IN THE SUPREME COURT OF THE STATE OF NEVADA

KURT FRITSCH,
Appellant,
vs.
CITY OF NORTH LAS VEGAS,
Respondent.

No. 47458

FILED

MAR 04 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a breach of employment contract and open meeting law action. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Respondent City of North Las Vegas hired appellant Kurt Fritsch as its City Manager in June 2000 and terminated him in July 2003. Upon his termination, Fritsch sued City of North Las Vegas for breach of contract and open meeting law violations. The City moved for summary judgment, which the district court granted, and this appeal followed. On appeal, Fritsch contends that genuine issues of material fact remain with respect to his breach of contract and open meeting law claims. For the following reasons, we conclude that Fritsch's contentions lack merit. The parties are familiar with the facts and we do not recount them except as necessary to our disposition.

Standard of review

We review a district court's grant of summary judgment de novo.[1] Summary judgment is appropriate when no genuine issue of

[1]Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

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material fact remains and the moving party is entitled to a judgment as a matter of law.[2] A factual dispute is genuine when, based on the evidence, a rational trier of fact could return a verdict for the nonmoving party.[3]

Breach of contract

Fritsch argues that a genuine issue of material fact remains as to whether he was an at-will employee at the time of his termination. We disagree and conclude that Fritsch's employment contract unambiguously allowed the City to terminate him at-will.

Where an employment contract exists, the contract's terms must be taken in their usual and ordinary signification, unless they are ambiguous and require additional interpretation.[4] Contractual ambiguity depends on whether the terms in question are reasonably susceptible to more than one interpretation.[5] Where a contract's terms are clear and unambiguous, we usually will not revise the contract.[6]

In this case, the parties entered into several written amendments to their original agreement, the second of which plainly states that "[t]he term of the Agreement shall extend until July 30, 2005, unless earlier terminated pursuant to Agreement Section 3 regarding

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[2]Id. (quoting NRCP 56(c)).

[3]Id. at 731, 121 P.3d at 1031.

[4]Traffic Control Servs. v. United Rentals, 120 Nev. 168, 174, 87 P.3d 1054, 1058 (2004).

[5]Shelton v. Shelton, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003); University of Nevada, Reno v. Stacey, 116 Nev. 428, 431, 997 P.2d 812, 814 (2000).

[6]Traffic Control Servs., 120 Nev. at 175, 87 P.3d at 1059.

termination." Agreement Section 3 provides that Fritsch became an at-will employee beginning July 1, 2001, and that the City could terminate Fritsch "at any time thereafter, with or without cause," upon payment of six months salary and accrued benefits. In addition, Section 4 of the parties' second written amendment makes clear that "[a]ll other terms of the Agreement and the First Amendment not specifically changed herein are reaffirmed to be in full force and effect."

Because nothing in the second amendment conflicts with its language applying the termination procedures set forth in the parties' original agreement, we conclude that Fritsch remained subject to termination in accordance with Section 3 of the original agreement. Although Fritsch cites evidence of numerous events that occurred prior to the Council's August 2002 meeting (at which it issued final approval of the second amendment), those events took place before the Council approved the final, unambiguous written version of the second amendment, and thus, we are barred from considering them under the parol evidence rule.[7] Even if the parol evidence rule did not bar our consideration of these events, however, we conclude that they fail to establish a genuine issue for trial.[8]

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[7]See Ringle v. Bruton, 120 Nev. 82, 91, 86 P.3d 1032, 1037 (2004); Kaldi v. Farmers Ins. Exch., 117 Nev. 273, 281-83, 21 P.3d 16 (2001) (concluding that neither silence in an employment contract on the issue of termination nor the absence of an at-will provision establishes an ambiguity for purposes of the parol evidence rule).

[8]Notably, Fritsch had time to review the second amendment and eventually read its terms into the record on August 7, 2002. Thus, we conclude that Fritsch is bound by the plain language of the second amendment, which references the Council's discretion to terminate Fritsch

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Open meeting law

Fritsch asserts that the City Council violated the open meeting law by failing to provide sufficient notice to the public of the Council's intent to take action on his contract. We disagree.

NRS 241.020 requires all public bodies to provide "written notice of all meetings . . . at least 3 working days before the meeting." In order to satisfy the open meeting law, this written notice must include an agenda setting forth a "clear and complete statement of the topics scheduled to be considered during the meeting."[9] In addition, the agenda must set forth "[a] list describing the items on which action may be taken and clearly denoting that action may be taken on those items."[10] We require "strict compliance" with NRS 241.020 and the open meeting law's agenda requirements.[11]

In this case, the Council requested Agenda Item 70, which provided for "Discussion and Possible Action on City Manager's Contract" and listed this item's projected fiscal impact as "to be determined." Fritsch, as City Manager, signed and approved Item 70 for the Council's

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. . . continued

pursuant to Section 3 of the original agreement. In addition, we conclude that reformation of the parties' contract is unwarranted because the record demonstrates that Fritsch understood the City's intent and was not misled about the nature of the employment agreement.

[9]NRS 241.020(2)(c)(1).

[10]NRS 241.020(2)(c)(2).

[11]Attorney General v. Board of Regents, 119 Nev. 148, 154, 67 P.3d 902, 905 (2003).

July 16, 2003, meeting. At the July 16 meeting, Fritsch agreed to move Item 70 before Item 69 (his annual performance review). Without discussion, the Council then immediately voted to terminate Fritsch's contract. Fritsch now contends that Item 70 provided insufficient notice of his possible termination and is, therefore, void.[12]

Although Item 70 did not specifically suggest that termination was possible and did not list the specific financial impact that would be incurred by terminating Fritsch, the statement "Discussion and Possible Action on City Manager's Contract" was sufficient to meet NRS 241.020's "clear and complete" notice standard as a matter of law. Accordingly, we conclude that Fritsch's argument lacks merit.

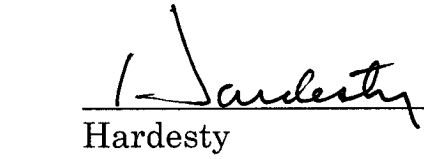
Conclusion

Fritsch has failed to present a genuine issue of material fact

[12]See NRS 241.036 (providing that "[t]he action of any public body taken in violation of any provision of [the open meeting law] is void.").

with respect to his breach of contract and open meeting law claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



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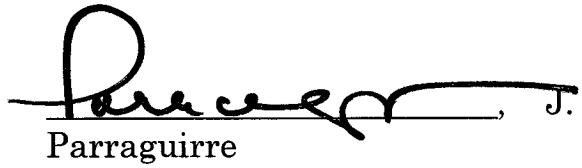

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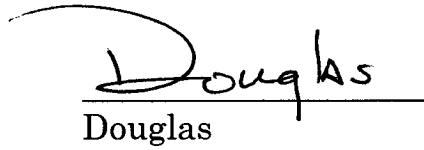

_____, J.
Douglas

cc: Hon. Jackie Glass, District Judge
Kathleen L. England, Settlement Judge
Law Office of Daniel Marks
Lionel Sawyer & Collins/Las Vegas
Smith & Kotchka
Eighth District Court Clerk