

[Cite as *Gatti v. Ohio Dept. of Transp.*, 2002-Ohio-419.]

IN THE COURT OF CLAIMS OF OHIO

ROBERT GATTI :

Plaintiff : CASE NO. 99-09145

v. : DECISION

DEPARTMENT OF TRANSPORTATION : Judge Russell Leach

Defendant :

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Plaintiff brings this action against defendant alleging a claim for estoppel and breach of an implied employment agreement. construction laborer who had last worked in November of 1997. On January 27, 1998, plaintiff filled out a civil service application for a position with defendant, Ohio Department of Transportation (ODOT). In his application, plaintiff disclosed that he had been convicted in the mid 1980s for felony misuse of a communication device. On March 20, 1998, plaintiff received a telephone call from Tom Brent, ODOT's Mahoning County manager, who requested that plaintiff interview for the position of Highway Maintenance Worker II (HMW II). Plaintiff subsequently interviewed for the position and took a short road test.

In an interoffice communication dated March 23, 1998, the interview panel recommended plaintiff for the position. The memo was signed by Brent and approved by Dale Dreger, ODOT's acting deputy director. According to plaintiff, on March 30, 1998, Brent called plaintiff to offer him the position and asked

plaintiff to come to the office to complete some employment documents. Brent did not recall this conversation.

On April 7, 1998, plaintiff met with Jacqueline Edwards, ODOT's district personnel officer, to complete the necessary employment documents. Plaintiff was not given the date he was to begin work. When he had not heard from ODOT for several weeks, plaintiff made telephone calls to both Edwards and Brent and was told that his employment documents had been sent to Columbus for review, but that no response had been received. On May 28, 1998, plaintiff again spoke with Dreger, who informed him that his employment application had been rejected because of his felony conviction.

Plaintiff alleges that he relied to his detriment upon oral promises of employment made by Brent and that the employment-related documents provided to plaintiff support the inference of employment. Plaintiff claims that he discontinued seeking union work for several months in reliance upon defendant's written and oral representations that he had been hired.

As a general rule, principles of estoppel do not apply against the state or its agencies in the exercise of a governmental function. *Cullen v. Ohio Dept. of Rehab. & Corr.* (1998), 125 Ohio App.3d 758. However, exceptions to this rule have been recognized in certain circumstances. See, e.g., *Ruozzo v. Giles* (1982), 6 Ohio App.3d 8 (promissory estoppel available against the state to prevent the state from denying a license solely on the basis of an untimely filing, where an agent of the state misinformed an applicant about the time constraints for filing); *Awada v. Univ. of Cincinnati* (1997), 83 Ohio Misc.2d 100, (promissory estoppel is available against the state where a faculty member reasonably relies upon the promise of a search committee member to recommend him for another faculty position);

State ex rel. Celebrezze v. Tele-communications Inc. (1990), 62 Ohio Misc.2d 405, (state was estopped to assert lack of control board approval as a basis to invalidate a lease where legal counsel for the state auditor certified that the transaction complied with controlling board requirements). Based upon the above-cited decisions, the court finds that estoppel is available against the state under the circumstances of this case.

"A prima facie case for equitable estoppel requires plaintiff to prove four elements: 1) that the defendant made a factual misrepresentation; 2) that it is misleading; 3) that it induces actual reliance which is reasonable and in good faith; 4) which causes detriment to the relying party." See *Doe v. Blue Cross/Blue Shield of Ohio* (1996), 79 Ohio App.3d 369.

As stated above, plaintiff bases his claim of estoppel primarily upon the assurance that he had the job allegedly offered by Brent. Although Brent did not recall the telephone conversation with plaintiff, he testified that he would never have told plaintiff that he was hired. Brent testified that he knew the decision of the hiring committee was only a recommendation and that a final employment decision had to be made by the Columbus office. The court found this testimony to be credible and, therefore, finds that Brent did not tell plaintiff he was hired. Thus, plaintiff has failed to prove an essential element of his case.

Moreover, even if Brent did make statements to plaintiff that may have been construed as assurances of employment, plaintiff must still prove that he reasonably relied upon such assurances to his detriment. *Doe, supra*. For the following

reasons, the court finds plaintiff's reliance was not reasonable under the circumstances.

It is clear that Brent did not have authority to offer plaintiff the position. The hiring process at ODOT requires that the hiring committee's written recommendation be forwarded to the ODOT home office for approval and that the final employment decision be made by ODOT's director. Plaintiff acknowledges that Edwards never told him that he was hired when he met with her on April 7, 1998, and that he was never given a starting date to begin work. The meeting with Edwards occurred just one week after Brent allegedly told plaintiff that he had the job. Plaintiff also signed a document on April 7, 1998, acknowledging that his employment was conditioned upon the successful completion of drug testing. Even though plaintiff knew that he would pass the test, his signature upon this document evidences his understanding that Brent did not have the final word on employment. Based upon this evidence, the court finds that plaintiff knew or should have known any assurance made by Brent did not represent the final hiring decision.

Plaintiff further argues that his reliance upon Brent's statement was certainly reasonable in light of the fact that Dreger had signed off on the hiring committee's written recommendation. This argument is without merit. First, there is no credible evidence that plaintiff ever saw the committee's recommendation letter at any time prior to the date his application was rejected. Moreover, if he had, it is simply not reasonable to believe that this letter was anything more than a recommendation of employment.

In further support of plaintiff's claim that his reliance was reasonable, plaintiff points to the employee handbook and an

employee orientation package he was given on April 7, 1998. Although each set of documents contains language purporting to welcome new employees to ODOT, each set also includes conspicuous language disclaiming any employment relationship. Consequently, plaintiff's receipt of those documents subverts his argument that his reliance was reasonable. For similar reasons, plaintiff's claim of an implied contract is without merit. See *Wing v. Anchor Media, Ltd.* (1991), 59 Ohio St.3d 108.

In the final analysis, plaintiff failed to prove by a preponderance of the evidence that he reasonably relied upon any representations by ODOT regarding his employment status. Consequently, plaintiff failed to prove his claim of estoppel.

Plaintiff has also failed to prove the existence of an implied contract. To the extent that plaintiff seeks recovery for his emotional injuries and damage to his reputation, there is no credible or persuasive evidence that defendant either published any false or defamatory statements about plaintiff or intentionally inflicted serious emotional distress upon plaintiff. Judgment shall be rendered in favor of defendant.

RUSSELL LEACH
Judge

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IN THE COURT OF CLAIMS OF OHIO

ROBERT GATTI :

Plaintiff : CASE NO. 99-09145

v. : JUDGMENT ENTRY

DEPARTMENT OF TRANSPORTATION : Judge Russell Leach

Defendant :

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This case was tried to the court. The court has considered the evidence, and for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

RUSSELL LEACH
Judge

Entry cc:

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