IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN Q. ADAMS,
Appellant,
vs.
NEVADA SYSTEM OF HIGHER EDUCATION, A STATE ENTITY,
Respondent.

No. 55563

FILED

MAR 18 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in an employment action. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

In October 2009, appellant John Q. Adams filed a complaint in district court seeking damages for breach of contract stemming out of the termination of his employment with respondent Nevada System of Higher Education (NSHE). Shortly thereafter, NSHE filed a motion to dismiss, which was ultimately granted over Adams' opposition.[1] In granting summary judgment, the district court concluded, among other things, that Adams' breach of contract claim failed as a matter of law. Adams now appeals.

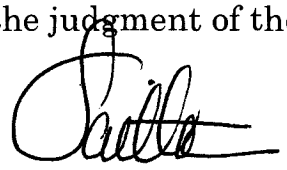
[1]The district court treated the motion to dismiss as one for summary judgment. See Lumbermen's Underwriting v. RCR Plumbing, 114 Nev. 1231, 969 P.2d 301 (1998) (explaining that if matters outside the pleadings are reviewed, a motion to dismiss should be treated instead as one for summary judgment).

On appeal, Adams argues that NSHE breached the employment contract by providing him ineffective notice of his nonrenewal. More specifically, Adams contends that, under the NSHE code incorporated into his 2005-2006 employment contract, he was owed notice at least 365 calendar days in advance of termination, which he did not receive. In response, NSHE asserts that the 2006-2007 employment contract entered into between it and Adams, as permitted by a different section of the NSHE code, contracted around the notice requirement. NSHE notes that the 2006-2007 employment contract expressly noted that it was "terminal," that Adams would not be reappointed upon the contract's conclusion, and that Adams' employment would end on a specified date.

This court reviews a district court summary judgment de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Having considered the parties' arguments and the record on appeal, we agree with the district court that Adams' breach of contract claim fails as a matter of law. Id. Here, while section 5.9.1(c) of the NSHE code requires notice to be provided "365 calendar days in advance of the termination of each succeeding employment contract of one academic or fiscal year's duration" for nontenured administrative faculty like Adams, section 5.4.3 explains that the code shall be made part of the terms and conditions of every employment contract "except as may be varied in writing by the parties to the contract." The excerpts in the record of the 2006-2007 employment contract make clear that the parties intended Adams' employment with NSHE to terminate at the conclusion of that contract, see Shoen v. Amerco, Inc., 111 Nev. 735, 743, 896 P.2d 469, 474 (1995) (explaining that employment contracts should be construed to give effect

to the intentions of the parties as demonstrated by the language used and the circumstances surrounding the agreement), and thus, the parties contracted around the section 5.9.1(c) notice requirement, as authorized by section 5.4.3. Accordingly, we conclude that summary judgment was properly granted on Adams' breach of contract claim, Wood, 121 Nev. at 729, 121 P.3d at 1029; Dickenson v. State, Dep't of Wildlife, 110 Nev. 934, 936, 877 P.2d 1059, 1061 (1994) (explaining that when there are no relevant factual disputes, interpretation of a contract is a question of law), and we

ORDER the judgment of the district court AFFIRMED.[2]



_____, J.
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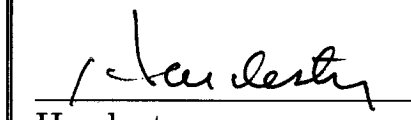

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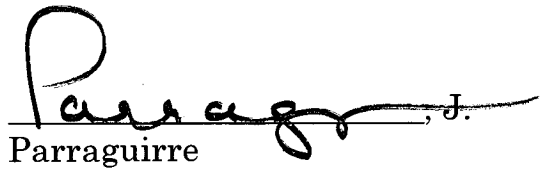

_____, J.
Parraguirre

cc: Hon. Robert H. Perry, District Judge
Philip A. Olsen, Settlement Judge
Jeffrey A Dickerson
Thomas J. Ray
Washoe District Court Clerk

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[2]As we conclude that Adams' breach of contract claim failed as a matter of law, making summary judgment proper on that basis, we need not address the parties' arguments regarding the district court's determination that issue preclusion principles barred this action.