

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

Linda Broadstock

Court of Appeals No. S-12-021

Appellee

Trial Court No. CVI 1201074

v.

Elmwood at the Springs

DECISION AND JUDGMENT

Appellant

Decided: March 15, 2013

* * * * *

Francis J. Landry, for appellee.

Christopher G. Kuhn, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} Appellant, Elmwood at the Springs (“Elmwood”), appeals from the judgment of the Fremont Municipal Court, Small Claims Division, awarding appellee, Linda Broadstock, \$1,500 as payment for accrued vacation time. We reverse.

A. Facts and Procedural Background

{¶ 2} Broadstock was an at-will employee of Elmwood. In December 2011, Elmwood asked Broadstock to leave the facility because of an alleged HIPAA violation. Broadstock testified that at that time, Elmwood was going to pay her for her accrued vacation time. However, Cindy Hayes, Elmwood's Director of Human Resources, said that Elmwood never made such an offer. Ultimately, Elmwood did not terminate Broadstock, and she returned to work. Shortly thereafter, in February 2012, a separate incident occurred, for which Broadstock was terminated.

{¶ 3} At the time of her termination, Broadstock had accrued 73.896 hours of vacation. Broadstock filed a claim in the trial court seeking payment for her unused vacation time. The matter proceeded to a hearing, wherein Elmwood submitted a copy of its employee handbook and a form signed by Broadstock acknowledging her receipt of the handbook. Concerning vacation time, the handbook provided,

When a team member leaves Elmwood, all accrued vacation time is paid to the end of the last pay period provided the team member requests the pay; a two (2) week notice is given and fulfilled; an exit conference has been conducted; all items (keys, uniforms, badges) have been returned; *and the team member has not been terminated.* (Emphasis added.)

Following the hearing, the trial court awarded judgment in favor of Broadstock in the amount of \$1,500.

B. Assignments of Error

{¶ 4} Elmwood has timely appealed, asserting three assignments of error:

1. The trial court erred as a matter of law by failing to apply Appellant's written policy governing the terms of Appellee's at-will employment, and by not entering judgment in favor of Appellant.

2. The trial court abused its discretion by ruling that Appellee is entitled to compensation for unused vacation time upon her termination, notwithstanding a written employee policy that unused vacation time is forfeit [sic] upon termination.

3. The trial court's judgment in favor of Appellee is against the manifest weight of the evidence.

{¶ 5} Elmwood's assignments of error are interrelated and will be addressed together.

II. Analysis

{¶ 6} We review small claims court proceedings for abuse of discretion. *Majecic v. Universal Dev. Mgt. Corp.*, 11th Dist. No. 2010-T-0119, 2011-Ohio-3752, ¶ 21. An abuse of discretion connotes that the trial court's attitude was arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 7} Although employee handbooks are not employment contracts in and of themselves, they may define the terms and conditions of an at-will employment

relationship if the employer and employee manifest an intention to be bound by them.

Sowards v. Norbar, Inc., 78 Ohio App.3d 545, 549, 605 N.E.2d 468 (10th Dist.1992).

Relative to this matter, numerous 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.”

Majecic at ¶ 22, quoting *Jones v. Conneaut City Health Dept.*, 190 Ohio App.3d 28, 2010-Ohio-4560, 940 N.E.2d 629, ¶ 27 (11th Dist.).

{¶ 8} For example, in *Majecic*, an at-will employee who had accrued 37.5 hours of vacation time at the time he was terminated sued for compensation. The trial court granted judgment to the employee. On appeal, the Eleventh District reversed, holding that the trial court abused its discretion in light of the personnel manual, which provided, “[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.” *Id.* at ¶ 10. The Eleventh District concluded,

[I]f 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. *Id.* at ¶ 26. *See*

also Sexton v. Oak Ridge Treatment Ctr. Acquisition Corp., 167 Ohio App.3d 593, 2006-Ohio-3852, 856 N.E.2d 280 (4th Dist.) (enforcing handbook provision that an employee will not be paid for any unused and accrued vacation time upon resignation or termination); *Winters-Jones v. Fifth Third Bank*, 8th Dist. No. 75582, 1999 WL 342215 (May 27, 1999) (employee bound by handbook policy that any unused vacation is lost at termination); *Bologa v. I.H.S. Inc.*, 9th Dist. No. 19218, 1999 WL 293945 (Mar. 17, 1999) (employee not entitled to payment for accrued vacation time where policy stated that paid time off is not paid to employees at termination).

{¶ 9} Here, the employee handbook clearly states that accrued vacation is not paid to an employee if the employee has been terminated. It is uncontested that Broadstock was terminated. Therefore, we hold the trial court abused its discretion in awarding \$1,500 as payment for her accrued vacation time.

{¶ 10} In her appellate brief, Broadstock now argues that the payment she is seeking—for the “checks that went back”—is for her previously accrued vacation time that should have been paid at her employment anniversary in November. The handbook provides that, “Team members must use accumulated vacation benefits each year by their anniversary date by either: [1] Taking the time off or [2] Receiving pay in lieu of time off for vacation time earned.” We find Broadstock’s argument to be untenable and not in accord with the record, however, because her claim was based on the amount of vacation

time shown on her February 2012 paycheck, which would not have reflected vacation time from the previous year.

{¶ 11} Accordingly, we find Elmwood’s assignments of error well-taken.

III. Conclusion

{¶ 12} For the foregoing reasons, the judgment of the Fremont Municipal Court, Small Claims Division is reversed. The matter is remanded to the trial court to enter judgment in favor of Elmwood. Costs of this appeal are assessed to Broadstock pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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