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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2019-CA-000064-MR

PATRICK BAHIL AND JOHN FAIG — APPELLANTS

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE
ACTION NO. 16-CI-000097

FLEXSTEEL INDUSTRIES, INC. AND
DMI FURNITURE, INC. — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: MAZE, LAMBERT, AND L. THOMPSON, JUDGES.

THOMPSON, L., JUDGE: Patrick Bahil and John Faig appeal from an order of the Jefferson Circuit Court which granted summary judgment in favor of Flexsteel Industries, Inc. and DMI Furniture, Inc. Appellants argue that the trial court erred in finding that Kentucky Revised Statutes (KRS) 337.060(1) could not be utilized to litigate their wage claims. Finding no error, we affirm.

FACTS AND PROCEDURAL HISTORY

Bahil began his employment with DMI in 1998. In 2003, Flexsteel acquired DMI and DMI became a wholly-owned subsidiary of Flexsteel. Bahil began reporting to Don Dreher, DMI's Chief Executive Officer. When Dreher left Flexsteel in 2014, Bail began reporting to Karel Czanderna, President and CEO of Flexsteel. Faig began his employment with DMI in 2008. Faig reported directly to Bahil upon his hiring and continued to do so until Bahil left the company in 2016.

Throughout their employment, Appellants were compensated in generally the same manner. They would receive a base salary, and quarterly and annual bonuses based on reaching certain goals and benchmarks related to the performance of their division. Bonus amounts and division benchmarks would periodically change. Some years neither Appellant would receive a bonus due to poor sales; however, other years Appellants would receive the maximum allowable bonus.

In fiscal year 2014, Flexsteel began the Cash Incentive Compensation Plan. This plan would apply to DMI employees. During a meeting, Dreher informed Appellants about the new compensation plan and stated that the way their bonuses would be calculated would be changing. Dreher also gave both Appellants a copy of the plan which laid out their new performance goals, target numbers, and annual potential payouts for meeting those goals. One change was

that the new plan did not give quarterly bonuses, only a lump sum payment after the financials for the fiscal year had been completed. In addition, Flexsteel's CEO had complete discretion over the bonuses and could reduce or cancel any bonus.

Bahil rejected the new plan. Faig rejected the new plan and proposed modifications to it. Faig gave those modifications to Czanderna and indicated he would only be willing to accept these modifications. Czanderna rejected the modifications and told Faig that the new plan was non-negotiable. Even though the plan did not allow for quarterly bonuses, Appellants kept receiving them. Appellants assumed that they would not be held to the new compensation plan and were still being paid under the old plan. In actuality, Flexsteel continued to pay quarterly bonuses to Appellants as a goodwill gesture in order to help with the transition to only receiving year-end bonuses. At the end of the fiscal year, Flexsteel gave Appellants a lump sum bonus payment. The end of the year payment and the quarterly payments equaled the amount Appellants would have received under the new plan at the end of the year. In other words, Appellants received an advance of their year-end bonus each quarter and any remainder was paid at the end of the year.

This accommodation, the quarterly payments and year-end remainder payment, continued during the 2014 fiscal year and the 2015 fiscal year. At the end of the 2014 fiscal year, Appellants received substantially smaller year-end

bonuses than they would have had they been paid under the old plan. Toward the end of the 2015 fiscal year, Appellants were told they would not be receiving a year-end bonus and that their final quarterly bonus would be greatly reduced. Appellants were also informed that beginning with the 2016 fiscal year, their quarterly bonuses would stop and they would only receive the year-end bonus.

Appellants believed that in fiscal years 2014 and 2015 they were being paid under the old plan and that Appellees impermissibly withheld wages from their year-end bonus; therefore, they brought the underlying lawsuit. Citing KRS 337.060(1), they argued Appellees impermissibly withheld wages from them.[1] On December 6, 2018, the trial court entered an order granting summary judgment in favor of Appellees. The trial court found that KRS 337.060 did not apply because there was a bona fide dispute over wages. This appeal followed.

ANALYSIS

The issue before us is whether the trial court erred in granting summary judgment in favor of Appellees by finding that KRS 337.060 did not apply to the case at hand.

> The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law. . . . "The record must be viewed in a light most favorable to the party opposing the motion for

[1] Appellants raised other issues, however, only the KRS 337.060 argument is before this Court.

> summary judgment and all doubts are to be resolved in his favor." Summary "judgment is only proper where the movant shows that the adverse party could not prevail under any circumstances." Consequently, summary judgment must be granted "[o]nly when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor[.]"

Scifres v. Kraft, 916 S.W.2d 779, 781 (Ky. App. 1996) (citations omitted).

KRS 337.060 states in pertinent part: "(1) No employer shall withhold from any employee any part of the wage agreed upon." KRS 337.010(c)1 defines wages as "any compensation due to an employee by reason of his or her employment, including salaries, commissions, vested vacation pay, overtime pay, severance or dismissal pay, earned bonuses, and any other similar advantages agreed upon by the employer and the employee or provided to employees as an established policy."

Here, the compensation plan used by Appellees, salary and bonuses, would constitute wages. The question before us is were the wages agreed upon? The trial court found that there was a bona fide dispute over the wages; therefore, KRS 337.060 did not apply. We agree with the trial court.

> When engaging in statutory interpretation, our main goal is "to give effect to the intent of the General Assembly." The clearest indicator of that intent is the "language the General Assembly chose, either as defined by the General Assembly or as generally understood in the context of the matter under consideration." And "[w]here the words used in a statute are clear and unambiguous and express the legislative

> intent, there is no room for construction and the statute must be accepted as written."

Bell v. Bell, 423 S.W.3d 219, 223 (Ky. 2014) (footnotes and citations omitted). "We must interpret statutes as written, without adding any language to the statute[.]" Commonwealth *v. Chestnut*, 250 S.W.3d 655, 661 (Ky. 2008) (footnote omitted). Here, the statute clearly states that it applies to "wages agreed upon." In other words, if there is a reasonable dispute over the set amount of wages, the statute does not apply. *See Kimmel v. Progress Paint Mfg. Co.*, No. 2002-CA-000273-MR, 2003 WL 1226837, at *3 (Ky. App. Jan. 10, 2003).

We have such a dispute in this case. Beginning in fiscal year 2014, Flexsteel began the Cash Incentive Compensation Plan. This changed the way employees, such as Appellants, would be compensated. Appellants were informed of the changes, but they rejected the new payment structure. Appellants wished to be paid under the old plan; however, according to their deposition testimony, no one told them that they would be exempt from the new plan. In addition, participation in the new plan was non-negotiable. Appellants assumed that when they began receiving quarterly bonuses, as opposed to one year-end bonus, that they were being paid under the old plan. This was an incorrect assumption. Here, Appellants did not agree to the new wage structure and Appellees did not agree to continue the old pay structure. There was clearly no agreed upon wage in this

instance. The trial court correctly found that KRS 337.060 did not apply and properly granted summary judgment in favor of Appellees.

CONCLUSION

Based on the foregoing, we affirm the judgment of the trial court.

ALL CONCUR.

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