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STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1684

Kathleen Klevesahl,
Appellant,

vs.

Carol Ackley d/b/a River Ridge Treatment Center, et al.,
Respondents.

Filed April 12, 2011
Reversed and remanded
Harten, Judge[*]

Dakota County District Court
File No. 19HA-CV-10-20

Stephen M. Harris, Meyer & Njus, P.A., Minneapolis, Minnesota (for appellant)

Kurt J. Erickson, David J. Duddleston, Jackson Lewis LLP, Minneapolis, Minnesota (for respondents)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Harten, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

HARTEN, Judge

The district court sua sponte awarded appellant, a terminated employee, summary judgment on the basis that a memo (the Memo) issued by respondent employer created a unilateral contract that entitled appellant to accrued paid-time-off (PTO) benefits. The district court also denied appellant's motion for attorney fees and respondent's motion for summary judgment. Appellant challenges the denial of attorney fees; respondent, in a notice of related appeal, challenges the adverse summary judgment. Because genuine issues of material fact preclude the entry of summary judgment, we reverse and remand.

FACTS

In 2006, appellant Kathleen Klevesahl began to work as a chemical dependency counselor for respondent C.D.C. Treatment Centers, Inc., d/b/a River Ridge Treatment Center. She received a copy of the employee handbook (also referred to by the parties as an "employee manual") published in 1999. It stated that eligible employees were entitled to, among other things, paid sick leave, vacation, holidays, and personal leave. The handbook also indicated, in boldface type, that it was not a contract between C.D.C. and the employee.

In January 2009, C.D.C. distributed the Memo, which notified its employees that the practice of granting paid sick leave, vacation, holidays, and personal leave had been changed to a grant of PTO, effective 28 December 2008. The Memo described PTO as a "permanent benefit" to employees.

In March 2009, Klevesahl was terminated for cause. In May 2009, her attorney wrote to C.D.C. claiming that Klevesahl was owed PTO for 230 hours, or $5,175, plus a statutory penalty of $3,375. C.D.C. replied that payment of PTO was discretionary with its chief executive officer (CEO). In June 2009, C.D.C. wrote to Klevesahl again to say that, although PTO was discretionary, C.D.C. had elected to pay Klevesahl for 40 hours of vacation time by direct deposit. Klevesahl returned this payment, claiming she was entitled to payment for 230 hours of PTO.[1]

In November 2009, Klevesahl brought this action against C.D.C., alleging that she was owed $5,175 for 230 hours of accrued PTO at $22.50 per hour, a $3,375 statutory penalty, and attorney fees.[2] In discovery, C.D.C. requested "[a]ll documents and things showing that you are entitled to payment for 230 hours of unpaid leave." Klevesahl's response was, "See pay stubs and employee manual"; she did not refer to the Memo.

In June 2010, C.D.C. moved for summary judgment dismissing Klevesahl's claims on the grounds of the disclaimer in the employee handbook. In her written response, Klevesahl stated that she should be awarded summary judgment because, despite its

[1] C.D.C. alternatively argues that its payment for 40 hours of vacation time was based on an accord and satisfaction that extinguished Klevesahl's claim well before she brought this action. Accord and satisfaction is a doctrine "expressed or implied from circumstances which clearly and unequivocally indicate the intention of the parties." *DeRosier v. Util. Sys. of Am., Inc.*, 780 N.W.2d 1, 8 n.4 (Minn. App. 2010) (quotation omitted). Klevesahl's return of the payment was a clear and unequivocal indication that she did *not* accept the proffered accord and satisfaction. Thus, C.D.C.'s accord and satisfaction argument fails.

[2] Klevesahl also named as a defendant Carol Ackley, the CEO of River Ridge Treatment Center, a C.D.C. facility where Klevesahl worked. Ackley moved successfully for a dismissal, which Klevesahl does not challenge. Thus, Ackley, individually, has no part in this appeal.

disclaimer, the employee handbook created a contract between her and C.D.C. under which she was entitled to PTO upon termination. In an accompanying affidavit, she asserted that she had received the handbook, that she had relied on its provisions about various benefits, and that she had concluded, from documents C.D.C. produced during discovery, that her correct amount of PTO was not the 230 hours asserted in her complaint but instead 157.35 hours.

Following a hearing, the district court sua sponte concluded that the Memo created a unilateral contract between C.D.C. and Klevesahl, denied C.D.C.'s motion on the ground that the handbook disclaimers did not affect the Memo, granted Klevesahl summary judgment, and denied her request for attorney fees. Klevesahl appealed from the denial of attorney fees, and C.D.C. noticed a related appeal challenging the sua sponte adverse summary judgment.

D E C I S I O N

In considering a summary judgment, we review de novo both whether a genuine issue of material fact exists and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). Here, the district court's denial of summary judgment to C.D.C. is based on an erroneous application of the law and its sua sponte summary judgment for Klevesahl is precluded by genuine issues of material fact.[3]

[3] In light of our reversal of the summary judgment granted to Klevesahl, the district court's denial of her request for attorney fees under Minn. Stat. § 181.171, subd. 3 (2010), is moot, and we do not address it.

1. C.D.C.'s Position on Adverse Summary Judgment

C.D.C. argues that Klevesahl has no contractual claim to PTO because the employee handbook she received when she was hired included disclaimers and therefore did not create contracts. For this argument, C.D.C. relies on *Roberts v. Brunswick Corp.*, 783 N.W.2d 226 (Minn. App. 2010), *review denied* (Minn. 24 Aug. 2010).[4] *Roberts* was a class action brought by a group of employees whose employer was purchased by another company, which hired them. 783 N.W.2d at 228. Both employers had handbooks that provided: "'Nothing in this employee handbook should be construed as a contract. [Employer] has the right to change these policies, procedures, and benefits as it deems appropriate without notice.'" *Id*. at 231 (alteration in original).

The first employer's handbook provided that vacation was earned on 1 July of each year based on an employee's time and service during the previous year and that unused vacation would result in a cash payout on 30 June of the following year. *Id*. at 228-29. The new employer's handbook provided a vacation policy of accrued rather than earned vacation and did not give a payout for unused vacation. *Id*. at 229. The employees alleged that they had a contractual right to be paid for unused vacation under the first employer's handbook. *Id.* But this court concluded that "even if an employee handbook constitutes an employment contract . . . , other language in the handbook can

[4] *See also Coursolle v. EMC Ins. Gr., Inc.*, ___ N.W.2d ___, ___, 2011 WL382783, at *4-5 (Minn. App. 8 Feb. 2011) (relying on *Roberts* and holding that employee had no contractual right to employment under employee handbook that disclaimed intention to form contract).

demonstrate that an employer does not intend to create an enforceable contract. A disclaimer in an employment handbook that clearly expresses an employer's intent will prevent the formation of a contractual right," and "that the disclaimer effectively prevented the formation of a contract." *Id*. at 230-32.

Klevesahl argues that, to the extent *Roberts* holds that a disclaimer entitles an employer to retroactively modify the terms of employment, "the rule is clearly wrong." Because the supreme court denied review of *Roberts*, this court is bound by it. *See Hoyt Inv. Co. v. Bloomington Commerce & Trade Ctr. Assocs.*, 418 N.W.2d 173, 176 (Minn. 1988) (holding that decisions of the court of appeals "bec[o]me final by virtue of the denial of the petition for further review"); *see also Lake George Park, L.L.C. v. IBM Mid-Am. Emps. Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998) ("This court, as an error correcting court, is without authority to change the law."), *review denied* (Minn. 17 June 1998).

The employee handbook that Klevesahl asserted was the basis for her claim of PTO did not confer a contractual obligation to pay PTO on C.D.C.

2. Summary Judgment For Klevesahl[5]

The district court concluded that the Memo, which contained no disclaimer itself and did not refer to the handbook, created a unilateral contract that conferred contractual rights to PTO on Klevesahl. Whether statements made by an employer are definite enough to constitute an offer for a unilateral contract is a question of law to be resolved by the court and is reviewed de novo by appellate courts. *Martens v. Minn. Mining & Mfg. Co*., 616 N.W.2d 732, 740 (Minn. 2000).

A unilateral contract requires an offer, communication of the offer by the offeror to the offeree, acceptance by the offeree, and consideration. *See Holman v. CPT Corp*., 457 N.W.2d 740, 743 (Minn. App. 1990), *review denied* (Minn. 20 Sept. 1990). Klevesahl never asserted that the Memo gave her a contractual right to PTO as the basis for her claim. In her affidavit responding to C.D.C.'s motion for summary judgment, Klevesahl referred to the handbook as "the one and only Employee Handbook/Manual

[5] Because Klevesahl never noticed a motion for summary judgment, C.D.C. argues that the summary judgment was granted sua sponte and is subject to reversal on two grounds. First, assuming without deciding that Klevesahl's responsive memorandum constituted a motion for summary judgment, it arrived less than ten days before the hearing, in violation of Minn. R. Civ. P. 56.03 ("[I]n no event shall the motion [for summary judgment] be served less than ten days before the time fixed for the hearing."). Second, C.D.C. was prejudiced because it had no notice that the district court would address the Memo and associated issues, including whether it created a unilateral contract, that would be dispositive of summary judgment; C.D.C. was not in a position to respond to claims involving the Memo. Summary judgment may be granted sua sponte only when "the absence of a formal motion creates no prejudice to the party against whom summary judgment is granted" and that party has "a meaningful opportunity to oppose such an action." *Id*. While we reverse the summary judgment on substantive grounds, we note that it would also be subject to procedural reversal.

that I ever received from [C.D.C]."[6] When asked to produce "[a]ll documents and things showing that you are entitled to payment for 230 hours of unpaid leave," Klevesahl responded, "See pay stubs and employee manual"; she did not refer to the Memo. Fact issues as to if and when Klevesahl received the Memo and her failure to base her claim on it preclude summary judgment on the grounds that the Memo created a unilateral contract. Moreover, it is manifest that C.D.C. did not have a fair opportunity to research and present arguments regarding the Memo. Finally, Klevesahl asserts on appeal that the Memo constituted a unilateral contract. As applied here, the existence of a unilateral contract would depend upon judicial fact finding that would preclude summary judgment.

Reversed and remanded.

[6] C.D.C. published another handbook that became effective after Klevesahl's termination.