

GILA REG'L. MED. CTR. V. OSUAGWU

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GILA REGIONAL MEDICAL CENTER,
Plaintiff-Appellee,
v.
CHINONYEREM OSUAGWU, M.D.,
Defendant-Appellant.

No. 31,936

COURT OF APPEALS OF NEW MEXICO

December 17, 2013

APPEAL FROM THE DISTRICT COURT OF GRANT COUNTY, Henry R. Quintero,
District Judge

COUNSEL

Kemp Smith, LLP, CaraLynBanks, Las Cruces, NM, for Appellee

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JUDGES

MICHAEL E. VIGIL, Judge. WE CONCUR: RODERICK T. KENNEDY, Chief Judge, M.
MONICA ZAMORA, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Judge.

{1} Defendant appeals from the order of the district court granting Plaintiff summary judgment. We reverse.

BACKGROUND

{2} This is the second time this case is before us on appeal. Because this is a memorandum opinion, and the parties are familiar with the procedural background of the case, we only set forth the facts that are essential to our disposition of this appeal.

{3} In our memorandum opinion herein, filed on July 15, 2011, in Cause No. 31,149, we reversed the order of the district court granting Plaintiff summary judgment on its claim that under the agreement between the parties, Defendant was obligated to repay living expenses advanced by Plaintiff to Defendant because Defendant prematurely left Plaintiff's employment. We noted that Defendant's answer asserted Plaintiff's own breach of contract (i.e., failure to comply with its bylaws) as an affirmative defense to the claim. In addition, Defendant had filed a motion to file an amended answer to add counterclaims. Without ruling on Defendant's motion to amend the answer to add counterclaims, the district court granted summary judgment in Plaintiff's favor.

{4} Our prior opinion noted in several instances that the factual circumstances of Defendant's departure and whether Plaintiff complied with its bylaws were in dispute, and that in granting summary judgment, the district court had ruled on the merits of these disputed circumstances. In addition, we noted that the district court had also resolved disputed issues of fact related to Defendant's proposed counterclaims. We reversed, holding as a procedural matter, that the district court erred in granting summary judgment prior to ruling on Defendant's motion to amend his answer to add counterclaims. We also held as a substantive matter, that the district court had "prematurely and inappropriately ruled on the merits of Defendant's affirmative defenses" because "the facts and the applicable legal doctrines are very much in dispute." The "Conclusion" to our opinion states, "We reverse the district court's order granting Plaintiff summary judgment and remand for a ruling on Defendant's motion to amend and for trial on the merits."

{5} The record before us in this second appeal reflects that on remand, the district court granted Defendant's motion to add counterclaims, then dismissed them on jurisdictional grounds. The district court then found there were no material disputed facts to try, and "reinstated" the summary judgment it previously granted to Plaintiff. Defendant appeals.

DISCUSSION

{6} The prior opinion of this Court noted that there were disputed issues of material fact related to Plaintiff's claim, Defendant's affirmative defense, and Defendant's proposed counterclaims. On remand, the district court dismissed Defendant's proposed counterclaims on the legal basis that it lacks jurisdiction to decide the counterclaims, and they were dismissed. However, dismissal of the counterclaims had no effect on our conclusion that material issues of fact precluded granting summary judgment on Plaintiff's claim and Defendant's affirmative defense.

{7} In *Martinez v. Pojoaque Gaming, Inc.*, 2011-NMCA-103, ¶ 17, 150 N.M. 629, 264 P.3d 725, we stated:

It is well settled that the duty of a lower court on remand is to comply with the mandate of the appellate court, and to obey the directions therein without variation. Where there is a question as to whether a lower court followed this Court's mandate on remand, it is within the power, and it is the duty, of this Court to construe its own mandate in case there is any ambiguity in the same.

(alterations, internal quotation marks, and citations omitted). Further, we review de novo the question of whether the district court complied with our mandate on remand, as it involves a question of law. *Id.*

{8} We conclude that the district court failed to comply with our mandate in "reinstating" summary judgment on Plaintiff's breach of contract claim. Our prior opinion held that the presence of material issues of fact precluded granting summary judgment on the claim. Plaintiff acknowledges that the basis for the original summary judgment on its claim for breach of contract "was that [Defendant] resigned his [h]ospital privileges and thereby breached the terms of the [r]ecruitment [a]greement which required him to work as a credentialed physician for three (3) years in exchange for the income guarantee." The facts, as they relate to Defendant's departure from Plaintiff's employment, remain in dispute, and our mandate required the district court to hold a trial on the merits of this claim and Defendant's affirmative defense.

{9} In light of our conclusion, we express no opinion on the propriety of the dismissal of Defendant's counterclaims or the denial of his motion for a change of venue, as they do not constitute final orders in the present posture of the case.

CONCLUSION

{10} The order granting Plaintiff summary judgment is reversed.

{11} **IT IS SO ORDERED.**

MICHAEL E. VIGIL, Judge

WE CONCUR:

RODERICK T. KENNEDY, Chief Judge

M. MONICA ZAMORA, Judge