

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRAD SELGESTAD, M.D.,

Appellant

vs.

UNIVERSITY MEDICAL CENTER AND
CLARK COUNTY BOARD OF
COMMISSIONERS, AS TRUSTEES,
Respondents.

No. 45724

FILED

SEP 26 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART,
REVERSING IN PART AND REMANDING

This is an appeal from a district court summary judgment in a contract action. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court.¹

Appellant Brad Selgestad, M.D., argues on appeal that the district court erred in determining that respondent University Medical Center (UMC) was entitled to summary judgment by virtue of the doctrine of sovereign immunity.² Selgestad contends that the doctrine of sovereign

¹Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (citing Caughlin Homeowners Ass'n v. Caughlin Club, 109 Nev. 264, 266, 849 P.2d 310, 311 (1993)).

²We note that Selgestad does not contend on appeal that the district court erred in granting summary judgment to UMC as to his claims for unjust enrichment, specific performance and declaratory relief, breach of
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immunity only applies to tort actions and not to contract actions. Selgestad further argues that even though a municipality's decision to enter into a contract is a discretionary act, all actions taken subject to the contract are operational, which he argues are not protected by the doctrine of sovereign immunity. Additionally, Selgestad argues that summary judgment was not proper because he was not an at-will employee under the provisions set forth in UMC's Human Resources Policies and Procedures Handbook; he claims that UMC's acts of laying-off and reassigning him breached the for-cause provision provided for in his employment with UMC.

As to Selgestad's claim that UMC breached its medical director agreement with him when it laid-off and reassigned him to the position of senior staff physician, we conclude that these acts would be considered discretionary and thus under the purview of the doctrine of sovereign immunity.³ We agree with UMC that it underwent personal

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the implied covenant of good faith and fair dealing, and intentional infliction of emotional distress. Consequently, we do not address whether the district court's grant of summary judgment was proper for these claims.

³See NRS 41.031; NRS 41.032; Frank Briscoe Co., Inc. v. County of Clark, 643 F. Supp 93, 97-99 (D. Nev. 1986) (“[I]t is noted that NRS 41.032(2) is as broad as is the waiver of sovereign immunity, NRS 41.031, and applies to actions for breach of contract, breach of implied warranty and for all actions sounding in tort.” Sovereign immunity under Nevada law is not waived “if the action or inaction complained of was taken or omitted during the exercise or performance of discretionary function or duty.”); University of Nevada, Reno v. Stacey, 116 Nev. 428, 434-35, 997 P.2d 812, 816 (2000) (holding that the State university was statutorily

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deliberation and judgment (and thus discretionary acts) in following its mandate to reduce its budget and in deciding whether to retain Selgestad as a medical director.⁴ Because we have concluded that Selgestad's layoff and reassignment were discretionary acts, for which sovereign immunity applies, we do not address Selgestad's argument relating to for-cause employment. Consequently, we conclude that the district court did not err in granting summary judgment to UMC as to Selgestad's claim that UMC breached the medical director agreement when it laid-off and reassigned Selgestad to the position of senior staff physician.

Accordingly, we affirm the district court's grant of summary judgment in part as to Selgestad's claim that UMC's acts of laying-off and reassigning him breached the medical director agreement.

As to Selgestad's claims that there were other breaches with the medical director agreement—that UMC failed to pay him for his off-the-clock administrative duties, that UMC failed to pay him for his examinations of police officers and firefighters, and that UMC improperly interpreted his productivity bonus provisions as minimum performance standards—we conclude that the district court erred in granting summary

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immune from suit for breach of contract in connection with its failure to award tenure to a professor whose probationary period was extended under that contract; further holding that the State university's decision on granting tenure was a discretionary act).

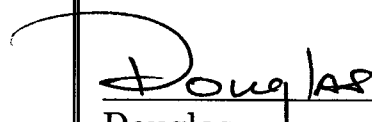
⁴See University & Cmty. Coll. Sys. v. Sutton, 120 Nev. 972, 980, 103 P.3d 8, 14 (2004) (holding that a discretionary act, for which qualified immunity applies, requires "personal deliberation and judgment").

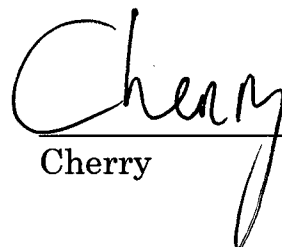
judgment to UMC. These alleged acts would be considered ministerial and operational; because they may have caused UMC to breach the terms of the medical director agreement, NRS 41.031 and 41.032 would not have afforded UMC the discretion to operationally violate the terms of Selgestad's medical director agreement.⁵ As a result, we conclude that UMC should not be afforded sovereign immunity for these aforementioned breach of contract claims.

Consequently, we reverse the district court's grant of summary judgment in part as to those other breach of contract claims and remand this matter to the district court for findings as to whether the medical director agreement was breached with respect to these other breach of contract claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

⁵See Sutton, 120 Nev. at 981, 103 P.3d at 14 (holding that the State university could be held civilly liable for a breach of specific terms in a contract).

cc: Hon. Jessie Elizabeth Walsh, District Judge
Carolyn Worrell, Settlement Judge
Jeffrey J. Whitehead
Annette L. Bradley
Eighth District Court Clerk