[Cite as *Krawulski v. Blvd. & Neal Terrace Apts Ltd.*, 2010-Ohio-3505.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93409

LORI KRAWULSKI, ET AL.

PLAINTIFFS-APPELLEES

vs.

BLVD. & NEAL TERRACE APTS. LTD.

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED AS MODIFIED

Civil Appeal from the
Cleveland Municipal Court
Case No. 2007-CVF-003232

BEFORE: Dyke, J., Rocco, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: July 29, 2010

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ANN DYKE, J.:

{¶ 1} Defendant Boulevard Terrace Apts. Ltd. ("Boulevard Terrace") appeals from the order of the Cleveland Municipal Court that awarded plaintiff Lori Krawulski for accrued wages, benefits and severance pay, and awarded plaintiff Rhoda Pawelecki accrued wages. For the reasons set forth below, we strike the trial court's award of prejudgment interest from the judgment rendered herein, and, as modified, affirm the judgment.

{¶ 2} On February 12, 2007, plaintiffs filed a complaint against Boulevard Terrace Apts./Neal Terrace Apts. and Harvey Oppmann, seeking unpaid wages

or other benefits. Defendants denied liability and set forth a counterclaim in which they asserted that plaintiffs committed "acts of embezzlement, intentional destruction and misuse of Defendants' property, theft and malfeasance." Defendants also asserted that plaintiff Pawelecki improperly took cash from tenants.

{¶ 3} The matter proceeded to trial, and the trial judge concluded, in relevant part, as follows:

{¶ 4} "On or about March 17, 2004 plaintiffs were employees for Kaval Levine Management, which was the property manager of Defendant Boulevard Terrace Apartments. Plaintiff Lori Krawulski was the office manager while Plaintiff Rhoda Pawelecki was the assistant manager.

{¶ 5} "***

{¶ 6} "In January 2006, Plaintiff's [sic] began working directly for Boulevard Terrace Apartments in the same capacity they had worked for Kaval Levine; Plaintiffs' duties nor the location of the principal place they reported changed (there was an interim management company before Defendant began managing the properties). Plaintiffs were advised that their benefits, accumulated vacation and sick time, would be transferred from their former employer to their employ with Defendant. They both testified that the benefits were effective immediately. Lori's pay stub from May 5, 2006 illustrates 80 hours for the vacation line and 40 hours of sick pay. Rhoda's time sheet reflects that she worked thirty-nine hours (May 1, 2006 through and including May 10, 2006) subsequent to the last pay

period for which she received compensation; she was scheduled to receive $9.30 an hour.

{¶ 7} "Subsequent to Defendant assuming the management responsibilities for its own rental properties Plaintiff, Lori, voiced her concerns about several perceived irregularities.

{¶ 8} "* * *

{¶ 9} "Lori received [a predisciplinary] letter on or about May 8, 2006 and soon thereafter Mr. Oppmann convened a meeting with Plaintiff, Lori, about the letter.

{¶ 10} "On May 10, 2006 Mr. Oppmann discussed the contents of the letter with Plaintiff, Lori, with Rhoda present. Mr. Oppmann did not have any intentions of firing Plaintiff, Lori, before the meeting and reciprocally Lori had no intentions of voluntarily terminating her employment. After a heated exchange about the substance of the disciplinary letter, Mr. Oppmann terminated Plaintiff, Lori.

{¶ 11} "The parties disputed what the terms were supposed to be subsequent to Plaintiff's, Lori, termination. Plaintiff maintained that she was promised 80 hours of vacation, 40 hours of sick time and two weeks severance. Mr. Oppmann asserted that he only agreed to a two-week severance provided that Plaintiff, Lori, did everything she was supposed to and in the correct manner. Lori admitted that she was told, 'Provided she complies with his order she would receive what was promised.' Mr. Oppmann refused to give Plaintiff, Lori, the

two-week severance because the computer files had allegedly been compromised and/or deleted. Additionally, the training manuals were missing and she was the reason why they were not present in the management office.

{¶ 12} "Defendant produced evidence in the form of witnesses and documents to establish that Plaintiff, Lori, was not entitled to the agreed compensation due to breach of the agreement that did everything correctly. The evidence demonstrated that files weren't deleted but instead were modified weeks, if not months prior to Plaintiff's termination. The 'training manuals' were nothing more than copied forms from a published book on property management. Lastly, Plaintiffs admitted that they removed certain items from the management office based upon the fact they purchased the items: toilet tissue, paper towels, copy paper, pens and pencils. Plaintiffs presented photos that were taken shortly before they vacated the office depicting the office in an orderly fashion.

{¶ 13} "Lastly, Plaintiff Rhoda admitted that she voluntarily left the Defendant's employ on May 10, 2006. She didn't return due to what she described as Mr. Oppmann's unprofessional manner of terminating Plaintiff, Lori."

{¶ 14} On May 18, 2009, the trial court entered judgment for plaintiffs and against defendant Boulevard Terrace. Relying on both R.C. 4113.15, the parties' agreements, and promissory estoppel, the trial court subsequently determined that plaintiff Lori Krawulski is entitled to $1,901.54 for eight days of work, $2,376.92 for unused vacation pay, $1,188.46 for unused sick pay, and severance pay of $2,376.92. The trial court further concluded that plaintiff

Rhoda Pawelecki was entitled to $558 for eight days of work. The court also awarded plaintiffs 8% interest on the awards, and entered judgment for plaintiffs on defendants' counterclaims. Boulevard Terrace now appeals and assigns four errors for our review.

{¶ 15} In its first assignment of error, Boulevard Terrace asserts that the trial court erred in determining that vacation and sick benefits were authorized under R.C. 4113.15, because, it claims, this statute pertains solely to wages. R.C. 4113.15 provides in relevant part:

{¶ 16} "(C) In the absence of a contest, court order or dispute, an employer who is party to an agreement to pay or provide fringe benefits to an employee or to make any employee authorized deduction becomes a trustee of any funds required by such agreement to be paid to any person, organization, or governmental agency from the time that the duty to make such payment arises. No person shall, without reasonable justification or excuse for such failure, knowingly fail or refuse to pay to the appropriate person, organization, or governmental agency the amount necessary to provide the benefits or accomplish the purpose of any employee authorized deduction, within thirty days after the close of the pay period during which the employee earned or had deducted the amount of money necessary to pay for the fringe benefit or make any employee authorized deduction. * * *"

{¶ 17} "Fringe benefits" are in turn defined as "health, welfare, or retirement benefits, whether paid for entirely by the employer or on the basis of a joint employer-employee contribution, or vacation, separation, or holiday pay."

{¶ 18} We find the agreed vacation pay, agreed sick pay and agreed severance pay to constitute "fringe benefits" within the meaning of R.C. 4113.15, so we reject this claim of error. In any event, the trial court did not exclusively rely upon this statute in formulating the awards. Rather, the court additionally determined that the parties had agreed to the severance package and that Krawulski complied with the terms of the parties' agreement, and that she was entitled to recover on the basis of promissory estoppel.

{¶ 19} The first assignment of error is without merit.

{¶ 20} For its second assignment of error, Boulevard Terrace asserts that the trial court erred in determining that Kawulski was entitled to compensation for sick time and vacation time, based upon the theory of promissory estoppel. For its third assignment of error, Boulevard Terrace asserts that the trial court's award of severance pay to Kawulski is against the manifest weight of the evidence.

{¶ 21} In the absence of a transcript, or narrative statement prepared pursuant to App.R. 9(C), we have nothing to pass upon and we must presume the regularity of the trial court's proceedings. *Hardy v. Fell,* Cuyahoga App. No. 88063, 2007-Ohio-1287, citing *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 400 N.E.2d 384 and App. R. 9(B) and (C).

{¶ 22} The second and third assignments of error are without merit.

{¶ 23} For its fourth assignment of error, Boulevard Terrace asserts that the trial court erred in awarding plaintiffs interest of 8% per year from December 2, 2008, a date that precedes the date of the trial court's judgment.

{¶ 24} R.C. 1343.03(C) provides for the award of prejudgment interest and states, in relevant part, as follows:

{¶ 25} "If, upon motion of any party to a civil action that is based on tortious conduct, that has not been settled by agreement of the parties, and in which the court has rendered a judgment, decree, or order for the payment of money, the court determines at a hearing held subsequent to the verdict or decision in the action that the party required to pay the money failed to make a good faith effort to settle the case and that the party to whom the money is to be paid did not fail to make a good faith effort to settle the case, [the court may award prejudgment] interest * * *."

{¶ 26} In this matter, plaintiff did not file a motion seeking prejudgment interest. In addition, the trial court did not hold a separate hearing on the issue of prejudgment interest, but rather included this award within its judgment entry. Further, although the trial court noted that Boulevard Terrace made a "last ditch effort used to obstruct Plaintiff [Krawulski] from collecting her promised severance," the court made no finding that Boulevard Terrace failed to make a good faith effort to settle the case. In accordance with all of the foregoing, we find no basis to support the award of prejudgment interest herein. We therefore conclude that the trial court abused its discretion in awarding it herein. The

judgment of the trial court is hereby modified to indicate that interest is to run from May 18, 2009 and not from December 2, 2008.

{¶ 27} The judgment of the trial court is modified, and as modified is affirmed.

It is ordered that appellees and appellant split the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANN DYKE, JUDGE

KENNETH A. ROCCO, P.J., CONCURS;
PATRICIA ANN BLACKMON, J., CONCURS IN JUDGMENT ONLY