2019 IL App (2d) 180744-U
No. 2-18-0744
Order filed June 10, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CHARLES J. PROROK,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 16-AR-254
	)	
THE COUNTY OF WINNEBAGO,	)	Honorable
	)	Eugene G. Doherty,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Birkett and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted defendant summary judgment on plaintiff's claim for payment for unused vacation time: pursuant to the parties' contract, plaintiff could accumulate only 400 hours of unused vacation time, and the fact that his pay stubs indicated that he accumulated more did not entitle him to payment for more.

¶ 2 Plaintiff, Charles J. Prorok, appeals from the judgment of the circuit court of Winnebago County denying his claim for monetary compensation for 526 hours of unused vacation time. Because plaintiff was not entitled to be paid for the unused vacation time, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff filed a complaint against defendant, Winnebago County,[1] seeking monetary compensation for 526 hours of earned but unused vacation time. Defendant, pursuant to section 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2016)), moved to dismiss based on the one-year limitations period in section 8-101(a) of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/8-101(a) (West 2016)). The trial court granted defendant's motion, and we reversed and remanded. See *Prorok v. Winnebago County*, 2017 IL App (2d) 161032.

¶ 5 Upon remand, plaintiff and defendant filed cross-motions for summary judgment. In support of the summary judgment motions, the parties stipulated to the following facts. Plaintiff was employed as an assistant state's attorney from February 1, 1978, until his resignation on October 27, 2007. Plaintiff's final payroll stub showed that he had 926 hours of unused vacation. It also showed that he was paid for 400 hours of the unused vacation.

¶ 6 Defendant had a written vacation policy, which took effect on June 1, 2004. The policy provided, in pertinent part, that as of January 1, 2006, an employee was allowed to accumulate "not more than [his] current vacation accrual plus an additional years' [*sic*] vacation accrual." Any accrued vacation "in excess of this allowed accumulation must [have been] used by January 1, 2006 or it [would] be lost." The policy further provided that "[a]ny accrued vacation in excess of the maximum amount allowed [would] be lost." Under the policy, plaintiff earned 200 hours of vacation per year and thus could accumulate a maximum of 400 hours of vacation. On June 1, 2004, plaintiff signed an acknowledgment of the policy.

[1] We note that plaintiff's salary and benefits were actually established by the Winnebago County State's Attorney, subject to the budgetary limitations set by defendant. See 55 ILCS 5/4-2003 (West 2016).

¶ 7 At the hearing on the cross-motions for summary judgment, plaintiff argued that, although the written policy limited his accrual of vacation to 400 hours, the payroll stub showed that he had accrued 926 hours. Thus, relying on section 5 of the Wage Payment and Collection Act (Wage Act) (820 ILCS 115/5 (West 2016)), plaintiff asserted that he was entitled to be compensated for the additional 526 hours of unused vacation.

¶ 8 The trial court denied plaintiff's motion for summary judgment and granted summary judgment to defendant. In doing so, the court found that the written policy controlled. The court described the policy as essentially a " 'use it or lose it' " policy. The court found that the policy made it very clear that plaintiff's accumulated vacation was capped at 400 hours. The court ruled that the "fact that [defendant's] accounting and/or payroll system apparently tracks the total amount of unused vacation time does not suggest an agreement to override the 400 hour limit." Plaintiff, in turn, filed this timely appeal.

¶ 9 II. ANALYSIS

¶ 10 On appeal, plaintiff contends that, after January 1, 2006, defendant never removed from its payroll records his excess vacation, nor stopped him from accumulating vacation beyond the policy's 400-hour limit. Thus, he maintains that he is entitled to be compensated for the 526 hours of vacation beyond the 400-hour limit, as reflected on his final pay stub.

¶ 11 Summary judgment is appropriate when the pleadings, depositions, admissions, and affidavits, viewed in the light most favorable to the nonmovant, establish no genuine issue of material fact and entitle the moving party to judgment as a matter of law. *Iwan Ries & Co. v. City of Chicago*, 2018 IL App (1st) 170875, ¶ 12. When the parties file cross-motions for summary judgment, they agree that there are no genuine issues of material fact and they invite the trial court to decide the case as a matter of law. *Iwan Ries & Co.*, 2018 IL App (1st) 170875, ¶ 12. We

review *de novo* a trial court's decision to grant summary judgment. *Iwan Ries & Co.*, 2018 IL App (1st) 170875, ¶ 12.

¶ 12 As noted in our opinion disposing of plaintiff's earlier appeal, his complaint is based on a contract. See *Prorok*, 2017 IL App (2d) 161032, ¶ 10. Plaintiff agrees that his alleged right to be compensated for unused vacation arises under the written policy.

¶ 13 Under the policy, as of January 1, 2006, plaintiff could not accumulate more than his current annual vacation plus one additional year's worth of vacation, or 400 hours. More importantly, as of January 1, 2006, any accrued vacation that exceeded 400 hours was lost. Thus, under the plain language of the policy, plaintiff was entitled to be compensated for a maximum of 400 hours of unused vacation.

¶ 14 In an effort to circumvent the plain language of the policy, plaintiff contends that, because his payroll stub continued to reflect an amount of unused vacation that exceeded 400 hours, he is entitled to be compensated for the additional 526 hours. We disagree.

¶ 15 The mere fact that the payroll stub included the amount of unused vacation that exceeded 400 hours did not modify the policy. There is no indication in the record that the parties agreed to any such modification. See *Burkhart v. Wolf Motors of Naperville, Inc.*, 2016 IL App (2d) 151053, ¶ 14. Nor does the record show that there was any other agreement between the parties requiring defendant to compensate plaintiff for any hours of vacation beyond the 400-hour limit. Indeed, there is nothing in the record to show that the inclusion on the final pay stub of the additional 526 hours of unused vacation was anything other than a mistake. Absent an agreement other than the one set forth in the policy, the policy controls.

¶ 16 Plaintiff suggests that defendant was obligated under the policy to affirmatively remove from its payroll records the additional hours of unused vacation and that, by not doing so, it

could not later deny him those hours. However, under the plain language of the policy, as of January 1, 2006, any unused vacation that exceeded 400 hours was automatically forfeited. Thus, defendant was not required to take any action to deny him the unused vacation.

¶ 17 Because the written vacation policy plainly prohibited the accumulation of more than 400 hours of vacation, and required the loss of unused vacation that exceeded 400 hours, plaintiff was entitled to be compensated for only 400 hours of vacation, irrespective of the amount shown on his final pay stub. Thus, the trial court properly denied plaintiff's motion for summary judgment and granted defendant summary judgment.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County.

¶ 20 Affirmed.