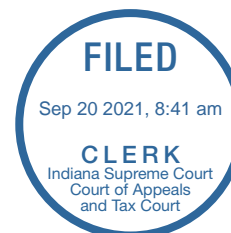


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Annette Emmons,
Appellant-Plaintiff,

v.

B.B.T.K.S., Inc.,
Appellee-Defendant.

September 20, 2021

Court of Appeals Case No.
21A-PL-257

Appeal from the Monroe Circuit
Court

The Honorable Elizabeth A. Cure,
Judge

Trial Court Cause No.
53C01-1810-PL-2062

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Plaintiff, Annette Emmons (Emmons), appeals the trial court's Order in favor of the Appellee-Defendant, B.B.T.K.S., Inc. (B.B.T.K.S.), denying her an award of attorney's fees.

[2] We affirm.

ISSUE

[3] Emmons presents one issue on appeal which we restate as follows: Whether the trial court properly denied her an award of attorney's fees.

FACTS AND PROCEDURAL HISTORY

[4] Beginning on May 18, 2018, Emmons worked for B.B.T.K.S.'s restaurant, in Ellettsville, Indiana, as a part-time hostess being paid \$9.00 per hour. Emmons's bi-weekly gross pay averaged approximately \$200.00. A clerical payroll error resulted in her bi-weekly gross pay for the period ending July 14, 2018, to total \$481.23 with a net pay of \$388.88. This resulted in an overpayment of \$219.33. Emmons did not mention the overpayment. On August 5, 2018, Emmons voluntarily terminated her employment by walking off the job. During the two and one-half months she was employed, B.B.T.K.S. deducted amounts from her paychecks purportedly for food purchases and paycheck advances. The deductions totaled \$174.88.

[5] On October 7, 2018, Emmons filed her Complaint, which she later amended on November 2, 2018. In her Amended Complaint, Emmons alleged that

B.B.T.K.S. “illegally deducted monies from [her] wages” on four separate occasions and was liable for statutory damages under the Wage Payment Statute, Indiana Code section 22-2-5-1 (Appellant’s Appendix Vol. II, p. 24). Pursuant to Indiana Code section 22-2-5-2, Emmons sought a judgment for wages owed, liquidated damages, costs, and attorney’s fees. On November 2, 2018, B.B.T.K.S. filed its Answer and indicated that the deductions were for two \$50 cash loans and for food purchases. B.B.T.K.S. further averred that it had also noted an overpayment for \$219.33 on Emmons’s paycheck issued on July 14, 2018. B.B.T.K.S. also counterclaimed for that amount and for attorney’s fees, claiming that the suit filed by Emmons was frivolous, unreasonable, groundless, and in bad faith.

[6] On September 15, 2019, Emmons filed a Motion for Partial Summary Judgment, arguing that she was entitled to actual damages in the amount of \$174.88, as well as \$349.76 in liquidated damages. Additionally, she requested a separate hearing to decide attorney’s fees and costs. On October 9, 2019, B.B.T.K.S. filed its memorandum in opposition of Emmons’s motion, arguing that Emmons was acting in bad faith in pursuing the action because she had actually been overpaid in an amount greater than the total deductions and because the deductions were made at her request and pursuant to the employee handbook. Along with its opposition, B.B.T.K.S. filed a motion for summary

judgment on its counterclaim for the overpayment amount and for the recovery of over \$5,000 in attorney's fees.¹

[7] On October 24, 2019, the trial court conducted a summary judgment hearing. B.B.T.K.S. conceded that it had committed a “technical violation” of Indiana Code section 22-2-6-2 by improperly deducting \$174.88 without Emmons's authorization. (Transcript p. 19). Nonetheless, B.B.T.K.S. contended, that the overpayment of \$219.33, an amount Emmons did not dispute, fully offset the improper deductions, and, therefore, no wages remained due.

[8] On October 29, 2019, the trial court entered an order, granting partial summary judgment in favor of Emmons, and dismissed B.B.T.K.S.'s counterclaim. In particular, the trial court concluded that B.B.T.K.S. had illegally deducted \$174.88 from Emmons's wages and had failed to demonstrate a good faith reason for doing so. Thus, the trial court awarded her an additional \$349.76 in liquidated damages, and after setting off the total damages by the stipulated amount of the overpayment, the trial court entered judgment against B.B.T.K.S. in the amount of \$305.31. The issue of attorney's fees, costs, and pre-judgment interest remained pending. On November 18, 2018, Emmons filed a motion for award of statutory attorney's fees and costs, along with a supporting brief and designated evidence.

¹ Emmons sought to recover attorney's fees of \$10,030 in the trial court and a remand order for attorney's fees and costs of \$14,988 on appeal.

[9] On November 27, 2019, B.B.T.K.S. filed a motion to correct error. At the hearing on its motion, B.B.T.K.S. argued that the undisputed evidence established that it had not acted in bad faith when it deducted \$174.88 from Emmons's paycheck and, therefore, Emmons was not entitled to liquidated damages. Without liquidated damages and in light of the overpayment, B.B.T.K.S. posited that no wages were due to Emmons and B.B.T.K.S. was entitled to judgment in the amount of \$44.45. On January 20, 2020, the trial court denied B.B.T.K.S.'s motion to correct error, and it set a hearing for February 3, 2020, to determine the statutory attorney's fees and costs sought by Emmons. The hearing was held as scheduled, and the trial court took the matter under advisement.

[10] Before the trial court issued a ruling on this pending issue, B.B.T.K.S. filed a notice of appeal on February 21, 2020, purporting to appeal from a final judgment. B.B.T.K.S.'s filing resulted in the trial court staying the proceedings and withholding its ruling on attorney's fees. We determined that the appeal was not properly before us since there had not been a final judgment entered in the case and B.B.T.K.S. had not sought an interlocutory appeal of the partial grant of summary judgment or the order denying the subsequent motion. *See B.B.T.K.S., Inc. v. Emmons*, No. 20A-PL-418, slip opinion at *3, (Ind. Ct. App. Dec. 11, 2020). On January 11, 2021, the trial court issued an Order in favor of B.B.T.K.S., stating as follows:

The [c]ourt having reviewed the file and given that B.B.T.K.S. actually overpaid Ms. Emmons, now finds that attorney's fees

would serve no purpose and would run contrary to the purpose of the statute. Therefore, the [c]ourt now DENIES [] [Emmons's] request for attorney's fees.

(Appellant's App. Vol. II, p.12).

[11] Emmons now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[12] Emmons claims that the trial court erred by failing to award her attorney's fees pursuant to the Wage Payment Statute. She claims that she is entitled to attorney's fees incurred in the instant case due to the public policy behind the Wage Payment Statute. B.B.T.K.S. in turn argues that the public policy behind the Wage Payment Statute is to provide recovery of attorney's fees only when the employer has failed to pay an employee and not in circumstances where an employer has overpaid an employee. B.B.T.K.S. then argues that the trial court properly interpreted the Wage Payment Statute and it properly denied Emmons her attorney's fees claim.

[13] We begin by noting that statutory interpretation is a question of law reserved for the court and is reviewed *de novo*. *Roman Catholic Diocese of Indianapolis, Inc. v. Metro. Sch. Dist. of Lawrence Twp.*, 945 N.E.2d 757, 765 (Ind. Ct. App. 2011). *De novo* review allows us to decide an issue without affording any deference to the trial court. *Id.* The goal of statutory interpretation is to determine, give effect to, and implement the intent of the legislature. *Indiana Civil Rights Commission v. County Line Park, Inc.*, 738 N.E.2d 1044, 1048 (Ind. 2000). The

statute is examined as a whole, and it is often necessary to avoid excessive reliance on a strict literal meaning or the selective reading of individual words.

Id. We presume that the legislature intended for the statutory language to be applied in a logical manner consistent with the statute's underlying policy and goals. *City of Gary v. Smith & Wesson Corp.*, 126 N.E.3d 813, 824 (Ind. 2019).

[14] In support of her public policy claim, Emmons cites to *Kleine-Albrandt v. Lamb*, 597 N.E.2d 1310 (Ind. Ct. App. 1992). In *Lamb*, the plaintiff was represented by Student Legal Services on her complaint seeking damages from her former employer pursuant to a statute dealing with the payment of wages to an employee after the employee voluntarily leaves a job. The statute at issue provided that once the plaintiff meets her burden of showing that the employer improperly withheld wages, the court *shall* assess a reasonable attorney's fee. *Id.* at 1312 (citing Ind. Code § 22-2-5-2(1998)). In concluding that the trial court erred when it failed to assess reasonable attorney's fees, we noted that such fees were mandatory pursuant to the Wage Payment Statute in effect at the time. *Id.* at 1311.

[15] We note that the holding in *Lamb* came before the General Assembly's amendment of the Wage Payment Statute in 2015. At the time *Lamb* was handed down, the following version of the Wage Payment Statute was in place

Every [employer] who shall fail to make payment of wages to any such employee as provided in section 1 of this chapter shall, as liquidated damages for such failure, pay to such employee for each day that the amount due to him remains unpaid ten percent (10%) of the amount due to him in addition thereto, not

exceeding double the amount of wages due, and said damages may be recovered in any court having jurisdiction of a suit to recover the amount due to such employee, and in any suit so brought to recover said wages or the liquidated damages for nonpayment thereof, or both, the court shall tax and assess as costs in said case a reasonable fee for the plaintiff's attorney or attorneys.

I.C. § 22-2-5-2 (1992). This court interpreted the prior version as allowing employees to recover attorney's fees and liquidated damages for late-paid wages, even if the employees had received all the wages to which they were entitled before filing suit. *See Valadez v. R.T. Enters., Inc.*, 647 N.E.2d 331, 333 (Ind. Ct. App. 1995).

[16] In 2015, however, the Legislature amended this section which now provides as follows:

Every such person, firm, corporation, limited liability company, or association who shall fail to make payment of wages to any such employee as provided in section 1^[2] of this chapter shall be

² Indiana Code section 22-2-5-1 provides that

(a) Every person, firm, corporation, limited liability company, or association, their trustees, lessees, or receivers appointed by any court, doing business in Indiana, shall pay each employee at least semimonthly or biweekly, if requested, the amount due the employee. The payment shall be made in lawful money of the United States, by negotiable check, draft, or money order, or by electronic transfer to the financial institution designated by the employee. Any contract in violation of this subsection is void.

(b) Payment shall be made for all wages earned to a date not more than ten (10) business days prior to the date of payment. However, this subsection does not prevent payments being made at shorter intervals than specified in this subsection, nor repeal any law providing for payments at shorter intervals. However, if an employee voluntarily leaves employment, either permanently or temporarily, the employer shall not be required to pay the employee an amount due the employee until the next usual and regular day for payment of wages, as established by the employer. If an employee leaves employment voluntarily, and without the employee's whereabouts or address being known to the employer, the employer is not subject to section 2 of this chapter until:

liable to the employee for the *amount of unpaid wages*, and the amount may be recovered in any court having jurisdiction of a suit to recover the amount due to the employee. The court shall order as costs in the case a reasonable fee for the plaintiff's attorney and court costs. In addition, if the court in any such suit determines that the person, firm, corporation, limited liability company, or association that failed to pay the employee as provided in section 1 of this chapter was not acting in good faith, the court shall order, as liquidated damages for the failure to pay wages, that the employee be paid an amount equal to two (2) times the amount of wages due the employee.

I.C. § 22-2-5-2 (emphasis added). The primary changes made to Section 2 as a result of the 2015 amendment can be summarized as follows:

Employers are liable to employees for violations of Section 1 for unpaid wages due, attorney fees, and court costs.

Liquidated damages are additionally available only if, in violating Section 1, the employer was not acting in good faith. Under such circumstances, the employee is entitled to liquidated damages totaling two times the amount of wages due.

Brown v. Butcher & Christian Consulting, Inc., 87 N.E.3d 22, 26-27 (Ind. Ct. App. 2017). Since *Lamb* was decided prior to the 2015 statutory changes, we find it inapplicable to the case at hand.

(1) ten (10) business days have elapsed after the employee has made a demand for the wages due the employee; or

(2) the employee has furnished the employer with the employee's address where the wages may be sent or forwarded.

[17] B.B.T.K.S. argues that it “acted in good faith and never failed to pay wages and is in precisely the position the legislature had in mind when revising the statute.” (Appellee’s Br. p. 12). B.B.T.K.S. maintains that it acted in good faith when it permitted Emmons to “eat her meals at half-price and by giving her advances in her wages. [] Additionally, there were never any unpaid wages because of the fact that any amount deducted by [B.B.T.K.S.] was actually paid by the clerical error in her pay from the week of June 14.” (Appellee’s Br. p. 12). Thus, B.B.T.K.S. claims that no unpaid wages were due to Emmons, and the penalty provision of Indiana Code section 22-2-5-2 was not triggered so as to allow recovery of attorney’s fees.

[18] The record shows that B.B.T.K.S. deducted \$174.88 from Emmons’s paycheck. The amount consisted of cash advances of \$100, and half-priced meals. We will analyze the deductions separately.

[19] We begin by noting that the cash advance payments of \$100 to Emmons constituted early payments of wages either earned or to be earned by Emmons for her services rendered to B.B.T.K.S. The deductions reflected on Emmons’s subsequent paychecks for the advances merely acted as an accounting measure for B.B.T.K.S. to ensure that it was not overpaying Emmons for her services. In *E & L Rental Equipment, Inc. v. Bresland*, 782 N.E.2d 1068, 1069 (Ind. Ct. App. 2003), we affirmed the trial court’s judgment in favor of the employee because the employer had unlawfully deducted wages from the employee’s paycheck to pay for property the employee had damaged. There, the employer deducted from the employee’s paycheck wages that were owed to the employee. *Id.* at

1071. Here, the facts are different. Unlike the employer in *E & L*, B.B.T.K.S. did not deduct the \$100 owed to Emmons; rather, the deduction was an adjustment for wages that had already been paid. Because the \$100 debited to Emmons's subsequent paychecks had already been paid, that amount was not due to Emmons.

[20] The balance of \$74.88 was spent by Emmons in food purchases, and it is undisputed that B.B.T.K.S. deducted these amounts from Emmons's paycheck. Indiana Code section 22-2-6-2(a) (the Deduction Statute) specifies that the wages of an employee are subject to deduction only if certain conditions are satisfied. One such condition is that the employee has executed a written wage assignment. *Id.* Finally, the assignment must be made for one of the purposes described in Indiana Code section 22-2-6-2(b)(6), which includes deductions for items like food offered by the employer and sold to the employee.

[21] As an initial matter, we observe that our Legislature did not expressly create a private right of action for a violation of the Deduction Statute. *See* I.C. § 22-2-6. Moreover, Emmons is not arguing that there is an implied private right of action for a violation of the Deduction Statute, rather, her claim is centered on the fact that B.B.T.K.S. made an improper wage assignment, which resulted in underpayment of earned wages. Although the deductions pertaining to the food purchases were authorized by the Deduction Statute, the evidence at trial indicated that the parties did not have a written agreement for wage assignments. In fact, B.B.T.K.S. conceded at the hearing that it had improperly deducted certain amounts from Emmons's paycheck. Here, the plain language

of the statute demonstrates that B.B.T.K.S.'s deductions from Emmons's wages were improper. Notwithstanding B.B.T.K.S.'s improper deductions, in July 2018, B.B.T.K.S. overpaid Emmons, and she ended up receiving \$219.33 more in her paycheck than was due to her.

[22] We presume that the Legislature intended for the statutory language to be applied in a logical manner consistent with the statute's underlying policy and goals. *Smith & Wesson Corp.*, 126 N.E.3d at 824. Indiana Code section 22-2-5-2 provides that employers who fail to pay their employees' wages are liable for an employee's reasonable attorney's fees and court costs incurred as a result of litigation to obtain *unpaid* wages. The purpose of the fee shifting provision is to deter employers from playing "fast and loose with wage obligations" by imposing treble damages and attorney's fees for non-compliant employers. *St. Vincent Hosp. & Health Care Ctr., Inc. v. Steele*, 766 N.E.2d 699, 706 (Ind. 2002)

[23] Because B.B.T.K.S. paid Emmons \$100 in advance, Emmons had no legal right to the amount debited to her subsequent paychecks. Also, we find that the overpayment of \$219.33 in wages to Emmons was more than the \$74.88 in food purchases that B.B.T.K.S. improperly deducted from her paycheck, therefore, there were no wages due to Emmons at the time she left her employment. Since this is not a situation where an employee was underpaid, we hold that the Wage Payment Statute was not applicable, Emmons was not entitled to the recovery of her attorney's fees, and the trial court's judgment was not improper. This conclusion is consistent with the public policy in Indiana underpinning the Wage Payment Statute. Nonetheless, we need not decide this case on public

policy grounds, but rather on the plain language of the statute, which embodies the Legislature's clear policy determination. Thus, we affirm the trial court.

CONCLUSION

[24] Based on the foregoing, we conclude that the trial court did not err by declining to award Emmons's attorney's fees.

[25] Affirmed.

[26] Najam, J. and Brown, J. concur