

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

JERRY R. MAJECIC,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2010-T-0119
UNIVERSAL DEVELOPMENT MANAGEMENT CORPORATION,	:	
Defendant-Appellant.	:	

Civil Appeal from the Girard Municipal Court, Case No. 2010 CVI 00777.

Judgment: Reversed and remanded.

Jerry R. Majecic, pro se, 1410 West Over Drive, S.E., Warren, OH 44484 (Plaintiff-Appellee).

Stephen A. Turner and *David A. Shepherd*, Turner, May & Shepherd, 185 High Street, N.E., Warren, OH 44481-1219 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Universal Development Management Corporation, appeals the judgment of the Girard Municipal Court, Small Claims Division, awarding its former employee, appellee Jerry R. Majecic, \$540.37 in unused vacation time following Mr. Majecic's termination from employment. At issue is whether Mr. Majecic was entitled to such award despite a provision in Universal's personnel manual providing for the

forfeiture of unused vacation time following resignation or termination from employment. For the reasons that follow, we reverse and remand.

{¶2} On July 27, 2010, Mr. Majecic filed a complaint in which he alleged he was entitled to compensation for his unused vacation pay following his termination from employment, and demanded judgment against Universal in the amount of \$291.86.

{¶3} The case was heard by the magistrate on August 31, 2010. Mr. Majecic testified he was hired by Universal as a maintenance technician in October 2007 to repair the apartments in Universal's apartment complex. He said that on June 16, 2010, the district manager told him that one of the tenants had accused Mr. Majecic of entering his apartment and stealing his pain medication. Mr. Majecic said the district manager gave him an opportunity to resign and said that if he did not, he would be terminated. However, Mr. Majecic refused to resign and, as a result, he was terminated.

{¶4} Mr. Majecic testified that he was an at-will employee and did not have an employment contract with Universal. He conceded he was terminated solely due to the tenant complaint, and that he was not terminated for any discriminatory reason. The parties agreed that, according to the company's "paid time off" policy, after three years of employment, an employee is entitled to two weeks of paid vacation time. They also agreed that Mr. Majecic had been employed by Universal for just over three years and that his rate of pay was \$14.41/hour.

{¶5} Mr. Majecic said that because he had been employed by the company for over three years, he was entitled to two weeks, or 80 hours, of vacation time. He said

that he had already used and was paid for 42.5 hours of his accrued vacation time, and that he was entitled to 37.5 hours of vacation time.

{¶6} Kim Lee, Universal's property manager, testified that the company's paid time off policy provides that any employee who either resigns or is terminated forfeits all paid time off days, which, she said, includes vacation time.

{¶7} Following the hearing, on August 31, 2010, the magistrate entered his decision, finding "Defendant owes Plaintiff for Accrued Vacation Upon Termination. 37.5 hours @ \$14.41 = \$540.37."

{¶8} On the following day, September 1, 2010, the trial court entered judgment affirming the magistrate's decision.

{¶9} Thereafter, Universal timely filed an objection to the magistrate's decision, arguing that Mr. Majecic's claim for paid time off was barred by the provision in its personnel manual, which provides that any unused paid time off, including sick, vacation, or personal time, is forfeited upon an employee's resignation or termination. In support of its objection, Universal attached the provision in its personnel manual concerning its paid time off policy, which provides, in pertinent part, as follows:

{¶10} "[Paid Time Off] (PTO) includes sick, vacation, *** and personal time off with pay. *** Employees will be given (PTO) days after one year of employment ***. *** All unused (PTO) will be forfeited upon an employee's resignation or termination. ****"

{¶11} The paid time off policy also included a "(PTO) Scale," which provided that between their third and fifth years of employment, employees are entitled to ten paid time off days.

{¶12} Mr. Majecic testified that he was given a copy of the company's personnel manual when he was hired. And, at the hearing, Mr. Majecic was asked:

{¶13} "Q. And you understand that in that personnel *** manual that the portion that's attached to the objection it states that all unused PTO – and PTO refers to Paid-Time-Off, which includes *** vacation *** time off with pay – that that would be forfeited upon an employee's resignation or termination, correct?"

{¶14} In response, Mr. Majecic testified:

{¶15} "I understand that. I read that."

{¶16} On October 18, 2010, the court entered judgment denying Universal's objection. The court found that, pursuant to Universal's paid time off policy, Mr. Majecic was entitled to ten days, or 80 hours, of paid time off for 2010; that he had used and was paid for 42.5 hours of his paid time off prior to his termination; and that he was entitled to 37.5 hours of paid time off, which, at \$14.41/hour, equated to \$540.37. The court found that the key issue here was whether Mr. Majecic's vacation time had "accrued." The court found that, because Mr. Majecic's vacation time had accrued, he was entitled to be paid for his remaining paid time off, and entered judgment in Mr. Majecic's favor for \$540.37 plus interest.

{¶17} Universal appeals, asserting the following for its sole assignment of error:

{¶18} "The trial court erred when it determined appellee was entitled to compensation for paid-time-off unused upon his termination, notwithstanding an employee policy that unused paid-time-off was forfeit upon termination."

{¶19} Universal argues that, pursuant to the provision in its personnel manual providing that vacation time is forfeited if not used prior to resignation or termination, Mr.

Majecic was not entitled to payment for vacation time because Mr. Majecic's employment was terminated.

{¶20} As a preliminary matter, we note that Mr. Majecic conceded below that he was an at-will employee, and did not have an employment contract with Universal. Further, while he denied the tenant's allegation, he admitted that the sole reason he was terminated was due to the tenant's complaint that he had entered his apartment and stolen his pain medication. Mr. Majecic conceded below that he was not terminated for any discriminatory reason. There is, moreover, no suggestion that Universal terminated him in bad faith or for some ulterior, unlawful motive. We further note that, under Universal's policy, the reason for the resignation or termination is irrelevant. The policy simply provides that, following an employee's resignation or termination from employment, he or she is not entitled to payment for accrued paid time off.

{¶21} "We review the adoption of a magistrate's decision by a trial court for [an] abuse of discretion." *Montecalvo v. Am. Family Ins. Co.*, 11th Dist. No. 2006-T-0074, 2006-Ohio-6881, at ¶5, citing *Singer Steel Co. v. H&J Tool & Die Co., Inc.*, 11th Dist. No. 2002-P-0135, 2004-Ohio-5007, at ¶22. Further, "the standard of review for small claims court proceedings is abuse of discretion." *Video Discovery, Inc. v. Passov*, 8th Dist. No. 86445, 2006-Ohio-1070, at ¶7. This court has recently stated that the term "abuse of discretion" is one of art, connoting judgment exercised by a court, which does not comport with reason or the record. *Gaul v. Gaul*, 11th Dist. No. 2009-A-0011, 2010-Ohio-2156, at ¶24, citing *State v. Ferranto* (1925), 112 Ohio St. 667, 676-678. The Second Appellate District has also recently adopted this definition of the abuse of discretion standard in *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, at

¶65, citing Black's Law Dictionary (4 Ed.Rev.1968) 25 ("A discretion exercised to an end or purpose not justified by and clearly against reason and evidence").

{¶22} This court in *Jones v. Conneaut City Health Dept.*, 190 Ohio App.3d 28, 2010-Ohio-4560, recently stated that "Ohio courts have enforced company policies regarding payment -- or nonpayment -- of personal or vacation time upon termination of employment where such policies are clear and published in an employee handbook." *Id.* at 33, quoting *Sexton v. Oak Ridge Treatment Ctr. Acquisition Corp.*, 167 Ohio App.3d 593, 2006-Ohio-3852, at ¶13.

{¶23} The trial court in its judgment did not address the forfeiture provision in Universal's paid time off policy. Instead, the court focused on whether Mr. Majecic's paid time off for his vacation time had accrued. In support, the trial court cited *Korsnak v. CRL, Inc.*, 8th Dist. No. 84403, 2004-Ohio-6116; *Shuler v. USA Tire, Inc.* (June 17, 1991), 12 Dist. No. CA90-08-171, 1991 Ohio App. LEXIS 2814; and *Straughn v. Dillard Dept. Store* (Mar. 4, 1996), 5th Dist. No. 95CA0294, 1996 Ohio App. LEXIS 1234. The trial court quoted *Korsnak*, *supra*, in which the Eighth District held: "[v]acation pay is not a gift or gratuity, but rather a deferred payment of an earned benefit' and an employer 'can no more withhold the accrued vacation pay than, for example, it could hold the last pay check the employee earned but not received.' *Id.* at ¶19, quoting *Straughn*, *supra*, at *4. The trial court also quoted *Shuler*, *supra*, at *3-*4 ("[o]nce *** accrue[d], an employer must pay a discharged employee for any vacation time that the employee has yet to take").

{¶24} This court considered essentially the same facts as those presented here in *Condron v. Willoughby Hills*, 11th Dist. No. 2007-L-015, 2007-Ohio-5208. In

Condron, the city's former finance director resigned giving two weeks notice and made a request during his last week of work that he be paid for his 49 accrued hours of vacation time. The city denied the request pursuant to a city ordinance, which provided that city employees who resign or are discharged are not entitled to vacation pay. The finance director filed a complaint in the small claims court against the city, and the court denied his claim for vacation time based on the forfeiture provision. On appeal, the finance director relied on the same case law cited by the trial court in the instant case, arguing that accrued vacation pay is a deferred payment of an earned benefit that cannot be withheld by the employer. In denying the director's request for accrued vacation time, this court held:

{¶25} “[*Korsnak*, supra, and *Shuler*, supra,] are distinguishable on the grounds that there was no provision in the employment [handbooks] at issue [in those cases] similar to the Willoughby Hills Ordinance that an employee forfeited his right to vacation pay upon resignation. Cf. *Korsnak*, 2004-Ohio-6116 at ¶24 (‘nothing in the handbook prevents the employee from being paid for these days after termination of employment’); *Justinger v. Bishop* (Sept. 28, 1984), 11th Dist. No. 10-092, 1984 Ohio App. LEXIS 10954, at *3 (‘the failure of the [employer] to include a forfeiture clause in the manual foreclosed the [employer] from contending that vacation pay was not due upon termination’). ‘Unless the vacation policy states otherwise, *** an employee is entitled to be paid for unused vacation days, because such payment is a deferred payment of an earned benefit.’ *Fridrich v. Seuffert Construction Co., Inc.*, 8th Dist. No. 86395, 2006-Ohio-1076, at ¶17 (citations omitted) (emphasis added). *Ervin v. Oak Ridge Treatment Ctr. Acquisition Corp.*, 4th Dist. No. 05CA27, 2006-Ohio-3851, at ¶13

(‘Ohio courts have enforced company policies that restrict or preclude payment for personal or vacation time upon termination of employment, where *** the policies are clear and published in an employee handbook) (citations omitted).’ (Emphasis omitted.) *Condrón*, supra, at ¶41.

{¶26} Thus, pursuant to this court’s decision in *Condrón*, if an employer does not have a personnel policy pursuant to which unused vacation time is forfeited, and if the employee has unused, accrued vacation time, he or she is entitled to be paid for that time. However, if the employer has a clear policy set forth in an employee manual or handbook providing that paid vacation time is forfeited on resignation or discharge, Ohio courts are required by law to enforce such policy.

{¶27} For the same reasons stated in *Condrón*, supra, the trial court’s reference to *Korsnak*, supra, and *Shuler*, supra, is unavailing. The employers in those cases did not have a policy expressed in an employee manual according to which unused vacation time was forfeited. In contrast, Universal’s personnel manual contained a forfeiture provision, which clearly provided that an employee who resigns or is terminated forfeits all unused vacation time. The trial court was therefore required by law to enforce this policy.

{¶28} Yet, while the paid time off policy was entered into evidence and cited by Universal in support of its objection to the magistrate’s decision, as noted above, the court did not even refer to it in its judgment. It simply ignored Universal’s policy and this court’s precedent in *Condrón*, supra, in entering judgment in favor of Mr. Majecic. In doing so, we hold the trial court abused its discretion.

{¶29} As an aside, we note that other Ohio Appellate Districts have reached the same conclusion this court reached in *Condron*, supra. For example, in *Winters-Jones v. Fifth Third Bank* (May 27, 1999), 8th Dist. No. 75582, 1999 Ohio App. LEXIS 2410, the employee claimed entitlement to payment for vacation time accrued but not used at the time she left her employment. Under the bank's policies, at the time the employee resigned, she was entitled to two weeks vacation time, but left her employment before using any of it. In affirming the trial court's summary judgment in favor of the employer, the Eighth District held:

{¶30} "Although employee handbooks, policy manuals, and the like are not contracts of employment, they may define the terms and conditions of an employment relationship if the employer and employee manifest an intention to be bound by them. *** There was undisputed evidence in the record that, at the time of her employment, appellant agreed to be bound by appellee's policies; indeed, her claim of entitlement to two weeks accrued vacation time manifests her acceptance of appellee's vacation policy. The policy clearly provides that accrued vacation time will be lost when employment is terminated; hence, appellant was not entitled to payment for vacation time accrued at the time her employment was terminated." (Internal citations omitted.)
Id. at *2-*3.

{¶31} Similarly, in *Bologa v. I.H.S. Inc.* (Mar. 17, 1998), 9th Dist. No. 19218, 1999 Ohio App. LEXIS 1107, after the employee received notice of his layoff, but before its effective date, he asked for payment for 160 hours of unused "paid time off." The employer's policy provided, "PTO is not paid to employees at termination of employment regardless of the reasons for the termination ***." In reversing the municipal court's

judgment in favor of the employee, the Ninth District held: “The plain language of this policy precludes [the employee] from collecting any payment for PTO upon termination, regardless of whether employee fault contributed to the termination.” Id. at *4.

{¶32} Universal’s assignment of error is sustained.

{¶33} For the reasons stated in the opinion of this court, it is the judgment and order of this court that the judgment of the Girard Municipal Court, Small Claims Division, is reversed, and the matter is remanded to the trial court for further proceedings consistent with this opinion.

DIANE V. GRENDALL, J.,

MARY JANE TRAPP, J.,

concur.