2019 IL App (5th) 180311-U

NO. 5-18-0311

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

DAPHNE BROWN-WRIGHT,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	St. Clair County.
	)	
v.	)	No. 14-AR-662
	)	
EAST ST. LOUIS SCHOOL DISTRICT 189,	)	Honorable
	)	Julia R. Gomric,
Defendant-Appellee.	)	Judge, presiding.

PRESIDING JUSTICE OVERSTREET delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's order entering judgment in favor of school district and against district employee is affirmed because employee failed to prove elements of promissory estoppel, breach of implied contract, or violation of Wage Payment and Collection Act.

¶ 2 The plaintiff, Daphne Brown-Wright, filed a complaint in the circuit court of St. Clair County, alleging that the defendant, East St. Louis School District 189 (District), failed to comply with its policy to pay a percentage of accumulated sick leave as severance pay upon her retirement. The plaintiff alleged claims for promissory estoppel, breach of implied contract, and violation of the Illinois Wage Payment and Collection Act (Wage Payment Act) (820 ILCS 115/1 *et seq.* (West 2014)). After hearing evidence,

the circuit court entered judgment in favor of the District and against the plaintiff. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 The plaintiff was employed by the District as a teacher from 1975 until 1998, and she returned to the District as an administrator from 2002 until June 2012, thus serving the District for 33 cumulative years. During this cumulative employment, the plaintiff accumulated 180 sick days, and thus, pursuant to a District policy allowing accumulated sick leave to be paid in severance pay when an administrator retires with at least 11 years of service to the District, she asserted that she was due severance pay of approximately $48,000 upon her retirement.

¶ 5 In 2006, the District adopted Policy 5:210, which states in relevant part:

> "Severance Pay for Administrators
>
> Accumulated sick leave shall be paid in severance pay when an administrator retires or leaves the system in accordance with policy. Severance pay shall be equal to 25% of the accumulated sick leave up to a maximum of 180 days for those administrators with 11 to 15 years of service to the District; 50% of the accumulated sick leave up to a maximum of 180 days for the administrators with 16 to 19 years of service to the District; and 75% of the accumulated sick leave for those administrators with 20 or more years of service to the District. This means that the maximum number of days paid to an administrator shall be 135 days. The rate of pay for each day shall be the administrator's daily rate of pay on the date of the letter announcing [his or her] retirement or resignation. ***"

¶ 6 The plaintiff retired from District service as of June 29, 2012. On July 26, 2012, the District notified the plaintiff in writing that she was ineligible for accumulated sick leave severance because her unused sick leave accumulated over less than 11 service years prior to her retirement. In the letter, the District explained that "prior, non-continuous service years with the District and unused, accumulated sick-leave for those service years are not considered in determining eligibility and calculating the amount of severance pay, if any, for administrators under such Policy."

¶ 7 The plaintiff thereafter filed a second-amended complaint against the District, alleging actions for promissory estoppel, breach of implied contract, and violation of the Wage Payment Act (820 ILCS 115/2 (West 2014)). On April 14, 2015, pursuant to the District's motion (735 ILCS 5/2-619(a)(9) (West 2014)), the circuit court entered an order dismissing with prejudice the plaintiff's second-amended complaint, and the plaintiff appealed. On appeal, this court reversed the circuit court's dismissal of the plaintiff's complaint. *Brown-Wright v. East St. Louis School District 189*, 2016 IL App (5th) 150148-U. This court determined that the plaintiff had sufficiently pled actions for promissory estoppel, breach of implied contract, and violation of the Wage Payment Act (820 ILCS 115/2 (West 2014)), reversed the circuit court's order dismissing the plaintiff's complaint, and remanded the cause for further proceedings. *Brown-Wright*, 2016 IL App (5th) 150148-U.

¶ 8 Accordingly, on February 26, 2018, the circuit court heard evidence on the plaintiff's claims. The plaintiff testified that prior to receiving the District's July 26, 2012, letter, no one from the District had notified her that her years of service to the

District must be continuous in order to obtain severance pay. The plaintiff testified that "several administrators *** talked about *** sav[ing] *** sick days [that] accumulated [in order to receive] severance [pay]." The plaintiff testified that she understood that the amount of sick days that were accumulated or saved determined the severance pay when she retired. The plaintiff testified that she believed that payment for accumulated sick days was a benefit of working for the District.

¶ 9 During the bench trial, the plaintiff testified that she had worked as a teacher for over 20 years when she first severed her employment with the District in 1998, in order to work in administration in Cairo, Illinois. The plaintiff acknowledged the District's contention that it paid her a severance of $1340.68 in November 1998, but the plaintiff testified that she did not know the purpose of the $1340 payment. The plaintiff suggested that it was probably her final paycheck from the District after she resigned. The plaintiff testified that even though she later worked in Cairo, she believed that she needed to return to the District to retire.

¶ 10 The plaintiff testified that she was working for the District in June 2006 when Policy 5:210 was enacted and that she continued to work for the District after June 2006. The plaintiff acknowledged, however, that she did not read Policy 5:210 until after she had received the July 26, 2012, correspondence from the District informing her that she was not entitled to severance pay for accumulated sick time. The plaintiff conceded that during her job interview, prior to her being rehired in 2002, no one from the District stated that she could use her prior District service to calculate retirement benefits. The plaintiff also conceded that she did not know anyone who had used a period of

noncontinuous service to entitle him or her to severance pay for accumulated sick leave. When asked whether she discussed the policy for accumulated sick leave with anyone from the District before she retired in 2012, the plaintiff answered in the affirmative, but, when confronted with her deposition, she admitted that she had testified earlier that she had not. The plaintiff testified that conversations with employees of the District formed her understanding about the District policy. The plaintiff stated that she "talked to several people[,] [including] teachers that left and went to other jobs, [but] not teachers that left and went to other jobs and came back and got paid."

¶ 11 Jacqueline Jones testified that she had worked for the District as a payroll supervisor from 1981 until 1995. Jones testified that in 1995, an oversight panel was appointed to help manage the District so that from 1995 until 2004, she worked for that third party. Jones testified that as payroll supervisor, she processed checks and retained payment documents. Jones verified the contents of the plaintiff's retirement file. Jones identified a 1998 document showing severance pay to the plaintiff for $1340.68. Jones testified that her signature on the form signified that she received the form and processed it for payment of severance pay to the plaintiff.

¶ 12 The plaintiff's retirement file included a Notice of Personnel Change dated September 22, 1998, indicating that after approval by the school board, the District issued the plaintiff severance pay for accumulated sick leave of $1340.68. The Payroll History of the plaintiff revealed a check processed on November 13, 1998, from a District account and payment made to the plaintiff in the amount of $1340.68.

¶ 13 Leslie Smith testified via an evidence deposition taken on February 15, 2018, and offered into evidence at trial. Smith testified that he had worked for the District from 1977 through 2001 as a math teacher and returned to work for the District from 2007 until 2011, retiring as an assistant principal. The District denied Smith severance for accumulated sick time for his period as an administrator. Smith testified that despite a prior term of service of more than 23 years, he was denied severance for his period as an administrator on the basis that he had not worked the requisite minimum 11 years for the District prior to his request for severance.

¶ 14 During trial, with regard to the plaintiff's objection to a question during the plaintiff's cross-examination, the plaintiff's attorney stated the following:

> "[T]he direct examination really didn't center on reliance. Reliance is one element of one theory in this case that frankly we didn't really put any evidence on as far as reliance goes. That goes to promissory estoppel only. This case as presented through the testimony has to do with either contract or agreement and reliance simply is not an element and therefore testimony about reliance or lack of reliance is not relevant."

In summation, the plaintiff contended that her claims were based on proof of both a contract and agreement with the District and that the promissory estoppel claim was barred upon such proof. See *Prentice v. UDC Advisory Services, Inc.*, 271 Ill. App. 3d 505, 512 (1995) ("once it is established *** that there is in fact an enforceable contract between the parties ***, then a party may no longer recover under the theory of promissory estoppel").

¶ 15 In its May 11, 2018, order, the circuit court found, *inter alia*, that the plaintiff had failed to prove that she was aware of Policy 5:210 in 2006 or any time before she retired in 2012 or that she continued to work for the District in reliance on this Policy. The circuit court noted that the plaintiff had conceded that there was no evidence of reliance at trial, and therefore, entered judgment for the District on the plaintiff's promissory estoppel claim. The circuit court also found that the plaintiff had not supported her claim that there was mutual assent between the parties that she could use her prior term of service as a teacher for benefit determination. The circuit court noted that the plaintiff conceded that this topic was not discussed when she was rehired and that no one made any statements that she would be able to use her prior term when she reapplied for employment with the District. The circuit court thus entered judgment in favor of the District on the plaintiff's claims for breach of implied contract and violation of the Wage Payment Act. On June 6, 2018, the plaintiff filed a timely notice of appeal.

¶ 16 ANALYSIS

¶ 17 The circuit court's judgment in this case was made following a bench trial and was based in part upon certain factual findings made by the circuit court. "To the extent that those factual findings are relevant to our determination of this issue, they must be given deference on appeal." *International Supply Co. v. Campbell*, 391 Ill. App. 3d 439, 447 (2009). "Thus, we will not reverse the trial court's factual findings unless they are against the manifest weight of the evidence." *Id.* at 447-48. "A judgment is against the manifest weight of the evidence when an opposite conclusion is apparent or when findings appear

to be unreasonable, arbitrary, or not based on evidence." *Brody v. Finch University of Health Sciences/The Chicago Medical School*, 298 Ill. App. 3d 146, 153 (1998).

¶ 18 "Whether a contract exists, its terms and the intent of the parties are [also] questions of fact to be determined by the trier of fact." *Hedlund & Hanley, LLC v. Board of Trustees of Community College District No. 508*, 376 Ill. App. 3d 200, 205 (2007). In contrast to a motion to dismiss, which raises issues of law (*Landers-Scelfo v. Corporate Office Systems, Inc.*, 356 Ill. App. 3d 1060, 1065 (2005)), the question of whether a contract exists is for the trier of fact to decide when there is a factual dispute (*Quinlan v. Stouffe*, 355 Ill. App. 3d 830, 836 (2005)). Specifically, an implied contract arises from a promissory expression inferred from the facts and circumstances showing an intent to be bound. *People ex rel. Hartigan v. Knecht Services, Inc.*, 216 Ill. App. 3d 843, 851 (1991). Likewise, the trier of fact's finding whether the plaintiff proved the elements of promissory estoppel should not be reversed unless it is against the manifest weight of the evidence. *Cullen Distributing, Inc. v. Petty*, 164 Ill. App. 3d 313, 318 (1987).

¶ 19 *Duldulao*

¶ 20 In *Duldulao v. Saint Mary of Nazareth Hospital Center*, 115 Ill. 2d 482, 491 (1987), our supreme court held that language in an employee handbook, stating that a nonprobationary employee could be discharged only after written notice, was sufficient to contractually modify the at-will nature of the plaintiff's employment. The supreme court found as undisputed that the defendant had given the handbook to the plaintiff and had intended that the plaintiff become familiar with its contents. *Id.* Notably, the court also found that the plaintiff continued to work with knowledge of the handbook provisions,

and therefore, the handbook's provisions became binding on the employer. *Id.* The *Duldulao* court held: "When these conditions are present, then the employee's continued work constitutes consideration for the promises contained in the statement, and under traditional principles a valid contract is formed." *Id.* at 490.

¶ 21 In *Duldulao*, "our supreme court applied traditional requirements for contract formation to determine whether an employee handbook create[d] an enforceable contract–offer, acceptance, and consideration." *Doyle v. Holy Cross Hospital*, 289 Ill. App. 3d 75, 78 (1997) (citing *Duldulao*, 115 Ill. 2d at 490 ("an employee handbook or other policy statement creates enforceable contractual rights if the traditional requirements for contract formation are present")).

> "Three requirements must be met for an employee handbook or policy statement to form a contract. First, the language of the policy statement must contain a promise clear enough that an employee would reasonably believe an offer has been made. Second, the statement must be disseminated to the employee in such a manner that the employee is aware of its contents and reasonably believes it to be an offer. Third, the employee must accept the offer by: 'commencing or continuing to work after learning of the policy statement.' " (Emphasis omitted.) *Id.* (quoting *Duldulao*, 115 Ill. 2d at 490).

¶ 22 In the present case, the plaintiff testified that she did not read Policy 5:210 until after she had received the July 26, 2012, correspondence from the District informing her that she was not entitled to severance pay for accumulated sick time. On appeal, the plaintiff contends that a contract was established pursuant to the words used by the

District in Policy 5:210 irrespective of whether the plaintiff read the policy. The plaintiff argues that she need only show that the policy language was clear enough so that an employee would believe an offer had been made and that the employer disseminated the policy in a manner that allowed employees to be aware of it. We disagree.

¶ 23 In *Duldulao*, our supreme court held that the employer's handbook provisions became binding on the employer when the plaintiff continued to work with knowledge of the handbook provisions. *Duldulao*, 115 Ill. 2d at 491 (employee accepts the offer "by commencing or continuing to work *after learning of the policy statement*" (emphasis added)); *Doyle v. Holy Cross Hospital*, 186 Ill. 2d 104, 111 (1999) (an employee's continuation of work *after learning of an employer's promise* constitutes consideration for the promises contained in the employer's offer, forming a valid contract). Here, the plaintiff did not continue to work after learning of Policy 5:210 but, instead, learned of Policy 5:210 only after her notice of retirement. See *Hanna v. Marshall Field & Co.*, 279 Ill. App. 3d 784, 791 (1996) (plaintiff's reliance on personnel policies as an enforceable contract fails where, among other things, the plaintiff testified that she never read the personnel policies). Thus, the plaintiff failed to demonstrate proof of consideration to form an employment contract. Compare *Mitchell v. Jewel Food Stores*, 142 Ill. 2d 152, 162 (1990) (plaintiff brought sufficient evidence to show requirements of *Duldulao* were met where "[p]laintiff received the employment manual, read through it, and continued to work").

¶ 24 Breach of Implied Contract

¶ 25 Likewise, the plaintiff failed to demonstrate that the District breached an implied-in-fact contract. A contract implied in fact is one whereby a contractual duty is imposed by a court by reason of a promissory expression inferred from facts, circumstances, and expressions by the promisor showing an intent to be bound. *Citizen's Bank—Illinois, N.A. v. American National Bank & Trust Co. of Chicago*, 326 Ill. App. 3d 822, 831 (2001). The plaintiff must allege and "prove the existence of the essential elements of a contract implied in fact, conveyed by implication from the parties' conduct or actions." *Brody v. Finch University of Health Sciences/The Chicago Medical School*, 298 Ill. App. 3d 146, 154 (1998). "A contract implied in fact must contain all elements of an express contract, and there must be a meeting of the minds. 17 C.J.S. *Contracts* § 4(b) (1963)." *Foiles v. North Greene Unit District No. 3*, 261 Ill. App. 3d 186, 190 (1994). "The elements of a contract are an offer, a strictly conforming acceptance to the offer, and supporting consideration." *Brody*, 298 Ill. App. 3d at 154.

¶ 26 "An implied contract arises where the intention of the parties is not expressed but an agreement in fact creating an obligation is implied or presumed from their acts—in other words, where circumstances under common understanding show a mutual intent to contract." *Id.* As noted above, although the plaintiff alleged that she had received and read the District's policy regarding retirement of its administrative employees, understood it as an offer, and accepted the offer by continuing her employment, the evidence revealed otherwise. After hearing the evidence, the circuit court determined that the plaintiff did not accept an offer conveyed by Policy 5:210 because she did not read

the policy until after she retired. See generally *Lampe v. Swan Corp.*, 212 Ill. App. 3d 414, 416 (1991) ("The [*Duldulao*] court found an implied-in-fact contract existed because the handbook contained a promissory expression, and Duldulao had alleged facts from which her reliance upon these promises could be inferred.").

¶ 27 The circuit court further found that although the plaintiff testified at trial that she had discussed a policy for accumulated sick leave with several people from the District prior to her retirement, she admitted that she had testified in an earlier deposition that she had not discussed the policy with an agent of the District. The circuit court noted that the plaintiff had admitted that she had never discussed with the District how long one would need to be employed or whether a noncontinuous term of service could be used in order to receive severance for unused sick leave. The circuit court found that the plaintiff had further admitted that she did not know of anyone who had used a period of noncontinuous service as a basis for accumulated sick leave severance and that the evidence revealed that the District had acted consistently by not paying administrator Smith accumulated sick leave severance based on noncontinuous service. The circuit court concluded that the plaintiff's own testimony undermined her claim that there was a meeting of the minds or that she acted in strict conformance with an offer to pay her sick leave severance based on her noncontinuous service to the District. "[A]s the trier of fact, the trial judge [was] in the best position to judge the credibility of the witnesses and to determine the weight to be given to their testimony." *Bullet Express, Inc. v. New Way Logistics, Inc.*, 2016 IL App (1st) 160651, ¶ 60.

¶ 28 Moreover, the evidence supports the circuit court's conclusions. The evidence revealed no conduct on the part of the District indicating that it offered to pay accumulated sick leave severance based on noncontinuous, cumulative years of employment, other than, allegedly, its use of the words "years of service" in Policy 5:210, which the plaintiff admitted she did not read prior to her retirement. The plaintiff's general understanding that she would be entitled to sick leave severance if she accumulated sick leave prior to her retirement failed to prove the existence of the essential elements of a contract implied in fact, conveyed by implication from the parties' conduct, requiring the District to consider her noncontinuous service to the District in order to calculate sick leave severance upon her retirement. See generally *Hanna*, 279 Ill. App. 3d at 792 (general understanding that warnings would be issued before an employee is terminated failed to create enforceable promise to satisfy *Duldulao*). The circuit court properly entered judgment in the District's favor.

¶ 29 Wage Payment Act

¶ 30 The plaintiff argues that the circuit court erred as a matter of law by dismissing her claim under the Wage Payment Act on the basis that the District did not assent to an agreement based on the policy.

¶ 31 The Wage Payment Act applies to employees of school districts and provides an avenue for employees to seek complete payment for earned compensation. 820 ILCS 115/1 (West 2014); *Miller v. Kiefer Specialty Flooring, Inc.*, 317 Ill. App. 3d 370, 374 (2000). The Wage Payment Act requires an "employer" to pay "final compensation" due to a separated employee within specified time limits. 820 ILCS 115/2, 5 (West 2014). To

successfully assert a violation of the Wage Payment Act, the plaintiff must allege and prove that: (1) the defendant was an "employer" as defined in the Wage Payment Act; (2) the parties entered into an "employment contract or agreement"; and (3) the plaintiff was due "final compensation." 820 ILCS 115/1 *et seq.* (West 2014); *Catania v. Local 4250/5050 of Communications Workers of America*, 359 Ill. App. 3d 718, 724 (2005). Although the Wage Payment Act does not specifically require the payment of accrued sick leave (*Grant v. Board of Education of City of Chicago*, 282 Ill. App. 3d 1011, 1022 (1996)), "final compensation" includes "any other compensation owed the employee by the employer pursuant to an employment contract or agreement" between the two parties (820 ILCS 115/2 (West 2014)).

¶ 32 Accordingly, in order for the plaintiff to prove her claim under the Wage Payment Act, the plain language of the statute requires her to prove the existence of either an employment contract or agreement. *Id.* An "agreement" is broader than a contract and requires only a manifestation of mutual assent of two or more persons; parties may enter into an "agreement" without the formalities of a contract. *Landers-Scelfo*, 356 Ill. App. 3d at 1067-68; *Zabinsky v. Gelber Group, Inc.*, 347 Ill. App. 3d 243, 249 (2004). Because the existence of a formally negotiated contract is not necessary under the Wage Payment Act, a plaintiff "seeking to recover under [the Wage Payment Act] does not need to plead all contract elements if she can plead facts showing mutual assent to terms that support the recovery." *Landers-Scelfo*, 356 Ill. App. 3d at 1068. Mutual assent to the terms of an agreement may be demonstrated by the parties' conduct. *Academy Chicago Publishers v. Cheever*, 144 Ill. 2d 24, 30 (1991). "Generally, it is the objective manifestation of intent

that controls whether a contract has been formed." *Urban Sites of Chicago, LLC v. Crown Castle USA*, 2012 IL App (1st) 111880, ¶ 51.

¶ 33 The plaintiff alleged a meeting of the minds expressed by the District's disseminated, written policy, offering severance pay credit to administrators for unused sick leave, and the plaintiff's acceptance of the policy, by continuing to work for the District. See *Tooley v. Industrial Comm'n*, 236 Ill. App. 3d 1054, 1056 (1992) (contractual relationship is a product of a meeting of minds expressed by some offer on the part of one and an acceptance on the part of the other). As noted above, however, the plaintiff failed to put forth evidence that she continued to work for the District after learning of a policy to pay accumulated sick leave as severance pay to administrators based on noncontinuous but cumulative years of service. Instead, the evidence revealed that the plaintiff did not read Policy 5:210 during her employment, that the District did not act in a manner consistent with a policy to pay accumulated sick leave as severance pay to administrators based on noncontinuous but cumulative years of service, and that she did not discuss such a policy with an agent of the District.

¶ 34 The evidence also revealed that the District had paid the plaintiff severance pay for her prior years of service, thus further supporting the conclusion that the parties had failed to objectively manifest an intent to form an agreement that required the payment of accumulated sick leave severance based on the plaintiff's previous years of District service as a teacher, in conjunction with her most-recent years of District service as an administrator. See generally *Burkhart v. Wolf Motors of Naperville, Inc.*, 2016 IL App (2d) 151053, ¶ 14 ("failure of the parties to agree upon or even discuss an essential term

of a contract may indicate that the mutual assent required to make or modify a contract is lacking"). Thus, the plaintiff failed to show a manifestation of mutual assent or a meeting of the minds as expressed by some offer on the part of one and an acceptance on the part of the other, and she thereby failed to sufficiently prove her claim to accumulated sick leave severance pay, based on her noncontinuous years of service, pursuant to the Wage Payment Act.

¶ 35 Therefore, we agree with the circuit court's conclusion that the evidence presented at trial failed to reveal a manifestation of mutual assent between the parties to include the plaintiff's previous term of employment when calculating severance pay. Accordingly, the evidence supports the circuit court's decision to enter judgment in the District's favor on the plaintiff's claim under the Wage Payment Act.

¶ 36 Promissory Estoppel

¶ 37 On appeal, the plaintiff argues that the circuit court improperly entered judgment in the defendant's favor on her action for promissory estoppel.

¶ 38 Promissory estoppel is "an equitable device invoked to prevent a person from being injured by a change in position made in reasonable reliance on another's conduct." *Kulins v. Malco, a Microdot Co.*, 121 Ill. App. 3d 520, 527 (1984). A party may recover under the doctrine of promissory estoppel in the absence of a contract. *Newton Tractor Sales, Inc. v. Kubota Tractor Corp.*, 233 Ill. 2d 46, 55 (2009). To establish a claim based upon promissory estoppel, a plaintiff must allege and prove that (1) the defendant made an unambiguous promise to the plaintiff, (2) the plaintiff relied on such promise, (3) the plaintiff's reliance was expected and foreseeable by the defendant, and (4) the plaintiff

relied on the promise to her detriment. *Quake Construction, Inc. v. American Airlines, Inc.*, 141 Ill. 2d 281, 309-10 (1990). A plaintiff's reliance must be reasonable and justifiable. *Newton Tractor Sales, Inc.*, 233 Ill. 2d at 51; *Quake Construction, Inc.*, 141 Ill. 2d at 309-10.

¶ 39 Although the plaintiff alleged that she continued to work for the District in reliance on its policy promising accumulated sick leave as severance pay, based on noncontinuous years of service, the evidence did not support her allegation. As noted by the circuit court, the plaintiff testified that she did not read District Policy 5:210 involving "years of service" until after she retired in 2012, and the plaintiff conceded that there was no evidence of reliance at trial. Thus, because the plaintiff could not establish that she was aware of a District policy wherein the District considered interrupted, cumulative years of employment with the District to calculate sick leave severance pay and that she understood the terms as a promise and reasonably relied on that promise in continuing her employment with the District, she failed to prove her claim for promissory estoppel.

¶ 40 CONCLUSION

¶ 41 For the reasons stated, we affirm the circuit court's judgment in favor of the defendant.

¶ 42 Affirmed.