IN THE COURT OF APPEALS OF IOWA

No. 0-347 / 99-1525
Filed August 16, 2000

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CLERK SUPREME COURT

SUSAN SCHOOLER,
Plaintiff-Appellant,

vs.

WOLFE CLINIC, P.C.,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, James W. Brown Judge.

Plaintiff appeals the summary judgment entered in favor of defendant on plaintiff's wage payment, breach of contract, misrepresentation, promissory estoppel, and fraud claims. **AFFIRMED.**

Michael J. Carroll of Coppola, Sandre, McConville & Carroll, P.C., West Des Moines, for appellant.

Joel T. S. Greer and Merrill C. Swartz of Cartwright, Druker & Ryden, Marshalltown, for appellee.

Considered by Vogel, P.J., and Miller and Hecht, JJ.

VOGEL, P.J.

Susan L. Schooler appeals the summary judgment entered in favor of Wolfe Clinic, P.C., on Schooler's wage payment, breach of contract, misrepresentation, promissory estoppel, and fraud claims. We affirm.

Background facts. This case arises from an employment dispute. Schooler alleges while employed by Wolfe Clinic P.C. (Wolfe), she received another job offer with a higher salary and a bonus package. Having worked primarily with Dr. Michael Hill, she informed him of her intention to accept the offer. Dr. Hill, with the apparent authority to act as an agent for Wolfe, offered to match the terms of the competing position. Schooler subsequently accepted the offer to remain with Wolfe at a $55,000 annual salary and a bonus plan comprised of thirty percent of her revenues. According to Schooler, she was not informed at what intervals she would receive the bonus payments. Approximately two years passed and, despite repeated requests, Schooler claims she received no bonus compensation. On January 31, 1997, she resigned. Schooler proceeded to file this lawsuit on February 23, 1999, asserting a violation under Iowa Code chapter 91A (1995) (Wage Payment Collection) and common law claims of breach of contract, negligent and/or intentional misrepresentation, promissory estoppel, and fraudulent misrepresentation. The district court barred her 91A wage claim based on the two-year statute of limitations for collection of wages under Iowa Code section 614.1(8) (1995). Further, the trial court determined her remaining common law claims were

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founded on her claim for wages and were, therefore, also barred under Iowa Code section 614.1(8).

Scope of review. On appeal, we review a summary judgment ruling for error. *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 354 (Iowa 1995). Summary judgment may be entered if the record shows "no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Iowa R. Civ. P. 237(c). Thus, "we examine the record before the district court to decide whether a genuine issue of material fact exists and whether the court correctly applied the law." *Benavides*, 539 N.W.2d at 354. In doing so, we view the facts in the light most favorable to the party opposing the motion for summary judgment. *Hagen v. Texaco Refining & Mktg., Inc.*, 526 N.W.2d 531, 538 (Iowa 1995).

Whether the payments owed constitute "wages" for purposes of Iowa Code chapter 91A involves statutory interpretation, which is a question of law for the court to decide. *Gabelmann v. NFO, Inc.*, 571 N.W.2d 476, 483 (Iowa 1997); *see Hornby v. State*, 559 N.W.2d 23, 25 (Iowa 1997). Thus, our review is for correction of errors of law as to the definition of "wages" for chapter 91A purposes. Iowa R. App. P. 4. In our review, we are not bound by the district court's interpretation. *State v. Bond*, 493 N.W.2d 826, 828 (Iowa 1992).

Chapter 91A wage claim. Iowa Code section 91A.2(7) defines wages as follows:

"Wages" means compensation owed by an employer for:

> a. Labor or services rendered by an employee, whether determined on a time, task, piece, commission or other basis of calculation. (emphasis in original)

Iowa Code section 614.1(8) sets the time period for bringing an action "founded on claims for wages or for a liability or penalty for failure to pay wages, within two years." The trial court barred Schooler's 91A wage claim because it determined the two-year statute of limitations for such claims had run before Schooler filed her lawsuit. Schooler argues on appeal that the trial court erred in calculating the appropriate commencement date for the statute of limitations. Schooler asserts her 91A wage claim was an effort to collect the bonus payments promised to her but unpaid during her employment period at Wolfe. The trial court determined the bonus money was due on the next regular payday following her resignation and, therefore, started the clock running on February 7, 1997, which made her subsequent February 23, 1999, filing untimely. Schooler contends the agreed upon bonus structure was thirty percent of the *collected* revenues generated by her efforts. She, therefore, argues the clock should not have started to run until all of the outstanding revenues generated by her were actually *collected* by Wolfe, her bonus amount was calculated and payable to her.

While Schooler asserts this position on appeal, she failed to raise this "collected revenues" theory before the trial court. She did not make this argument in her resistance to the motion for summary judgment. Subsequently, this question was not ruled on by the trial court or raised by Schooler in her 179(b) motion. Because it has not been addressed by the trial court, Schooler failed to preserve error as to this issue and we cannot now address it for the first

time on appeal: *Peters v. Burlington Northern R.R. Co.*, 492 N.W.2d 399, 401 (Iowa 1992).

Extension of thirty days under chapter 91A. Iowa Code section 91A.4 contains a thirty-day extension on the commencement of the statute of limitations for the payment of commissions by an employer. Schooler argued the application of this extension to her case before the trial court. The district court subsequently determined the commission exception required an agreement between the employer and employee to pay "only part of the commission or bonus at other than regular pay periods." The district court found there was no such agreement in this case. However, we need not review the merits of this argument as Schooler failed to present this issue for appeal. Iowa R. App. P. 14(a)(3). When a party, in an appellate brief, fails to present an issue for review, the issue may be deemed waived. *Pierce v. Staley,* 587 N.W.2d 484, 486 (Iowa 1998); *see Hollingsworth v. Schminkey,* 553 N.W.2d 591, 596 (Iowa 1996).

Common law claims. Schooler next asserts her common law claims of breach of contract, negligent and/or intentional misrepresentation, promissory estoppel, and fraudulent misrepresentation remain viable even if the 91A wage claim does not survive the statute of limitations. She argues these claims, although arising from the same allegation of Wolfe's failure to pay her bonus, are not just the wage claim disguised as additional claims, but are each individual claims with separate elements and remedies. Despite her assertions, Schooler failed to state the applicable statute of limitations relevant to each of these claims

or cite authority allowing separate causes of action with varying statute of limitations periods arising from a claim for wages under 614.1(8).

The appropriate statute of limitations periods for different causes of actions are outlined in Iowa Code section 614.1. Although the applicable limitations periods for claims of breach of an unwritten contract and fraud are five years that does not necessarily extend the limitations period in this case. We must determine the actual nature of the action to ascertain the appropriate statute of limitations. *Clark v. Figge*, 181 N.W.2d 211, 213 (Iowa 1970).

Iowa Code section 614.1(8) assigns the statute of limitations period for wages, stating, "[t]hose *founded on claims for wages* or for a liability or penalty for failure to pay wages, within *two years*." (emphasis added) Although Schooler's common law claims each invoke separate elements and remedies, they are "founded" or based on a claim for wages consisting of her alleged unpaid bonus compensation. *See Gabelmann*, 571 N.W.2d at 481 (holding an unwritten contract common law claim for an unpaid housing allowance to an employee was subject to the two year wage statute of limitations under Iowa Code section 614.1(8)); *see also Dallenbach v. MAPCO Gas Products, Inc.*, 459 N.W.2d 483, 488 (Iowa 1990) (maintaining an employee's annual bonus was wages under section 91A.2(7) because it was clearly part of the compensation owed for labor or services). Schooler claimed she did not accept employment elsewhere because Wolfe agreed to match her compensation offer with another employer. If Wolfe had paid the anticipated bonuses, none of Schooler's common law claims would survive. Thus, the actual nature of the cause of action

is for damages incurred from Wolfe's failure to pay her alleged bonuses. Therefore, we agree with the trial court that the additional common law claims are "those founded on claims for wages" and barred by the applicable two-year statute of limitations under Iowa Code section 614.1(8). Accordingly, we affirm.

AFFIRMED.