McCauley v. City of San Diego

Court of Appeal of California, Fourth Appellate District, Division One

April 24, 2020, Opinion Filed

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Reporter
2020 Cal. App. Unpub. LEXIS 2518 *

JOSH MCCAULEY, Plaintiff and Appellant, v. CITY OF SAN DIEGO, Defendant and Respondent.

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Prior History: [*1] APPEAL from a judgment of the Superior Court of San Diego County, No. 37-2017-00012321-CU-CO-CTL, Randa Trapp, Judge.

Disposition: Affirmed.

Counsel: Shewery and Saldana and Christopher Saldaña for Plaintiff and Appellant.

Office of the City Attorney; Mara W. Elliott, City Attorney, George Schaefer, Assistant City Attorney and Alison P. Adema, Deputy City Attorney, for Defendant and Respondent.

Judges: BENKE, Acting P. J.; HALLER, J., DATO, J. concurred.

Opinion by: BENKE, Acting P. J.

Opinion

Plaintiff and appellant Josh McCauley sued defendant and respondent City of San Diego (the City) for breach of contract—the implied covenant of good faith and fair dealing—after the City terminated his employment during his probationary period. McCauley appeals from a judgment dismissing his first amended complaint without leave to amend. We affirm the judgment for the reasons stated below.

BACKGROUND

McCauley was admitted to the Fire Academy and completed the training. He was hired by the San Diego Fire-Rescue Department (Department) of the City as a Firefighter I, with a probationary period of one year. The Department notified McCauley on May 15, 2014, that his employment would be terminated as of May 30, 2014.

McCauley filed a complaint three years [*2] later on April 5, 2017, and a first amended complaint (FAC) on January 25, 2018. He stated a cause of action for breach of the covenant of good faith and fair dealing and asked for monetary damages and equitable relief.

The City demurred, McCauley responded. Following a hearing, the court issued an order of dismissal without leave to amend. The court found that McCauley failed to show compliance with the claims presentation requirement of the Government Claims Act (Gov. Code, § 900 et seq.) and failed to allege facts sufficient to state a cause of action for breach of the covenant of good faith and fair dealing. The court stated that public employment is held by statute, not contract. Therefore,

public employees cannot state a cause of action for breach of contract or breach of the implied covenant of good faith and fair dealing. The court ruled that McCauley could not amend his complaint to state a claim for equitable relief because the claim for equitable relief was merely incidental to the monetary relief sought.

Judgment was entered for the City. McCauley timely appealed.

DISCUSSION

McCauley concedes that he cannot pursue his claim for monetary damages because he did not comply with the required claims presentation, [*3] however, he claims the court erred in finding he did not have a contract of employment with the City and in failing to give him leave to amend to state a claim for injunctive relief.

Standard of Review

We review de novo an order sustaining a demurrer. (*Intengan v. BAC Home Loans Servicing LP* (2013) 214 Cal.App.4th 1047, 1052 (*Intengan*).) "We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*McBride v. Boughton* (2004) 123 Cal.App.4th 379, 384-385.) We review the exhibits attached to a complaint and accept as true the facts stated in those exhibits. (*Ivanoff v. Bank of America, N.A.* (2017) 9 Cal.App.5th 719, 726 (*Ivanoff*).) When there is a conflict between the exhibits and the facts in the complaint, we give precedence to the facts contained in the exhibits. (*Ibid.*) "In order to prevail on appeal from an order sustaining a demurrer, the appellant must affirmatively demonstrate error. Specifically, the appellant must show that the facts pleaded are sufficient to establish every element of a cause of action and overcome all legal grounds on which the trial court sustained the demurrer. [Citation.] We will affirm the ruling if there is any ground on which the demurrer could have been properly sustained." (*Intengan*, at p. 1052.)

We review the court's denial of leave to amend for an abuse of discretion. "'Leave to [*4] amend a complaint is thus entrusted to the sound discretion of the trial court. ". . . The exercise of that discretion will not be disturbed on appeal absent a clear showing of abuse. *More importantly, the discretion to be exercised is that of the trial court, not that of the reviewing court*. Thus, even if the reviewing court might have ruled otherwise in the first instance, the trial court's order will . . . not be reversed unless, as a matter of law, it is not supported by the record.'" [Citations.]" (*Branick v. Downey Savings & Loan Assn*. (2006) 39 Cal.4th 235, 242.)

Contract Claim

McCauley asserts a contract claim is permissible because there is no statute controlling probationary employment. The trial court did not err in denying leave to amend to state a claim for injunctive relief. That claim would still be on the theory of breach of the duty of good faith and fair dealing. A covenant of good faith and fair dealing exists only if there is a contractual relationship between the parties. (*Molecular Analytical Systems v. Ciphergen Biosystems, Inc.* (2010) 186 Cal.App.4th 696, 712.) McCauley had no employment contract with the City.

A public employee cannot state a claim for breach of contract or breach of the implied covenant of good faith and fair dealing. (*Shoemaker v. Myers* (1990) 52 Cal.3d 1, 23-24.) Contract law does not apply to public employees. "[I]t is well settled in [*5] California that public employment is not held by contract but by statute . . . . '[The] statutory provisions controlling the terms and conditions of civil service employment cannot be circumvented by purported contracts in conflict therewith.'" (*Miller v. State of California* (1977) 18 Cal.3d 808, 813-814 (*Miller*); see *Hill v. City of Long Beach* (1995) 33 Cal.App.4th 1684, 1690 (*Hill*) [noncivil service employment is by statute, not contract, along with civil-service employment].)

A public employee has no contractual right to continued employment. (*Cal Fire Local 2881 v. California Public Employees' Retirement System* (2019) 6 Cal.5th 965, 977 (*Cal Fire*).) " '[I]nsofar as the duration of such employment is concerned, no employee has a vested contractual right to continue in employment beyond the time or contrary to the terms and conditions fixed by law.' [Citation.]" (*Miller, supra*, 18 Cal.3d at p. 813.) Public agencies have broad discretion in determining whether to retain a probationary employee. (*Bogacki v. Board of Supervisors* (1971) 5 Cal.3d 771, 783 (*Bogacki*); *Dona v. State Personnel Bd.* (1951) 103 Cal.App.2d 49, 52 [public employer has great discretion in rejecting probationer].) Specifically, "[a]n employee who is still on probation may be terminated 'without a hearing and without judicially cognizable good cause.' [Citations.]" (*Amezcua v. Los Angeles County Civil Service Commission* (2019) 44 Cal.App.5th 391, 394

(*Amezcua*).)

McCauley acknowledges that he is not a party to any collective bargaining agreement. He claims that the Department's Basic Fire Academy Manual (Manual) constituted "an express written contract" [*6] with the City that governed the terms of his probationary status. He attaches a copy of the Manual to his complaint, but neither in his complaint nor in his brief on appeal does he identify any portion of that Manual that governs his probationary employment. We give precedence to the language of the manual that conflicts with McCauley's allegation in the complaint that he had a contract with the City. (*Ivanoff, supra*, 9 Cal.App.5th at p. 726.) The written terms of the Manual apply to recruits—not to probationary employees. McCauley's only citation to any part of that Manual is to section 13, regarding termination, which states: "It is the goal of the Basic Fire Academy to prepare Recruits to assume the responsibilities of entry-level Firefighters. . . . There are several reasons why a Recruit would be terminated from the Basic Fire Academy as outlined in this policy and other documents produced by or for the Department." (Emphasis deleted.) However, as we have noted, the clear language applies only to recruits, not to probationary employees. McCauley has never identified any contract that guaranteed him permanent employment as a firefighter or even a "fair shake" at obtaining permanent employment.

McCauley relies on *Walker v. Northern San Diego County Hospital Dist.* (1982) 135 Cal.App.3d 896, 903, for the proposition [*7] that a public employee on probationary status had a contract for employment spelling out the standards for satisfying probationary employment requirements and becoming a permanent public employee. *Walker* held only that it was a factual question for the jury, as opposed to a legal question for the judge, whether a public hospital had promised an employee she would be fired only for good cause. (*Id.* at p. 905.) It was assumed without discussion that the public employee and employer had a legally authorized contract that governed the employment relationship. (*Id.* at p. 903.) A contract, when it exists, overrides the statutory provisions for employment. (See *Retired Employees Assn. of Orange County v. County of Orange* (2011) 52 Cal.4th 1171, 1182.) The rule of *Miller* that public employment is governed by statute, not contract, was not at issue in *Walker* and was not discussed. (See *Hill, supra*, 33 Cal.App.4th at p. 1691 [criticizing and declining to follow *Walker*]; *Miller, supra*, 18 Cal.3d at p. 813.) McCauley and the City did not have a contract that governed probationary employees, so *Walker* is not applicable here.

Because McCauley had no contract claim, he could not have stated a claim for injunctive relief under the covenant of good faith and fair dealing.

Other Remedies

McCauley argues that he should be allowed to sue for a breach of an implied covenant because he has [*8] no other recourse to remedy a wrong. He states this argument is supported by the "policy behind the determination that public employment is always a creature of statute," and that the "state civil service system requires good faith and fair dealing" in resolving employment issues, citing *Valenzuela v State of California* (1987) 194 Cal.App.3d 916, 920.) The employee in *Valenzuela* was in the state civil service, subject to the statutes governing public employment. (*Id.* at pp. 919-920.) The court held that a claim for breach of the implied covenant of good faith and fair dealing simply restated the obligation of the state to deal fairly and in good faith with its employees as required by its statutory and administrative rules. (*Id.* at p. 920.) The employee's remedies were limited to the administrative procedures provided by the state civil service system and his claim was barred by a failure to exhaust administrative remedies. (*Ibid.*) The *Valenzuela* court relied on the law that the terms and conditions of public employment are set by statute, not contract. (*Ibid.*) It did not create a contract action for breach of good faith and fair dealing where none exists.

McCauley had other remedies to pursue employment-related wrongs. "A probationary employee may not be rejected for the exercise [*9] of a constitutional right [citation] or for engaging in an activity protected by labor statutes." (*Trustees of Cal. State University v. Public Employment Relations Bd.* (1992) 6 Cal.App.4th 1107, 1130; *Bogacki, supra*, 5 Cal.3d at p. 778.) He had statutory rights including the right to pursue a discrimination claim under the Fair Employment and Housing Act and the right to workers' compensation in case of injury. He met with the Department Chief to discuss the failure to be hired permanently. The City's attorney represented that McCauley had filed an internal grievance during his employment and it was addressed by the City.

City Regulations

McCauley also claims that if he had no contract cause

of action, he could have stated a cause of action to enforce the "City regulations" on its own or as a quasi-ordinance. He has not identified any such regulations, however, and thus has not shown how he could state a claim.

City rules or regulations create an entitlement to a governmental benefit, such as a permanent job, only when the rules or regulations set out the terms and conditions of that benefit or its denial. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, 169-170; *Board of Regents v. Roth* (1972) 408 U.S. 564, 577 [a property interest in employment might be created by statute, rule or policy if it sets out the terms and conditions of the employment].) Presumably McCauley refers again to the Basic Fire Manual, as he has [*10] told us that no civil service protections or collective bargaining agreement apply to him and has never identified any other regulations or ordinance applicable to him. The Manual does not set out the terms and conditions of his probationary employment.

Public rules and regulations are interpreted the same way as statutes—to ascertain the legislative intent to permit us to effectuate the purpose of the law. (*Amezcua, supra*, 44 Cal.App.5th at p. 397; *Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715.) "We first examine the words themselves because the statutory language is generally the most reliable indicator of legislative intent. [Citation.] The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context. [Citation.]" (*Hassan, supra*, at p. 715.) If the plain, commonsense meaning of a statute's language is unambiguous, the plain meaning controls. (*Satele v. Superior Court* (2019) 7 Cal.5th 852, 858.)

Again, the plain, unambiguous words of the Manual refer only to recruits, not to probationary employees. The Manual mentions termination from the Basic Fire Academy, but nothing about probationary employees or the guarantee of a permanent job. The Manual provides neither conditions for permanent employment not entitlement to government employment. McCauley has not identified any regulations [*11] of the City or of the Department under which he could state an alternate claim.

In sum, McCauley cannot state any cause of action that would entitle him to injunctive relief. The trial court did not abuse its discretion in denying leave to amend the complaint.

DISPOSITION

Judgment affirmed. Costs awarded to respondent.

BENKE, Acting P. J.

WE CONCUR:

HALLER, J.

DATO, J.