NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 CA 0684

DALE A. GREMILLION

VERSUS

GREENE TWEED & CO. I., L.P. & GREENE, TWEED, & CO., INC.

Judgment Rendered: December 27, 2013

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number 617,529

Honorable R. Michael Caldwell, Judge Presiding

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Paul F. Bell **Baton Rouge, LA**	**Counsel for Plaintiff/Appellant** **Dale A. Gremillion**
Amelia W. Koch **Kathlyn G. Perez** **New Orleans, LA**	**Counsel for Defendant/Appellee** **Greene, Tweed & Co., I., L.P. &** **Greene, Tweed & Co., Inc.**

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BEFORE: WHIPPLE, C.J., WELCH, AND CRAIN, JJ.

WHIPPLE, C.J.

This appeal involves an action by an employee against his former employer for unpaid vacation pay. The employer filed a motion for summary judgment on the grounds that all wages owed to the employee, including unused vacation pay, were promptly paid at the time of his resignation. The trial court granted the motion for summary judgment and dismissed the employee's claim. For the following reasons, we affirm.

PROCEDURAL HISTORY

Dale Gremillion began his employment as a salesman with Greene Tweed & Co. I.,L.P. & Greene, Tweed, & Co., Inc. ("Greene Tweed") on September 16, 2006. He voluntarily resigned almost six years later on June 26, 2012. After receiving his final paycheck, Gremillion emailed Greene Tweed's human resources department, requesting additional pay for unused vacation pay purportedly due. Greene Tweed denied his request, prompting Gremillion to file suit for lost wages, penalties, interest, attorney's fees, and costs under the Louisiana Wage Payment Act.

In response, Greene Tweed filed a motion for summary judgment, contending that Gremillion was promptly paid for all vacation time that he was owed upon his resignation and that he has no claim for additional unpaid vacation. The trial court granted Greene Tweed's motion for summary judgment and dismissed Gremillion's suit. Gremillion now appeals.

DISCUSSION

Vacation leave, once promised, immediately becomes vested property of the employee to whom it was promised. Williams v. Dutchtown Pharmacy, L.L.C., 08-2559 (La. App. 1st Cir. 9/11/09), 24 So.3d 221, 226. Upon the resignation of an employee, vacation pay is considered an amount due under the terms of

employment, if, in accordance with the stated vacation policy of the person employing such laborer or other employee, both of the following apply:

(a) The laborer or other employee is deemed eligible for and has accrued the right to take vacation time with pay.

(b) The laborer or other employee has not taken or been compensated for the vacation time as of the date of the discharge or resignation.

LSA-R.S. 23:631(D)(1).

In his petitions, Gremillion contended that he was entitled to compensation for unused and unpaid vacation, which he claims should have been awarded to him on April 1, 2011 for his prior year of service.[1] Gremillion's alleged entitlement to additional compensation under the policies presents a question of contractual obligation and interpretation of Greene Tweed's leave policy(ies).[2] Interpretation of a contract is usually a legal question which can be properly resolved in the framework of a motion for summary judgment. Sanders v. Ashland Oil, Inc., 96-1751 (La. App. 1st Cir. 6/20/97), 696 So.2d 1031, 1036, writ denied, 97-1911 (La. 10/31/97), 703 So.2d 29. Interpretation of a contract is the determination of the common intent of the parties. LSA-C.C. art. 2045. When the words of a contract are clear, explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. LSA-C.C. art. 2046; Green v. New Orleans Saints, 00-0795 (La. 11/13/00), 781 So.2d 1199, 1203. Thus, the threshold

[1]In his original petition, Gremillion contended he was entitled to compensation for 200 hours of unused vacation. However, in brief to this court, he contends that he is entitled to "20 days of unused vacation for his 2010/2011 year of service to Greene Tweed," together with statutory penalties and attorney's fees. For purposes of this appeal, we analyze his claim as a demand for "20 days of unused vacation."

[2] In Knecht v. Board of Trustees for State Colleges and Universities and Northwestern State University, 591 So.2d 690, 692 (La. 1991), a compensatory time policy was implemented by the Board in an executive order, and was later suspended. A group of thirty-two unclassified state employees filed suit seeking compensation for overtime worked pursuant to the Board's policy. The Supreme Court found that the plaintiffs were "contractually entitled" to use the compensatory time and the employer failed to perform its "contractual obligation."

issue we must decide is whether Greene Tweed's policy(ies) clearly and unambiguously establish how and ***when*** vacation is earned and allocated.

On appeal, the parties do not dispute that Gremillion was entitled to be paid for any unused vacation time; nor do they dispute that Greene Tweed had the power and right to make prospective changes to its leave policy(ies). The parties also do not dispute that various changes to Greene Tweed's vacation policies were made during Gremillion's employment. However, the parties disagree as to whether changes to Greene Tweed's leave policy(ies) resulted in the company's failure to provide Gremillion with vacation that he claims was previously earned and owed, namely, the twenty days of vacation that Gremillion alleges he should have received on April 1, 2011.

Gremillion contends that under Greene Tweed's policy(ies), vacation was "retroactive" and earned in the year before it was given. Accordingly, he argues that on April 1, 2011, he was due, but never received, pay for vacation time **earned** for work done from April 1, 2010 through March 31, 2011. In contrast, Greene Tweed contends that under its policy(ies), vacation was **awarded** prospectively, and then earned in the year it was given. Therefore, Greene Tweed contends, no lump sum of vacation was owed to Gremillion on April 1, 2011; rather, Greene Tweed contends that under the policies at issue, Gremillion was fully compensated. After *de novo* review of each of the policies offered in support of the motion for summary judgment, we agree.

On the date Gremillion began working at Greene Tweed in September 2006, Greene Tweed's vacation policy provided in pertinent part that newly hired employees would be entitled to "paid time off" in the year of hire and "vacation days" in the following calendar year under a specific schedule. Under this policy, employees hired from July through the end of the calendar year of hire were entitled to no "paid time off" in the calendar year of hire and a specified number of

"vacation days" for the following calendar year. Thus, in accordance with this policy, when Gremillion began working at Greene Tweed in September 2006, he did not receive any vacation benefit on the date of his hire or throughout 2006. Moreover, on January 1, 2007, in accordance with the applicable policy, he received the specified amount of twelve days of vacation. Thereafter, he received the full amount allowed under the schedule, i.e., fifteen "vacation days," on January 1, 2008 and on January 1, 2009.

However, Greene Tweed amended its stated leave policy in October 2009, with the changes effective April 1, 2010. These changes included implementing a paid time off policy, thereby eliminating any distinction between personal/sick days and vacation days, and changing the PTO policy to run in accordance with the fiscal year of April 1st through March 31st, with employees expressly "grant[ed]" their "annual entitlement" of PTO on April 1st of each year. Specifically, the policy stated: "Effective April 1st, 2010, the company grants annual PTO to employees under the following plan. It is the policy of the company not to provide pay in lieu of PTO, unless required by law." Although the number of PTO hours granted was based on "years of continuous service," there is nothing in the policy to support Gremillion's argument that this annual award of PTO was **earned** as compensation for prior work. Accordingly, on April 1, 2010, Gremillion was granted twenty days of PTO.

As reflected in the record, Greene Tweed again amended its leave policy with changes effective April 1, 2011. Pursuant to these changes, employees were no longer awarded an annual entitlement of PTO at the beginning of the fiscal year. Rather, for the first time, the adopted policy provided that employees would **earn** PTO, to be accrue on a monthly basis, (i.e., 1/12 per month) in accordance with years of continuous service, as follows:

> The PTO plan year extends from April 1st through March 31st. PTO will be earned on a monthly basis (i.e., 1/12 per month) in the current PTO plan year. **PTO is earned at the beginning of each calendar month worked.**

(Emphasis added). Thus, under the above policy, Gremillion could accrue PTO of twenty days (160 hours) throughout the year, to be earned and accrued on a monthly basis in the amount of 1.66 days (13.33 hours). As reflected in the record, between April 1, 2011 and March 31, 2012, Gremillion earned his PTO on a monthly basis under the policy and used his entire twenty days of PTO. Further, in accordance with this policy, from March 31, 2012 through his resignation date of June 26, 2012, Gremillion **earned** fifty hours of PTO, of which he used twenty-four hours. Accordingly, upon Gremillion's resignation, Greene Tweed owed and paid Gremillion for his remaining twenty-six hours of earned, but unused PTO.

In addition to the policies noted above, Greene Tweed also offered in support of its motion for summary judgment the affidavit of Beth Manville, an employee in Green Tweed's human resource department, which set forth the specific vacation policies applicable during Gremillion's employment; the amount of PTO or vacation earned, allocated and used by Gremillion throughout his employment; and the amount and mathematical basis for the final amount paid to Gremillion for his unused PTO.

In opposition to the motion for summary judgment, Gremillion did not offer any affidavits or other supporting evidence to contradict the policies as set forth by Greene Tweed. Instead, he relied only on a strained and unsupported interpretation of the applicable policies, which argument we specifically reject. While the policy effective April 1, 2010 tied the specific amount of PTO to be **granted** an employee at the beginning of the fiscal year to the employee's years of service, there is nothing on the record before us to indicate that this schedule represented PTO earned for prior service. When a motion for summary judgment is made and

supported, an adverse party may not rest on the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided above, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be rendered against him. LSA-C.C.P. art. 967(B).

Based on the foregoing, we conclude that Greene Tweed showed that under the applicable policies, no genuine issue of material fact remained as to when vacation was granted or earned by employees, and that under said policies, Gremillion received or was paid for all vacation time or PTO due upon cessation of his employment with Greene Tweed. Therefore, we find that the trial court correctly granted Greene Tweed's motion for summary judgment.

CONCLUSION

For the foregoing reasons, the February 21, 2013 judgment of the trial court is hereby affirmed. Costs of this appeal are to be paid by plaintiff, Dale A. Gremillion.

AFFIRMED.