STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1233

Clarence Hightower,
Appellant,

vs.

Community Action Partnership of Ramsey and Washington Counties,
Respondent.

Filed June 26, 2023
Affirmed
Segal, Chief Judge

Ramsey County District Court
File No. 62-CV-21-3009

Larry E. Reed, Law Offices of Larry E. Reed, Minneapolis, Minnesota (for appellant)

Kevin M. Mosher, Thompson, Coe, Cousins & Irons, L.L.P., St. Paul, Minnesota (for respondent)

Considered and decided by Wheelock, Presiding Judge; Segal, Chief Judge; and Ross, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Appellant Clarence Hightower, the executive director of respondent Community Action Partnership of Ramsey and Washington Counties (CAPRW), sent an email to the chair of the CAPRW board of directors on March 24, 2020, stating that he intended to resign his position effective April 1, 2020. He then started a new full-time job on April 1

as executive director of a different community action partnership agency. After CAPRW declined to pay Hightower the balance of his accumulated paid time off (PTO), Hightower initiated this suit alleging, as relevant to this appeal, breach of contract and a violation of Minn. Stat. § 181.14 (2022) of the Minnesota Payment of Wages Act (PWA), Minn. Stat. §§ 181.01-.1721 (2022). The district court granted summary judgment to CAPRW on Hightower's claims. Because Hightower has no contractual right to a payout of accrued PTO and because Minn. Stat. § 181.14 provides no independent right to such a payment, we affirm.

FACTS

The following is a summary of the undisputed facts. Hightower began working for CAPRW as its executive director in 2008. His employment was governed by a written employment contract that was revised a number of times to reflect negotiated increases in salary and benefit changes, including increases in his rate of PTO accrual. The contract in effect when Hightower separated from employment with CAPRW consisted of a 2012 written contract that was most recently amended effective January 1, 2019. The 2019 amendments included an increase in salary and allowed Hightower to carry over an unlimited number of accrued PTO hours from year to year. Prior to the 2019 amendments, Hightower's contract had a 400-hour cap on the number of PTO hours that could be carried over at the end of a year.

Hightower sent an email to the CAPRW board chair on March 24, 2020, with the subject line "Letter of Resignation." The email stated:

> I write this letter to inform you of my intent to resign my position as Executive Director of [CAPRW] effective April 1, 2020. I want to thank you and the board for the opportunity to lead this organization for the last twelve years.
>
> In March of 2019, I had a life altering health event that continues to be problematic and I now need to be more attentive.
>
> I would be remiss if I didn't say "thank you" to all the wonderful staff that have allowed me to lead them for all these years, THANK YOU!!!!
>
> I pray for the continued success under your Board Leadership.

Hightower became the employee of another organization, Community Action Partnership of Hennepin County (CAP Hennepin), as its executive director on April 1.[1]

After his resignation, Hightower requested that CAPRW pay him the balance of his 1,345.82 hours of accrued PTO—or a little more than $125,000—stating that he was entitled to payment under the terms of his employment contract. CAPRW disagreed but sent Hightower a letter on April 6 offering to pay Hightower the equivalent of 400 hours of PTO, conditioned on Hightower signing an agreement releasing all claims against CAPRW. Hightower did not sign the agreement.

Several days later, Hightower sent CAPRW a letter, via counsel, demanding payment for his accrued PTO. When he did not receive a response, Hightower sent a certified letter to the board chair stating his intent to utilize all of his PTO beginning

[1] Hightower had been serving as executive director of both CAPRW and CAP Hennepin through a contract between CAPRW and CAP Hennepin. As of April 1, 2020, he became an employee of CAP Hennepin.

retroactively on April 1, and to terminate the contract when all of the PTO was used. Alternatively, Hightower stated that he would "appreciate a lump sum payment consistent with [his] accumulated hours." CAPRW did not comply with Hightower's demands and this lawsuit ensued.

CAPRW moved for and the district court granted summary judgment on Hightower's claims. The district court determined that the unambiguous provisions of the employment contract did not entitle Hightower to a payout of accrued PTO in the event he voluntarily resigned from his employment; the contract only required CAPRW to pay out Hightower's accrued PTO in the event that CAPRW terminated Hightower's employment without cause. The district court also reasoned that Hightower's statutory claim failed as a matter of law because "Chapter 181 is a timing statute" and Hightower had not "point[ed] to a clear contractual obligation of [CAPRW] to [pay out his accrued] PTO."

DECISION

Hightower argues that the district court erred in granting summary judgment dismissing his claims for breach of contract and for a violation of Minn. Stat. § 181.14. Appellate courts "review the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). In doing so, this court "view[s] the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

I. The district court did not err in dismissing Hightower's breach-of-contract claim.

Under Minnesota law, an employee's rights regarding the payout of an employment benefit, like PTO, are wholly the creature of contract. *See Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 123, 128 (Minn. 2007) (concluding that, because Minnesota statutes "do not provide for employee vacation pay as of right," the right to paid-time-off benefits are a matter of contract); *Brown v. Tonka Corp.*, 519 N.W.2d 474, 477 (Minn. App. 1994) ("An employer's liability for employees' vacation pay is wholly contractual."). Contract interpretation involves a question of law subject to de novo review. *Alpha Real Est. Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 311 (Minn. 2003). "In construing contracts, [this court] look[s] to the language of the contract to determine the parties' intent. A contract is ambiguous if, based upon its language alone, it is reasonably susceptible of more than one interpretation." *Trebelhorn v. Agrawal*, 905 N.W.2d 237, 242 (Minn. App. 2017) (quotation and citation omitted). "If a contract is unambiguous, the contract language must be given its plain and ordinary meaning, and shall be enforced by courts even if the result is harsh." *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346-47 (Minn. 2003) (quotation omitted).

Hightower argues that the district court erred in interpreting sections 5 and 8 of his employment contract and that a correct reading of those sections demonstrates that he is entitled to a payout of his accrued PTO. Those sections provide:

> 5. PAID TIME OFF. EMPLOYEE shall be entitled to paid time off each year in accord with the terms and provisions contained within the EMPLOYER'S established paid time off policy. . . . EMPLOYEE'S use of paid time off is subject to

> the requirement that EMPLOYEE shall confer with the Board President at least ten (10) working days prior to taking planned paid time off for more than three (3) consecutive days. Unused paid time off shall carry-over from year-to-year for EMPLOYEE. EMPLOYEE may accumulate (bank) an unlimited amount of paid time off.
>
> . . . .
>
> 8. TERMINATION WITHOUT CAUSE. Notwithstanding Paragraph 2 [which sets the term of the contract], EMPLOYER may terminate this agreement for any reason upon giving EMPLOYEE thirty (30) days written notice by certified or registered mail. . . . EMPLOYEE may also terminate this Agreement in the same fashion upon thirty (30) days written notice sent by certified or registered mail to the Board Chair. In the event of termination of this contract by EMPLOYER, EMPLOYEE shall be entitled to cash out accrued paid time off through the date of termination based upon EMPLOYER's cash out schedule, which is based on consecutive years of service.

On their face, neither of these sections references a right to a payout of PTO under the circumstances presented here—a resignation by Hightower. Section 5 of the contract discusses the accrual, use, and right to carry over unused PTO from one year to the next. It makes no mention of a cash payout of accrued PTO upon termination of employment. Section 8 of the contract discusses a payout of PTO but this is only in reference to a termination of the contract by CAPRW, not a voluntary resignation by Hightower. Section 8 contains no reference to a payout of PTO if Hightower is the one terminating his employment. The sentence in section 8 that discusses termination by Hightower simply addresses the form and amount of notice he must provide.

Hightower, nevertheless, maintains that his entitlement to a payout of PTO derives from the phrase "in the same fashion" that is contained in the second sentence of section

8, which reads: "EMPLOYEE may also terminate this Agreement *in the same fashion* upon thirty (30) days written notice." (Emphasis added.) He argues that the phrase unambiguously means that he had the right to be paid for his accrued PTO "in the same fashion" that CAPRW would have had to pay his accrued PTO in the event CAPRW had terminated his employment. We are not persuaded.

We conclude that Hightower's interpretation of section 8 is strained and illogical. The phrase "in the same fashion" logically cannot modify the succeeding sentence that references CAPRW's obligation to pay out PTO. The payout obligation in that sentence is expressly limited by the clause "[i]n the event of termination of this contract by EMPLOYER." Under the plain language of the sentence, only in the event of termination by CAPRW is Hightower "entitled to cash out accrued paid time off."

Moreover, as a matter of semantics, a phrase such as "in the same fashion" would typically be expected to refer to something that *precedes* the phrase. If the intent was to refer to a concept set out in a later sentence, one would expect an additional qualifier, such as "in the same fashion *as set out below*." And no such qualifier is contained in the sentence. That logic is reinforced here by the fact that the "in the same fashion" sentence covers the same subject matter as the sentence that immediately precedes it—the right to terminate the contract upon 30 days' notice. The only difference between the two sentences is that the first sentence addresses CAPRW's right to terminate the contract for any reason upon 30 days' notice and the second sentence addresses Hightower's comparable right. By contrast, the sentence containing CAPRW's obligation to pay out PTO follows *after* the

"in the same fashion" sentence and deals with a new topic—CAPRW's obligation to pay out PTO in the event it terminates Hightower's employment.

Logic and a plain reading of the section thus lead us to the conclusion that the phrase "in the same fashion" refers to the first sentence, not the last sentence in section 8. Because we reject Hightower's interpretation as not reasonable, we conclude that section 8 is not ambiguous and discern no error by the district court in its interpretation of that section. *See Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004) (noting that "when a contractual provision is clear and unambiguous, courts should not rewrite, modify, or limit its effect by a strained construction").

Hightower also argues that the reference to CAPRW's employee handbook in section 5 of his contract gave him a right to cash out his accrued PTO upon his resignation. The reference appears in the first sentence of section 5 and states: "EMPLOYEE shall be entitled to paid time off each year in accord with the terms and provisions contained within the EMPLOYER'S established paid time off policy." The employee handbook contains a PTO policy that sets out accrual rates for employees, establishes a 400-hour cap on carrying over PTO, and allows employees to cash out their accrued PTO upon resignation on the condition that "the employee must give his or her supervisor a two-week written notice of resignation."

We conclude, however, that Hightower forfeited this argument because he never raised it before the district court. Hightower, in fact, consistently maintained the opposite position before the district court, steadfastly arguing that the PTO policy in the employee handbook did *not* apply to him. For example, at the very outset of his memorandum to the

district court opposing summary judgment, Hightower stated that the handbook "does not apply to Dr. Hightower. It is only relevant to show that the practice of the agency involved the payment to all employees of PTO at the time of termination." It was only in oral argument to this court that Hightower suggested for the first time that the PTO policy in the employee handbook applied to him. Because Hightower never made this argument to the district court, we will not consider it here. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally address only those questions previously presented to and considered by the district court).

Finally, Hightower makes several contentions that rely on events or discussions outside of the employment contract, such as emails between CAPRW staff and the board chair, CAPRW's general practices in relation to departing employees, and the letters that CAPRW sent Hightower following his resignation.[2] Such evidence might be relevant if we concluded that the language of the contract was ambiguous. But we have concluded, as did the district court, that the applicable provisions of the contract are not ambiguous. *See Trebelhorn*, 905 N.W.2d at 243 (stating that "[e]xtrinsic evidence beyond the four corners of a contract is inadmissible to explain the meaning of a contract that is unambiguous and fully integrated").

[2] Hightower contends that the letter CAPRW sent him after he sent his resignation email placed the timing of his resignation in doubt. He also claims that through this letter CAPRW waived any notice requirement for contract termination, thus entitling him to his PTO payout under the contract. However, neither the exact timing of Hightower's resignation nor any alleged waiver of notice is material to our analysis. It is undisputed that Hightower did in fact resign, and, as explained above, the contract unambiguously entitles Hightower to PTO payment only if CAPRW terminates the contract.

We also note that the contract contained an integration clause expressly stating that the contract "contains the entire understanding and agreement between the parties . . . and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties hereto . . . that are not fully expressed herein." And Hightower confirmed in his deposition that no side agreement existed between him and CAPRW regarding the terms of the contract. As such, we are to look only to the terms of the contract and are not to look outside the document. *See Alpha Real Est.*, 664 N.W.2d at 312 (stating that "[t]he parol evidence rule prohibits the admission of extrinsic evidence . . . to explain the meaning of a contract when the parties have reduced their agreement to an unambiguous integrated writing" (quotation omitted)). Thus, the evidence put forward by Hightower, such as the deposition testimony concerning CAPRW's practice of paying out PTO to employees, constitutes parol evidence that we must disregard.

Without a right in the four corners of his employment contract to be paid his accrued PTO in the event he resigned his employment, we must conclude that Hightower had no such right, as harsh as that result might seem. We therefore affirm the district court's grant of summary judgment against Hightower on his breach-of-contract claim.

II. The district court did not err in dismissing Hightower's claim for failure to pay wages under Minn. Stat. § 181.14 of the PWA.

Hightower next challenges the district court's dismissal of his claim against CAPRW under Minn. Stat. § 181.14 of the PWA for CAPRW's failure to pay his accrued PTO. Section 181.14 requires employers to pay earned wages to employees who quit or resign by the next regularly scheduled payroll date. Hightower states that "[b]ecause the

PTO constitutes wages," CAPRW was required to pay out his PTO upon termination of the contract and is subject to a penalty and payment of his attorney fees under the PWA for its failure to do so.

As CAPRW acknowledges, and the district court held, the term "wages" in Minn. Stat. § 181.14 can include payment of accrued PTO. *See Lee*, 741 N.W.2d at 124-25 (holding "that paid time off or vacation pay constitutes wages for purposes of section 181.13(a)," which is a related provision of the PWA). But the statute does not create an independent right to wages or accrued PTO. It is instead merely a timing statute that dictates when employers must pay wages that an employee otherwise has a right to receive.

The Minnesota Supreme Court reached this very conclusion in *Lee.* In *Lee*, the employee argued that the PWA provided her a substantive right to the payout of accrued PTO when her employer terminated her employment. *Id.* at 125. The supreme court rejected that argument. *Id.* Instead, the supreme court held "that section 181.13(a) is a timing statute, mandating not *what* an employer must pay a discharged employee, but [only] *when* an employer must pay a discharged employee." *Id.*

The supreme court recently reinforced this interpretation in *Hall v. City of Plainview*, stating again that "Minnesota Statutes § 181.13(a) (2020) does not create an independent substantive right to payment of accrued [PTO] in the absence of a contract between an employer and an employee or another source identified in the statute that establishes an obligation by the employer to pay [PTO]." 954 N.W.2d 254, 257 (Minn. 2021).

We discern no reason why the holdings in *Lee* and *Hall* would not apply with equal force to Minn. Stat. § 181.14. That section of the PWA deals with the same subject matter as Minn. Stat. § 181.13(a), except that it governs the timing of wage payments in the event of a voluntary resignation by the employee instead of an employer-initiated discharge. *See Chatfield v. Henderson*, 90 N.W.2d 227, 232 (Minn. 1958) (noting that section 181.13 and section 181.14 "must be read together"); *see also Vill. Lofts at St. Anthony Falls Ass'n v. Hous. Partners III-Lofts, LLC*, 937 N.W.2d 430, 436 (Minn. 2020) ("We will read and construe a statute as a whole and interpret each section in light of the surrounding sections to avoid conflicting interpretations." (quotation omitted)).

Applying *Lee* and *Hall*, we conclude that section 181.14 does not create an independent obligation to pay Hightower for his accrued PTO. We thus affirm the district court's grant of summary judgment against Hightower on his claim for a violation of the PWA.

Affirmed.