COURT OF APPEALS
DECISION
DATED AND FILED

April 9, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP819 **Cir. Ct. No. 2011CV3069**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

EZELAGU E. OBASI,

PLAINTIFF-APPELLANT,

V.

MILWAUKEE SCHOOL OF ENGINEERING,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Milwaukee County: WILLIAM S. POCAN, Judge. *Affirmed*.

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Dr. Ezelagu E. Obasi, *pro se*, appeals from a judgment dismissing his breach of contract claim against the Milwaukee School of

Engineering ("MSOE").[1] Obasi argues that prior to trial, the trial court erroneously granted partial summary judgment in MSOE's favor after determining that Obasi was not covered by certain employee handbook provisions and that Obasi could not recover for emotional distress or damage to his professional reputation. Obasi also argues that the jury's verdict was erroneous. We reject Obasi's arguments and affirm.

BACKGROUND

¶2 In August 2010, MSOE determined that it needed to quickly hire an adjunct instructor to teach chemistry before classes began in September.[2] Obasi submitted an online application for the position. That application included Obasi's acknowledgement of the following:

> I understand that if I am hired, I will be given a contract for a specific period of time. By signing that contract, I agree to honor the length of that contract and MSOE agrees to do the same. MSOE reserves the right to terminate a contract for just cause reasons as stated in the "Statement on Academic Freedom, Faculty Appointments and Due Process" handbook. No one other than the President has the authority to modify this contract. Any such modifications will be in writing.

The "Statement on Academic Freedom, Faculty Appointments and Due Process" handbook (hereafter, "Handbook") referenced in the online application contains the following statement concerning just cause: "Classically, elements of just cause

[1] Obasi represented himself throughout the litigation, including at the jury trial.

[2] The facts in this section were taken from the record and trial testimony and are provided as background. This court recognizes that Obasi continues to dispute some of the facts.

have included institutional financial exigency, moral turpitude, gross misconduct, repeated refusal or inability to perform appropriate assignments, etc."

¶3 Dr. Matey Kaltchev, Chair of the Department of Physics and Chemistry, interviewed Obasi. Although Kaltchev had some difficulty communicating with Obasi because English is not Obasi's first language, Kaltchev testified that he nonetheless decided to hire Obasi based on Obasi's prior teaching experience. Kaltchev testified that he planned to monitor how well Obasi communicated with students and staff.

¶4 On August 18, 2010, Kaltchev emailed Obasi and offered him a fifty-percent teaching load for the fall, including one chemistry lecture and two labs. MSOE subsequently provided Obasi an appointment letter, which stated in relevant part:

> It is a pleasure to invite you to accept appointment as a part time member of the faculty of the Milwaukee School of Engineering as Adjunct Assistant Professor in the Physics & Chemistry Department for the [Academic Year] 2010-11. Summer employment is not included as part of this contract.
>
> Your salary will be at $5,100 per month, expressed in terms of a full-time workload. It is mutually understood that your academic assignment may be less than a full load and may vary from quarter to quarter, depending upon both the needs of the department and your interests, and your salary rate for a given quarter will be accordingly proportionate.
>
> ….
>
> As an indication of your acceptance of this arrangement, please sign and return one copy of this letter to the Office of the Vice President of Academics by September 20, 2010.

¶5 Obasi signed the appointment letter on August 24, 2010, after meeting with Kaltchev. During that meeting, Kaltchev told Obasi that he would like him to teach a full load and Obasi agreed. Obasi began preparing to teach his classes.

¶6 In early September, before classes began, Kaltchev decided to have Obasi teach only laboratory classes and reduced his workload accordingly. Kaltchev testified that he made that decision after receiving "feedback from faculty indicating that there might be communication problems." Kaltchev said that Obasi was "upset about losing part of his load" and Kaltchev told him to take "the opportunity to show, prove himself as a good teacher, and after that when any doubts about his communication skills were cleared," he could be considered for a lecture assignment again.

¶7 Classes began on September 7, 2010. During the second week of classes, Kaltchev heard from another professor that students had complained about Obasi. Kaltchev told the professor that students should direct any complaints to Kaltchev. In the third week of classes, Kaltchev received emails from seven students outlining difficulties they had communicating with Obasi and expressing concern about the way he ran his classes. The decision was made to terminate Obasi and he was notified on September 24, 2010.

¶8 Subsequently, Obasi filed the breach-of-contract lawsuit that is the subject of this appeal. The complaint alleged that Obasi's workload was reduced "against [his] will" and that he was later "fired … for no wrong doing," which was "in opposition to the terms of contract."

¶9 The parties conducted discovery. Thereafter, MSOE successfully moved for partial summary judgment on several bases, two of which are relevant

to this appeal. First, MSOE argued that Obasi was not protected by certain evaluation, reappointment, and dismissal procedures outlined in the Handbook because he is an adjunct faculty member, rather than a long-term faculty member. The trial court reviewed the Handbook and concluded that it was ambiguous as to whether adjunct professors are considered long-term employees who are accorded certain due process protections. In light of that ambiguity, the trial court looked to extrinsic evidence—including an affidavit outlining the hiring procedures at MSOE—and ultimately concluded that adjunct faculty members do not receive long-term appointments or the due process protections outlined in the Handbook.

¶10 MSOE's second argument was that Obasi was not entitled to recover emotional, reputational, or punitive damages. The trial court concluded that while "emotional and reputational damages may be available in certain rare breach of contract cases, without any evidence that such damages were in the parties' contemplation and with no facts in the record that would support such damages, the Court can exclude this request." The trial court further held that punitive damages were not permitted in employment contract actions and noted that Obasi had not pled any tort claims.

¶11 The case proceeded to trial, where witnesses included Obasi, Kaltchev, four of the students who complained about Obasi, and other MSOE representatives. The jury was asked to determine whether MSOE breached its contract with Obasi and, if so, what sum of money would compensate Obasi for the breach of contract. The jury answered the first question no. Accordingly, the trial court entered judgment dismissing Obasi's claim. This appeal follows.

DISCUSSION

¶12 Obasi argues that the trial court erroneously granted partial summary judgment on the two issues outlined above. He also argues that the jury erred when it found that MSOE did not breach its contract with Obasi. We consider each issue in turn.

I. Partial summary judgment issues.

A. Legal standards.

¶13 We review a grant of summary judgment independently, using the same methodology as the circuit court. ***Hardy v. Hoefferle***, 2007 WI App 264, ¶6, 306 Wis. 2d 513, 743 N.W.2d 843. The summary judgment methodology is well established and need not be repeated here. *See, e.g.*, ***Lambrecht v. Estate of Kaczmarczyk***, 2001 WI 25, ¶¶20-23, 241 Wis. 2d 804, 623 N.W.2d 751. The legal standard is whether there are any material facts in dispute that entitle the opposing party to a trial. ***Id.***, ¶24. We view the materials "in the light most favorable to the party opposing the motion." ***Id.***, ¶23.

B. Applicability of the Handbook.

¶14 Obasi argues that he should have been afforded the due process protections outlined in Sections VI.A and VI.B of the Handbook and that the trial court erred when it concluded that he was not entitled to those protections. At the outset, we recognize that nothing in the online application or in Obasi's appointment letter indicated that the entire Handbook would apply to him; the only reference to the Handbook appeared in the online application, which stated that "MSOE reserves the right to terminate a contract for just cause reasons as stated in the" Handbook.

¶15 The Handbook itself contains references to adjunct faculty, but not every section addresses its applicability to adjunct faculty. Nonetheless, we agree with the trial court that "[a]s a matter of law, Dr. Obasi did not have a long-term appointment under the [Handbook] … and is not entitled to the protections of the procedures of the [Handbook]." Specifically, we conclude that Section VI. is not ambiguous: it applies to faculty members with long-term contracts, and that did not include Obasi.

¶16 Section VI. is entitled "OFF-SCHEDULE REVIEWS" and states in relevant part:

> The most important aspect of being an MSOE faculty member is effective teaching. The regular review schedule is expected to adequately ensure that faculty are meeting and maintaining minimal expectations in this area. *However it is possible that a faculty member in the middle of their long-term contract could show a significant decrease in their teaching effectiveness.* When such a scenario arises, it is in the best interest of the institution and its constituencies to initiate a review of such a faculty member. Such reviews are considered off-schedule reviews and are initiated after a documented decline in institutional effectiveness.

(Emphasis added.) Following the introductory paragraphs of Section VI., Sections VI.A. and VI.B. outline the processes for initiating and conducting an off-schedule review. They include holding a personal conference with the faculty member, documenting deficiencies "in the faculty member's next annual evaluation," having the Vice President of Academics meet with the faculty member, and

following the College Faculty Appointment Review Committee process outlined earlier in the Handbook.[3]

¶17 We are unconvinced that Section VI. applies to adjunct faculty members like Obasi who are hired year-to-year and are not guaranteed a particular workload for each quarter. Section VI. provides an interim review procedure for faculty members who teach for multiple years and who undergo a regular performance review. Because the review procedures outlined in Section VI. do not apply to adjunct faculty members like Obasi, we affirm the trial court's grant of partial summary judgment on this issue.

C. Ability to seek emotional distress or reputational damages.

¶18 Obasi argues that the trial court erred when it concluded that Obasi could not seek damages for emotional distress or damage to his professional reputation.[4] He outlines the facts he believes show that MSOE officials engaged in "extreme and outrageous conduct[]." He argues that as a matter of law, he should be able to recover those damages.[5] In support, he outlines the elements of a claim for intentional infliction of emotional distress and argues that all the elements were met in this case.

[3] The section of the Handbook that discusses the College Faculty Appointment Review Committee procedures, III.B.4.2, explicitly applies only to faculty members "having a long term appointment." *See* Handbook Section III.B. Preface.

[4] In a single paragraph, MSOE asserts that "the jury verdict moots this appeal issue." Because the parties have not developed arguments on mootness, we will not consider that issue and will instead briefly address why the trial court correctly concluded that Obasi could not recover emotional distress or reputational damages.

[5] Obasi does not explicitly challenge the trial court's conclusion that he could not seek punitive damages.

¶19 We agree with the trial court that Obasi was not entitled to seek emotional distress or reputational damages in this breach-of-contract case. *See* ***Bourque v. Wausau Hosp. Ctr.***, 145 Wis. 2d 589, 596 n.2, 427 N.W.2d 433 (Ct. App. 1988) ("Damages for breach of employment contract are limited in Wisconsin to lost wages and expenses incurred in obtaining new employment. Damages for emotional distress, humiliation, loss of reputation, and attorney fees are not permitted."). Obasi did not plead any torts in his complaint, and he has not provided any case law that refutes the proposition that emotional distress or reputational damages cannot be awarded in an employment contract case. We decline to develop an argument for him. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988). Obasi's challenge to the grant of partial summary judgment fails.

II. Challenge to the jury's verdict.

¶20 Obasi argues that the jury "erred in reaching the verdict that [MSOE] did not breach its employment contract with" Obasi. (Some capitalization omitted.) He asserts that "any reasonable jury would have concluded that repeated inability to perform appropriate assignments did not occur in this case." (Bolding omitted.) He further argues that the seven letters of complaint filed by the students contained false allegations and that an MSOE administrator was not a credible witness. In short, Obasi challenges the jury's credibility assessments and factual findings.

¶21 The scope of an appellate court's review of a jury's findings is narrow. We affirm the jury's verdict if there is any credible evidence that under any reasonable view supports the verdict. ***State v. Quinsanna D.***, 2002 WI App 318, ¶30, 259 Wis. 2d 429, 655 N.W.2d 752. If conflicting reasonable inferences

may be drawn from the evidence, we draw the reasonable inference that supports the jury's verdict. ***Id.*** It is the role of the jury, not the appellate court, to assess the credibility of witnesses and the weight to be given to the testimony of those witnesses. ***Morden v. Continental AG***, 2000 WI 51, ¶39, 235 Wis. 2d 325, 611 N.W.2d 659. On review, we search the record for credible evidence that supports the jury's verdict, not for evidence that supports a verdict that the jury could have reached but did not. ***Id.***

¶22 Applying those standards here, we reject Obasi's challenge to the jury's verdict. First, Obasi attacks the credibility of several witnesses. It was the jury's role to assess the credibility of those witnesses and we will not overturn those credibility determinations. *See* ***id.***

¶23 Second, we conclude that there was credible evidence in the record that supports the jury's verdict. The jury was asked to determine if MSOE breached its employment contract with Obasi when it terminated him. MSOE argued that under the contract, it could terminate Obasi for "just cause," including "repeated … inability to perform appropriate assignments." There was credible evidence presented to the jury that Obasi lacked the ability to perform his assignments, including evidence that he was unable to effectively communicate with students, did not clarify his expectations concerning lab reports, missed office hours, and had at least one grading error. This evidence supports the jury's verdict. *See* ***id.*** Accordingly, we affirm.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.