IN THE COURT OF APPEALS OF IOWA

No. 9-653 / 09-0177
Filed September 17, 2009

VAUGHNELLE PENISKA,
Plaintiff-Appellant,

vs.

DAVITA, INC.,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Richard G. Blane II, Judge.

Vaughnelle Peniska appeals from the district court's order granting defendant's motion for summary judgment. **AFFIRMED.**

Harley C. Erbe of Erbe Law Firm, Des Moines, for appellant.

Heidi A. Guttau-Fox and Scott Moore of Baird, Holm Law Offices, Omaha, Nebraska, for appellee.

Considered by Vogel, P.J., and Potterfield, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

POTTERFIELD, J.

I. Background Facts and Proceedings

Vaughnelle Peniska was employed by DaVita, Inc. from 2003 until she was involuntarily terminated in 2007. DaVita employees receive paid time off (PTO) to use for vacation, sick, and personal time. DaVita employees also receive extended illness leave (EIL) to use when personal illness or injury prevents them from working. At the time of her termination, Peniska had accrued 56.18 hours of PTO and 160.42 hours of EIL. These unused PTO and EIL benefits were not paid to Peniska following her termination.

DaVita's policies specify that an employee who is involuntarily terminated "will automatically forfeit all accrued PTO, except in states where prohibited by law." It is undisputed that Peniska's termination was involuntary. DaVita's policies also state that "EIL is not paid out in the event of a teammate's separation of employment (either voluntary or involuntary)."

On February 29, 2008, Peniska filed a petition seeking payment of her accrued PTO and EIL time. On November 6, 2008, DaVita filed a motion for summary judgment asserting that Peniska is not entitled to such payments. On January 5, 2009, the district court granted DaVita's motion for summary judgment.

II. Standard of Review

We review the granting of a summary judgment motion for correction of errors at law. *In re Estate of Renwanz*, 561 N.W.2d 43, 44 (Iowa 1997). Summary judgment is appropriate when the record demonstrates that there is no genuine issue of material fact and the moving party is entitled to judgment as a

matter of law. *Id.* We review the evidence in the light most favorable to the nonmoving party. *Id*.

III. Summary Judgment

Iowa Code section 91A.4 (2007) provides, "When the employment of an employee is . . . terminated, the employer shall pay all wages earned . . . ." Iowa Code section 91A.2(7)(b) defines wages to include "[v]acation, holiday, sick leave, and severance payments which are due an employee under an agreement with the employer or under a policy of the employer." "When a statute is plain and its meaning is clear, we need not search for its meaning beyond its expressed language." *Stroup v. Reno*, 530 N.W.2d 441, 443 (Iowa 1995). We agree with the district court that the plain language of the statute means that vacation and sick time are not wages unless the employer has such a policy or agreement with its employee. It is undisputed that no such policy or agreement existed in this case.

Further, the cases cited by Peniska on appeal do not support her interpretation of the statute. The cases Peniska cited are either cases from other jurisdictions, which involve different statutory language,[1] or cases involving an agreement or policy.[2] We agree with the district court that because DaVita did

[1] *See Langager v. Crazy Creek Prods., Inc.*, 954 P.2d 1169 (Mont. 1998); *Roseland v. Strategic Staff Mgmt., Inc.*, 722 N.W.2d 499 (Neb. 2006).

[2] *See Vanous v. City of Cedar Rapids*, 255 N.W.2d 334, 336 (Iowa 1997) (involving a policy granting retirement benefits, which included full compensation for all accumulated sick leave in excess of ninety days); *Haesemeyer v. Mosher*, 308 N.W.2d 35, 38 (Iowa 1981) (allowing the Iowa merit employment department to limit the amount of unused vacation time for which employees would be compensated upon termination); *Chard v. IA Mach. & Supply Co.*, 446 N.W.2d 81, 84 (Iowa Ct. App. 1989) (finding employee was entitled to unused vacation pay pursuant to an agreement with employer); *Willets v. City of Creston*, 433 N.W.2d 58, 63 (Iowa Ct. App. 1988) (finding employees' accrued sick

not have an agreement or policy providing that it would compensate employees for unused PTO or EIL time upon involuntary termination, Peniska has no right to compensation under the statute, and DaVita is entitled to judgment as a matter of law.

AFFIRMED.

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leave benefits provided by a collective bargaining agreement were not due without sickness, retirement, or termination).