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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0631**

Edwards Lifesciences, LLC,
Respondent,

vs.

Bryan Szweda,
Appellant.

**Filed March 18, 2019
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CV-16-5418

Cortney G. Sylvester, Allyson J. Petersen, Nilan Johnson Lewis PA, Minneapolis,
Minnesota (for respondent)

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appellant)

Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and Smith,
Tracy M., Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant-employee challenges the district court's grant of summary judgment in
favor of respondent-employer on its breach-of-contract claim to recover portions of

appellant's sign-on bonus and relocation benefits, arguing that the district court's grant of summary judgment is unsupported by admissible evidence and that there are genuine issues of material fact. Appellant also challenges the district court's summary dismissal of his breach-of-contract counterclaim regarding certain stock options. We affirm.

FACTS

On February 2, 2015, appellant Bryan Szweda began working for respondent Edwards Lifesciences LLC (Edwards) as its "Senior Director, Engineer—Heart Valve Therapy." In April 2016, Edwards sued Szweda, asserting breach-of-contract and promissory-estoppel claims. Edwards alleged that Szweda's "employment with [Edwards] was terminated on or about October 26, 2015" and that he was thus required to repay \$12,500 of his sign-on bonus and \$123,110.75 of his relocation benefits under the terms of an offer letter and relocation-benefits agreement. In December 2016, Szweda counterclaimed for breach of contract, asserting that he was entitled to the vested portion of certain stock options.

In July 2017, Edwards moved for summary judgment. The summary-judgment record established the following undisputed facts. By letter dated December 22, 2014, Edwards offered Szweda the position of "Senior Director, Engineer—Heart Valve Therapy." The offer letter proposed that Szweda would begin employment on February 2, 2015, and that he would receive an annual salary of \$230,000, a sign-on bonus of \$20,000, an equity grant valued at \$60,000, and relocation benefits.

As to the sign-on bonus, the offer letter stated,

In the event that you should separate from Edwards Lifesciences LLC prior to two (2) years of employment (except through a workforce reduction and/or job elimination), the bonus will be repayable to Edwards Lifesciences LLC on a pro-rated basis. For example, should the separation occur after twelve (12) months of employment, the pro-rated amount due would be calculated as follows [(24-12)/24]*(\$20,000.00)=\$10,000.00.

As to the equity grant, the offer letter stated that the grant would include stock options, which would “vest 25% per year over four years of employment with Edwards from the date they were granted.” According to a “Grant/Award Activity Report” in the record, Szweda received 2,494 stock options on February 19, 2015.

Lastly, as to relocation benefits, the offer letter stated,

In the event that you should separate from Edwards Lifesciences LLC prior to two (2) years of employment (except through a workforce reduction and/or job elimination), all relocation expenses will be repayable to Edwards Lifesciences on a pro-rated basis. For example, should the separation occur within the first twelve (12) months of employment, the pro-rated amount due would be 100% of all relocation expenses incurred to date. Should the separation occur within the second twelve (12) months of employment, the pro-rated amount due would be 50% of all relocation expenses incurred to date.

The offer letter provided that “[t]his offer, if accepted, creates an employment-at-will relationship between you and Edwards Lifesciences and may be terminated at any time by you or Edwards Lifesciences LLC.” Szweda signed the offer letter on December 24, 2014, under the heading “OFFER ACCEPTED” and submitted it to Edwards. The parties executed an employment agreement, which Szweda signed on December 24, 2014, and Edwards signed on February 2, 2015.

On February 10, 2015, Szweda signed a document entitled “RELOCATION REPAYMENT AGREEMENT,” which provided that he agreed to repay relocation benefits “if, within twenty-four (24) months of the commencement of [his] employment in the new work location, [his] employment is terminated for any reason (except through a workforce reduction and/or job elimination) by [him] or by [Edwards]” and established a repayment schedule.

On September 10, 2015, the State of Minnesota charged Szweda with five counts of theft by swindle and one count of theft of a trade secret. The criminal complaint alleged that between September 1, 2010, and September 30, 2014, Szweda “received over \$140,000 in reimbursements or benefits from his [former] employer by falsifying expense reports [and] reimbursement requests or otherwise misusing the company-issued credit card.” The complaint also alleged that on the day Szweda’s former employer placed him on administrative leave, he copied a file containing “highly sensitive files that had been marked as confidential” from his work computer to an external hard drive and then copied them from the external hard drive to his home computer and another external hard drive.

In his deposition in this case, Szweda testified that, in the fall of 2015, Edwards placed him on an administrative personal leave of absence based on his criminal charges. Szweda testified that an Edwards employee instructed him to turn in his work computer and badge, which he did, and that he also turned in his work iPad. Szweda testified that he stopped performing work for Edwards after he was placed on administrative leave.

Edwards sent Szweda a letter dated October 2, 2015, stating that he had been placed on an administrative personal leave of absence “effective September 28, 2015,” that it was

an “unpaid leave,” and that during such leaves employees are required to exhaust their “accrued vacation and/or sick time.” The letter also stated that Szweda’s sick time would be paid out on October 9, that his vacation time would be paid out on October 23, and that “[a]s of October 26, 2015, Mr. Szweda will no longer be receiving paid time from Edwards Lifesciences LLC.”

Edwards sent Szweda a demand letter dated January 14, 2016, stating that his “employment with Edwards was ended on October 26, 2015,” and demanding that he repay a \$12,500 prorated share of his sign-on bonus and \$123,110.75 of his relocation benefits. On February 16, Szweda’s counsel responded to the demand letter by email, writing,

As we have discussed in the past, [Szweda] does not agree with your position that he owes monies to Edwards pursuant to the Relocation Assistance Agreement nor does he agree that he owes monies to Edwards pursuant to the Offer Letter.

In the summary-judgment proceedings, Szweda maintained that his employment with Edwards had never been terminated and that he therefore was not obligated to repay any of his sign-on bonus or relocation benefits. The district court rejected that argument, reasoning that Szweda should have been aware that his employment had been terminated upon his receipt of Edwards’s January 14, 2016 demand letter, which stated that his employment had ended in October 2015. The district court granted summary judgment for Edwards on its breach-of-contract claim, dismissed its promissory-estoppel claim as moot, and dismissed Szweda’s counterclaim. The district court awarded judgment for Edwards in the amount of \$135,610.75, comprised of a \$12,500 prorated share of Szweda’s sign-on bonus and \$123,110.75 of his relocation benefits. Szweda appeals, challenging the district

court's grant of summary judgment and dismissal of his counterclaim. He does not challenge the district court's computation of damages.

DECISION

“A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). A factual dispute is material when its resolution will affect the outcome of the case. *Antonello v. Comm’r of Revenue*, 884 N.W.2d 640, 645 (Minn. 2016). A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). No genuine issue of material fact exists “when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). But if the record evidence could support “disputed reasonable inferences from undisputed facts, . . . summary judgment [is] improper.” *Henson v. Uptown Drink, LLC*, ___ N.W.2d ___, ___, 2019 WL 287474, at *1 (Minn. Jan. 23, 2019).

This court reviews a district court’s grant of summary judgment de novo. *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 150 (Minn. 2014). “We view the evidence in the light most favorable to the party against whom summary judgment was granted to

determine whether there are any genuine issues of material fact and whether the district court correctly applied the law.” *Id.*

I.

Szweda contends that the district court’s grant of summary judgment is based on inadmissible evidence.

“Evidence offered to support or defeat a motion for summary judgment must be such evidence as would be admissible at trial.” *Twin Cities Metro-Certified Dev. Co. v. Stewart Title Guar. Co.*, 868 N.W.2d 713, 720 (Minn. App. 2015) (quotation omitted); *see also Murphy v. Country House, Inc.*, 240 N.W.2d 507, 511 (Minn. 1976) (stating that because affidavit contained inadmissible hearsay, it could not be considered in deciding summary-judgment motion). A document must be authenticated to be admissible. Minn. R. Evid. 901(a). This requirement “is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” *Id.* The district court’s determination that a document meets the authentication requirement in rule 901 is reviewed for an abuse of discretion. *Gopher Oil Co. v. Am. Hardware Mut. Ins. Co.*, 588 N.W.2d 756, 765 (Minn. App. 1999), *review denied* (Minn. Apr. 20, 1999).

Szweda argues that the following exhibits, which were attached to Edwards’s counsel’s affidavit in support of summary judgment, were inadequately authenticated: “Employee Expense Detail Report,” “HR Termination Checklist,” “November 10, 2015 COBRA Notice to Bryan Szweda & Family,” “February 1, 2016 email from Vickie Seriki to Andy Tymkiw,” “March 25, 2016 Andy Tymkiw email,” and “January 14, 2016 Demand Letter.” Specifically, Szweda argues that Edwards’s counsel “lacked the foundation

necessary” to properly authenticate those documents because she did not have personal knowledge of them.

The district court explained that it entered “judgment against [Szweda] based on January 14, 2016 as his termination date.” The district court’s use of January 14, 2016, as the termination date was based on Edwards’s January 14, 2016 demand letter; it was not based on any of the other documents that Szweda challenges as inadequately authenticated. We therefore limit our consideration of Szweda’s evidentiary challenge to the January 14, 2016 demand letter.

At Szweda’s deposition in the underlying action, Edwards presented the January 14, 2016 demand letter to Szweda, Szweda testified that his counsel received the letter, and Szweda further testified that he saw the letter in January 2016. Szweda’s deposition testimony was sufficient to satisfy rule 901’s authentication requirement that the January 14, 2016 demand letter “is what its proponent claims.” The district court therefore did not abuse its discretion by relying on that demand letter, and we consider the demand letter in determining whether the district court properly granted summary judgment for Edwards.

II.

Szweda contends that summary judgment was inappropriate because there is a genuine issue of material fact regarding the date, if any, on which his employment was terminated and whether his “position of Senior Director, Engineer—Heart Valve Therapy was eliminated.”¹

¹ At oral argument to this court, Szweda attempted to raise an issue regarding the meaning of separation from employment. However, Szweda conceded that although he raised that

As to the termination date, Szweda argues that “the documentation in the record expressly established that [he] was placed on ‘Leave of Absence’” and that “never had anyone from Edwards ever informed him he was terminated.” He argues that “[t]here was no termination meeting, there was no final meeting, there was no exit interview—none of these regular processes in terminating someone occurred here” and that “[a]s a result, the District Court had no factual basis for resolving the disputed issue as to [his] alleged termination date.” Szweda further argues that “[t]he Court will search the record in vain for a single piece of admissible evidence stating that [his] employment with Edwards was terminated within one or two years of commencement.”

The record refutes Szweda’s argument that Edwards never informed him that his employment had been terminated. At his deposition, Szweda acknowledged receiving Edwards’s January 14, 2016 demand letter. He also acknowledged that the demand letter stated that Szweda’s “employment with Edwards [had] ended” and demanded that he repay \$12,500 of his sign-on bonus and \$123,110.75 of his relocation benefits. However, Szweda notes that the demand letter also stated that his employment had ended on October 26, 2015, and argues that the district court improperly resolved the “genuinely disputed material fact” regarding when he was discharged.

“[T]he district court is not to find facts by resolving disputes at the summary judgment stage” *J.E.B. v. Danks*, 785 N.W.2d 741, 747 (Minn. 2010). Moreover,

issue in district court, he did not raise or discuss it in his briefing to this court. We therefore do not consider that issue. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (“This issue was not argued in the briefs and accordingly must be deemed waived.”).

“the function of the district court on a motion for summary judgment is not to weigh the evidence.” *DLH*, 566 N.W.2d at 70. Nonetheless, the district court made multiple “findings of facts” in support of its order for summary judgment, including that Szweda’s employment “was terminated on or about October 26, 2015.” Because the evidence regarding whether Szweda’s employment was terminated on October 26, 2015, is conflicting, the district court erred by finding that Szweda’s employment was terminated on that date. However, that error is harmless because the district court’s grant of summary judgment was ultimately based on the theory that termination occurred no later than January 14, 2016. See Minn. R. Civ. P. 61 (“The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.”).

A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler*, 751 N.W.2d at 564. It is undisputed that Szweda is required to repay prorated shares of his sign-on bonus and relocation benefits if Edwards terminated his employment within the first two years of employment. Thus, a rational trier of fact could not render a verdict for Szweda unless it found that Szweda’s employment was *not* terminated within the first two years of employment, which began on February 2, 2015. The January 14, 2016 demand letter eliminates any reasonable dispute regarding whether Szweda’s employment was terminated as of the date of the demand letter. As the district court reasoned, Szweda “should have been aware that he was terminated on January 14, 2016 when [Edwards] sent him a demand letter stating that he had been terminated in October 2015 and was required

to repay Edwards Lifesciences.” A reasonable person could not draw a different conclusion.²

Because reasonable people could not disagree that Szweda’s employment was terminated as of January 14, 2016, and that date was within the first two years of his employment, there is no genuine issue of material fact regarding his termination date.

As to whether his position was eliminated, Szweda argues that “the 2015 and 2016 Edwards Organizational Charts evidence that [his] position of Senior Director, Engineer—Heart Valve Therapy was eliminated” and that the elimination of his position “negated any obligation by [him] to repay any portion of the sign-on bonus or relocation expenses.” Szweda notes that the 2015 Edwards Organizational Chart shows him as “Sr. Director Adv. Mfg. Engmg” and asserts that the “2016 Edwards Organizational Chart establishes that [his] position was eliminated and is entirely missing from the Organizational Chart.”³

However, the offer letter provides that Szweda is not required to repay any portion of the sign-on bonus or relocation benefits if his separation from Edwards occurs “through a workforce reduction and/or job elimination.” Thus, to avoid summary judgment on the

² Szweda argues that because the letter was sent by an attorney representing Edwards, and not Edwards, a reasonable person could question the accuracy of the letter’s content and therefore reach a different conclusion. We are not persuaded.

³ The 2015 Organizational Chart and the 2016 Organizational Chart show two organizational structures within Edwards. The 2015 Organizational Chart starts at Edwards’s vice president of “HVT GlobalOPS” and shows all of the positions in Edwards’s HVT unit, including Szweda’s position of “Sr. Director Adv. Mfg. Engmg.” The 2016 Organizational Chart starts at Edwards’s director of engineering and shows the positions under the director of engineering.

basis of this exception, Szweda had to present evidence that he separated from Edwards *because* his position was eliminated.

In his deposition testimony, Szweda stated that he believed Edwards eliminated his position based on “industry chatter.” Neither that testimony nor the organizational charts on which Szweda relies explains why Edwards terminated Szweda’s employment. And Szweda does not cite to evidence in the record suggesting that Edwards terminated his employment *because* it had eliminated his position. At best, the record “merely creates a metaphysical doubt” regarding the reason for Szweda’s separation from employment, which is not “sufficiently probative . . . to permit reasonable persons to draw different conclusions.” *See DLH*, 566 N.W.2d at 71.

In sum, there is no genuine issue of material fact regarding whether Szweda’s employment with Edwards was terminated as of January 14, 2016, nor whether Szweda’s employment was terminated because his position was eliminated. Because the record indisputably establishes that Edwards terminated Szweda’s employment within the first two years of employment, Edwards is entitled to judgment as a matter of law on its breach-of-contract claim, and the district court did not err by granting summary judgment for Edwards.

In addition, the district court properly dismissed Szweda’s breach-of-contract counterclaim. Szweda claimed that he was entitled to the vested portion of his stock options. The December 22, 2014 offer letter stated that Szweda’s stock options would “vest 25% per year over four years of employment with Edwards from the date they were granted.” Edwards granted Szweda stock options on February 19, 2015, and terminated

his employment no later than January 14, 2016, less than a year after the stock-option award. Thus, Szweda was not employed at Edwards long enough for any portion of his stock options to vest, and he had no viable claim for vested stock options.

Affirmed.