# IN THE COURT OF APPEALS OF IOWA

No. 7-186 / 05-2120
Filed May 9, 2007

**ANTHONY R. STUHLDRYER,**
Plaintiff-Appellant/Cross-Appellee,

**vs.**

**PERCIVAL SCIENTIFIC, INC.,**
Defendant-Appellee/Cross-Appellant.

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Appeal from the Iowa District Court for Dallas County, Darrell J. Goodhue, Judge.

The plaintiff appeals following dismissal of his claims against the defendant on summary judgment. **AFFIRMED.**

Gordon R. Fischer of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellant.

F.D. Chip Baltimore of Doran, Anderson & Baltimore, P.L.C., Boone, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

**VOGEL, P.J.**

Anthony Stuhldryer was terminated by Percival Scientific in August 2004 after being placed on probation for excessive absences. He brought suit against Percival, claiming among other things, that his termination violated the federal Family and Medical Leave Act (FMLA). The district court, finding no genuine issue of material fact, granted Percival's motion for summary judgment. Our review is for correction of errors at law. *Walderbach v. Archdiocese of Dubuque, Inc.*, __N.W.2d__, __ (Iowa 2007). We adopt the district court's finding of facts, application of the law and ruling, and therefore affirm pursuant to Iowa Court Rule 21.29(1)(*a*), (*d*) and (*e*).

The FMLA grants eligible employees as many as twelve weeks of leave during a one-year period if, among other things, they have a "serious health condition that makes the employee unable to perform the functions of the position of such employee." 29 U.S.C. § 2612(a)(1)(D). The Act prohibits an employer from interfering with an employee's right to take medical leave, 29 U.S.C. § 2615(a)(1); and it prohibits an employer from retaliating against an employee for exercising his or her rights under the Act. 29 U.S.C. § 2615(a)(2).

> An employee is to provide his employer with 30 days notice or as much notice as is practicable of the intention to use FMLA leave, when the necessity for leave "is foreseeable." 29 U.S.C. § 2612(e)(2). Less than 30 days notice is permissible for reasons "such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency." 29 C.F.R. § 825.302(a). Notice is required "as soon as practicable," meaning "as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case." 29 C.F.R. § 825.302(b). "This ordinarily . . . mean[s] at least verbal notification to the employer within one or two business days of when the need for leave becomes known to the employee." *Id.* If the need for FMLA leave is not foreseeable,

> the employee "should give notice to the employer of the need for FMLA leave as soon as practicable under the facts and circumstances of the particular case." 29 C.F.R. § 825.303(a).
>
> Although "[a]n employer may also require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave," "failure to follow such internal employer procedures will not permit an employer to disallow or delay an employee's taking FMLA leave if the employee gives timely verbal or other notice." 29 C.F.R. § 825.302(d). The acceptable ways for an employee to provide notice include, "in person, by telephone, telegraph, facsimile . . . or other electronic means." 29 C.F.R. § 825.303(b).

*Spangler v. Fed. Home Loan Bank of Des Moines*, 278 F.3d 847, 852 (8th. Cir. 2002).

The district court found no genuine issue of material fact that Stuhldryer failed to give Percival notice to reasonably apprise them that any of his absences were due to a "serious health condition." Although he asserted in this action that his asthma was the qualifying serious health condition that caused him to miss work, Stuhldryer admitted during his deposition that his asthma did not "have anything to do with Percival and the lawsuit that's filed here." Nor do his absence reports reflect that Stuhldryer ever suggested he suffered from any illness other than "not feeling well."[1]

We therefore agree with the district court's conclusion that no genuine issue of material fact exists as to Stuhldryer's failed notification to Percival of any serious health conditions or that FMLA might be applicable. We affirm the

[1] The final absence that led to his termination was a week-long vacation to the Sturgis motorcycle rally in South Dakota. Stuhldryer's absence report indicated he wanted to use his accrued vacation and personal time plus twenty hours of leave without pay. He was told before he left that he was not approved to take the leave without pay, and his job was in jeopardy if he did not return when his accrued time was up. Ignoring the warning, he was absent the entire week and was terminated.

granting of summary judgment to Percival.

Percival cross-appeals the denial of their motion for sanctions pursuant to Iowa Rule of Civil Procedure 1.413(1). However, we conclude the district court did not abuse its discretion in declining to impose sanctions against Stuhldryer's attorney on the basis of filing a frivolous lawsuit. *See Harris v. Iowa Dist. Court*, 570 N.W.2d 772, 776-77 (Iowa Ct. App. 1997).

**AFFIRMED.**