Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

FEB 25 2010

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-236

FEBRUARY TERM, 2010

Henry C. Brislin	}	APPEALED FROM:
v.	}	Rutland Superior Court
Wendy Wilton, Treasurer of City of Rutland, and City of Rutland	}	DOCKET NO. 389-5-07 Rdcv
		Trial Judge: William D. Cohen

In the above-entitled cause, the Clerk will enter:

Henry Brislin appeals from the trial court's order granting summary judgment to defendants Wendy Wilton and the City of Rutland. He argues that the court erred in granting summary judgment because material facts remain in dispute. We affirm.

Brislin was employed by the City of Rutland between 1994 and 2007. Between March 1995 and March 2007, he served as assistant city attorney, which is a position appointed by the mayor for a two-year term. While employed by the City, Brislin received health insurance, among other benefits. In March 2007, a new treasurer, Wilton, and a new mayor were elected. Brislin understood that he would not be reappointed to his position. According to Brislin, the outgoing treasurer informed him that he would be provided with health insurance benefits should he decide to retire. Brislin, who was sixty years old, did retire and he received health benefits for approximately three months. Wilton learned that Brislin was receiving health benefits without prior approval by the Board of Aldermen and she cancelled the benefits. In May 2007, Brislin sued defendants for breach of contract. The parties were referred to mediation, which was unsuccessful. In late 2008, defendants moved for summary judgment and Brislin filed a cross-motion for summary judgment. In April 2009, before the motions were decided, Brislin moved to amend his complaint to add a claim under 42 U.S.C. § 1983.

In an April 2009 order, the court granted summary judgment to defendants. It found no evidence to support Brislin's assertion that defendants were contractually obligated to provide him with health insurance benefits upon his retirement. The court explained that the Rutland city charter gave all authority for fiscal matters to the Board of Aldermen, subject to the mayor's veto. The court found no provision that would allow the city treasurer to make expenditures that were not authorized by the Board. Similarly, the treasurer was not authorized to enter into contracts on the City's behalf. Instead, the treasurer's duty was simply to pay all debts legally entered into by the City.

The court explained that Brislin's contract claim was based on a conversation he had with an unnamed human resources official, which was later confirmed by the City's former treasurer. Brislin also asserted that there was a city policy of providing equal benefits to union and nonunion employees and that a similarly situated union employee would receive health insurance benefits upon retiring. Notwithstanding this argument, the court found no evidence to show that the Board ever approved Brislin's health benefits, nor did Brislin provide any contract that set forth that he was entitled to these benefits upon retiring or leaving his position. Brislin maintained that the City did not always adhere to the benefits set forth in the personnel manual, citing as an example the fact that another employee had been granted credit toward his pension for military service. The court found this fact immaterial to the issue of whether the City had ever legally authorized Brislin's health care benefits. The court was equally unpersuaded by Brislin's assertion that the City's policy of equalizing union and nonunion employment was proof that the City was contractually obligated to provide him health care benefits. The court reiterated that, under state law, the Board had sole authority to authorize such health-care benefit expenditures, and it was undisputed that the Board did not do so here. The court further found that the former treasurer's confirmation of health care benefits was not binding on the City because the treasurer had no authority to enter into such an agreement. The court also noted that the former treasurer had not submitted an affidavit confirming that any promise or confirmation of benefits was made. For these and other reasons, the court granted summary judgment to defendants.

Brislin moved for reconsideration, and the court denied his request. In the same order, the court also denied Brislin's motion to amend his complaint. As the court explained, Brislin had conceded that his motion to amend would be moot if the court denied his motion to reconsider (given that the court had already ruled that Brislin had no right to health care benefits). Thus, because the court denied the motion to reconsider, it also denied Brislin's motion to amend. Brislin appealed.

Brislin first argues that the court erred in stating that the Board had sole authority to authorize health-care benefit expenditures and that the Board had not authorized the benefits at issue here. In support of this contention, Brislin points to instances where benefits were provided to employees that were allegedly not authorized by the Board. Brislin maintains, moreover, that the Board does not approve each employee's benefits, but rather, it approves benefits for groups of employees, in some instances, by "acquiescing" in employees receiving such benefits. Brislin also argues that material facts remain in dispute as to whether there was a policy and practice to provide the same benefits to union and nonunion employees.

On review, we apply the same standard as the trial court. Cavanaugh v. Abbott Labs., 145 Vt. 516, 520 (1985). Summary judgment is appropriate if there is no dispute as to a genuine issue of material fact and if the moving party is entitled to judgment as a matter of law. V.R.C.P. 56(c). We affirm the trial court's decision here.

As the source of his contractual right, Brislin relies on the former treasurer's statement that he would receive health benefits as well as an alleged city policy of equalizing benefits for union and nonunion employees. We agree with the trial court that the treasurer had no authority to make such a promise and that any such promise was not binding on the City. As the trial court explained, the City's charter provides the Board with the authority over fiscal matters, subject to

the mayor's veto. See 24 V.S.A. app. ch. 9, § 4.1 ("The administration of all fiscal, prudential and municipal affairs of the city and the government thereof shall be vested in the board of aldermen, except as otherwise provided by this charter or by law, and except where the powers are specifically delegated to the mayor, or other boards or officers herein created."); id. § 5.1 (Board has power to "make, alter, amend or repeal any resolutions, bylaws, regulations and ordinances which it may deem necessary and proper for carrying into effect any of the powers conferred upon said city by this Act"). The fact that other employees might have received certain benefits that were not approved by the Board does not establish that Brislin had a contractual right to the benefits at issue here. Even if there were evidence of a past practice of "equalizing" benefits, moreover, that cannot obviate the plain legal requirement that the Board must approve such a policy and the payment of such expenses. It was undisputed, as the trial court concluded, that the Board did not approve the benefits here. None of Brislin's arguments undermine this conclusion, or the legal requirement stated above. Because Brislin failed to establish a contractual basis for his claim, summary judgment was properly granted to defendants.

Brislin next suggests that the court erred in denying his motion to reconsider because he provided "new evidence." Brislin explains that his new evidence was an affidavit from another city employee who retired in 2006 and received health insurance that was subsequently cancelled by the city. He argues, in one sentence, that this evidence demonstrated the existing, long-standing policy that nonunion employees would receive the same benefit as union employees. As an initial matter, this evidence merely echoed the same argument made by Brislin in his cross-motion for summary judgment. Moreover, as the court stated in its decision, motions for reconsideration serve to correct manifest errors of judgment or to present newly discovered evidence. Brislin offers no explanation as to why this affidavit could not have been submitted as part of his initial summary judgment motion. He fails to show that this evidence was "newly discovered," or that the court erred in denying his motion to reconsider. See, e.g., Rubin v. Sterling Enters., Inc., 164 Vt. 582, 588-89 (1996) (where party had ample opportunity at trial to elicit information contained in post-trial motion, motion to reconsider was properly denied).

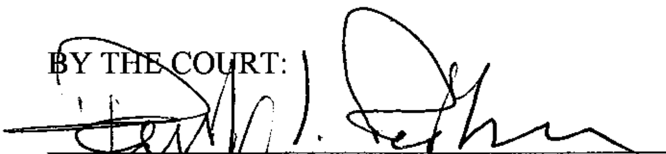
Brislin next argues that the court erred in denying his motion to amend. He does not directly address the concession he made at the hearing on the motion, however. At that hearing, Brislin stated to the court that his motion to amend was moot if the motion to reconsider was denied because, absent a protected property interest, his 42 U.S.C. § 1983 claim fails. Given Brislin's concession, we find no ground to disturb the court's conclusion.

Finally, we reject Brislin's assertion that the court erred in denying his motion for sanctions under Vermont Rule of Civil Procedure 16.3. As he did below, Brislin argues that defendants failed to mediate in good faith because the City failed to have anyone present during mediation who had the authority to settle the action. The trial court declined to impose sanctions under Rule 16.3(h) following a hearing. It credited defendants' assertion that it would have been nearly impossible to bring any settlement demand to the Board in advance of the mediation. Defendants' attorney also noted that the mediator had brought up potential solutions that no one had considered prior to mediation. The court acted within its discretion in concluding that sanctions were not warranted, and as we have often repeated, the assessment of the weight of the evidence and the credibility of witnesses are matters exclusively for the trial court. Chase v. Bowen, 2008 VT 12, ¶ 15, 183 Vt. 187. We note that, in response to Brislin's motion, the court

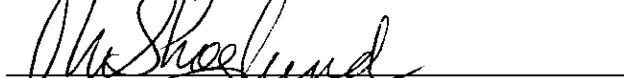
did order the City to participate with Brislin in a second mediation, and it required that Wilton attend, as well as the city attorney on behalf of the mayor, a Board member, and a claims representative from the League of Cities and Towns. The court also required that the City pay for the cost of the mediator. The fact that the second mediation became moot following the court's summary judgment decision does not change our conclusion here. Brislin fails to show that the court erred in denying his motion for sanctions.

Affirmed.

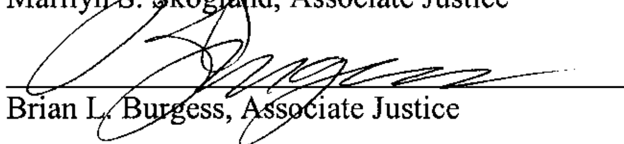
BY THE COURT:



Paul L. Reiber, Chief Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice