases can be read to reach a result contrary to our holding here, we disapprove them.

The District also argues that oral promises modifying employment at will are unenforceable under the Statute of Frauds. The District is correct only if the promises cannot be performed within one year. *Miller v. Riata Cadillac Co.*, 517 S.W.2d 773, 775 (Tex. 1974). An employment contract for an indefinite term is considered performable within one year. *Bratcher v. Dozier*, 346 S.W.2d

795 (Tex. 1961). It would be unusual, however, for oral assurances of employment for an indefinite term to be sufficiently specific and definite to modify an at-will relationship.

The concurring opinion “would imply a term of working-life duration into the District’s alleged oral commitment to provide Brown job security, a period that clearly exceeded one year.” *Post*, at _____. The record, however, does not support such an implication. Perhaps Brown, like most employees, hoped to work for the District as long as she wanted, and much longer than a year, but the concurrence cites no evidentiary support for the assertion that “the ‘tenor and understanding’ between the parties, if any, was that Brown would have many years of job security.” *Post*, at _____. Even if a term can be supplied by implication, there is no basis for doing so in this case. The concurrence’s reliance on *Schroeder v. Texas Iron Works, Inc.*, 813 S.W.2d 483, 489 (Tex. 1991), to justify an implication is misplaced. In that case we simply accepted as true the plaintiff’s allegations that his contract was to remain in effect for eight to ten years.

Finally, Brown’s constitutional claims are premised on her assertion that she had an oral employment contract with the District based on the assurances given her. Because she had no such contract, her constitutional claims fail.

Accordingly, the judgment of the court of appeals is reversed and judgment is rendered for the District.

Nathan L. Hecht
Justice

Opinion delivered: March 13, 1998