

IN THE COURT OF APPEALS OF IOWA

No. 0-881 / 10-0543
Filed January 20, 2011

JACKALYN K. SCHRAM,
Plaintiff-Appellant,

vs.

JAYA BILGI d/b/a
BILGI CHILDREN'S CLINIC,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Carla T. Schemmel,
Judge.

Jackalyn Schram appeals a district court ruling rejecting her claim for nonpayment of overtime compensation under the Fair Labor Standards Act after determining that she was an exempt employee. **REVERSED AND REMANDED.**

Harley C. Erbe of Erbe Law Firm, Des Moines, for appellant.

Douglas A. Fulton of Brick Gentry, P.C., West Des Moines, for appellee.

Considered by Mansfield, P.J., and Danilson and Tabor, JJ.

MANSFIELD, P.J.

Jacklyn Schram worked as office manager for Dr. Jaya Bilgi for ten years until resigning in July 2008. Shortly thereafter, she sued Dr. Bilgi under Iowa Code chapter 91A (2007) for unpaid vacation time and under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 207(a)(1) (2006), for unpaid overtime compensation. The district court awarded part of the vacation time but rejected Schram's FLSA claim on the ground she was an exempt employee.

Schram appeals the FLSA decision. We conclude that because Schram was paid on an hourly basis and was not guaranteed a minimum salary, she was not an exempt employee. Therefore, we reverse and remand for further proceedings.

I. Background Facts & Proceedings.

In 1998, Schram became Dr. Bilgi's office manager. An April 17, 1998 memorandum prepared by Dr. Bilgi's accountant, John Hines, states as follows:

I met with Jackie on Wednesday, April 15, 1998 and we discussed her taking the position of office manager.

What we agreed to was that her compensation would be increased to \$18 per hour effective April 24, 1998. At the end of ninety days, the performance of the office would be reviewed and if certain criteria had been met, her rate of pay would be increased to \$20 per hour retroactive to April 24.

The criteria for the ninety days review will be as follows:

1. Insurance claims, billing, accounts receivable, and bank deposits are being processed on a current timely basis;
2. The office will be staffed by a total of four people with a minimal amount of overtime;
3. Efforts have been made to improve the rapport [among] the office staff and between the office staff and yourself;

.....

Jackie indicated that she had already planned some personal time for next week and therefore, she will not start full time until April 24. After that date, she will be full time. She shall be entitled to take as comp time as much of Tuesday afternoon's as is necessary to compensate for any time in excess of eight hours per day worked on any other day so as to avoid overtime hours.

As office manager, Schram supervised and scheduled the other employees. She handled payroll, performed coding, and submitted insurance bills. She worked the front desk if needed. Although it was not her regular job, Schram also sometimes performed maintenance tasks such as cleaning toilets and carpets, spraying weeds, trimming shrubbery, and picking up trash. Schram ran outside errands.

Schram was paid at an hourly rate that gradually increased to twenty-four dollars per hour. She kept time records, which she did not present to Dr. Bilgi. However, Dr. Bilgi did see Schram's paystubs when he signed her paychecks. The paystubs reflected Schram's hours for each pay period, including additional hours worked above forty per week. Schram was paid at a regular rate for the additional hours; unlike most of the other employees she did not receive extra overtime compensation.

In 2008, the relationship between Schram and Dr. Bilgi deteriorated. Dr. Bilgi became concerned about a serious backlog in billing and collections. He brought in an outside billing service, and in July 2008 Schram resigned.

Soon thereafter, on October 21, 2008, Schram filed a petition against Dr. Bilgi seeking recovery of earned and unpaid time off under Iowa Code chapter 91A and overtime compensation under FLSA. Dr. Bilgi answered, denying liability.

At trial, Schram conceded she had never been paid for less than forty hours per week, but stated that she had never worked less than forty hours per week (presumably taking into account holidays and paid time off). Hines characterized Schram's arrangement as a "base rate" of forty hours per week, with compensation for additional hours above that. However, he admitted this description was not supported by any document.

The district court found that Schram was entitled to payment for 160 of the 468.75 hours of unused vacation she had claimed. The court also rejected Schram's FLSA claim on the ground that she was an exempt employee under the "salary-basis test." Schram appeals the FLSA decision.

II. Standard of Review.

Our review is for correction of errors at law. *Raper v. State*, 688 N.W.2d 29, 36 (Iowa 2004). The trial court's factual findings are binding on appeal if supported by substantial evidence. *Id.* Evidence is substantial when "a reasonable mind would accept the evidence as adequate to reach a conclusion." *Id.*

III. Discussion.

Federal law exempts employees who work "in a bona fide executive, administrative, or professional capacity" from the overtime pay requirements. *Smidt v. Porter*, 695 N.W.2d 9, 17 (Iowa 2005); see 29 U.S.C. § 213(a)(1). The employer bears the burden of proving exempt status. *Smidt*, 695 N.W.2d at 18.

To establish Schram's exempt status, Dr. Bilgi had to prove that she met both a "duties" test and a "salary-basis" test. *Id.* at 17-19; see 29 C.F.R. § 541.2 (2009). For an executive, administrative, or professional employee to meet the

salary-basis test, the employee must “be compensated on a salary basis at a rate of not less than \$455 per week.” 29 C.F.R. § 541.600(a). Under the general rule, an employee is considered “paid on a salary basis” if “the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee’s compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed.” 29 C.F.R. § 541.602. “The expression ‘salary basis’ incorporates the concept of a guaranteed wage.” 48B Am. Jur. 2d *Labor & Labor Relations* § 2913, at 423 (2005).

Schram argues that she was paid on an hourly basis, not a salary basis, as demonstrated by the fact that her compensation fluctuated based on the hours she reported in excess of forty per week. Yet Dr. Bilgi counters that under federal regulations, an employer “may provide an exempt employee with additional compensation without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis.” 29 C.F.R. § 541.604(a). Dr. Bilgi argues that Schram was “guaranteed” forty hours a week of compensation, and thus she met the salary-basis test, even though she received extra compensation for additional hours.

The problem we have with Dr. Bilgi’s position is that evidence of such a guarantee is missing from this record. Hines’s April 17, 1998 memorandum describing Schram’s employment arrangement made no reference to a guarantee (or a salary, for that matter). It simply stated she would be compensated on an hourly basis. In fact, the memorandum stated that Schram

would be entitled to take “comp time” on Tuesday afternoon “so as to avoid overtime hours.” Thus, if anything, the memorandum reaffirms that Schram’s arrangement was strictly hourly. In short, “the record does not permit a reasonable inference that this guarantee existed.” *Donovan v. Daylight Dairy Prods., Inc.*, 91 Lab. Case ¶ 34,022 n.1, 1981 WL 2301 (D. Mass. 1981) (rejecting claim that employees were guaranteed a minimum salary); *see also Rodgers v. Basin Sch. Dist. No. 72*, 2006 WL 3497254 (D. Idaho 2006) (granting summary judgment to employee where the employment contracts did not express any guarantee of payment).

Hines testified that Schram was paid forty hours per week as a “base rate,” but he admitted there was no document supporting that characterization:

Q. Is there any document that says that? A. No, not that I’m aware of, no.

...

Q. Your 1998 memo, Plaintiff’s Exhibit 6, says nothing about a minimum rate per week, does it? A. No.

There is no evidence in the record that Schram was ever told she had a guaranteed forty hours per week of compensation. To the contrary, Dr. Bilgi agreed the 1998 memo would indicate to him that Schram was an hourly employee, and he “didn’t know . . . what happened after that.” Thus, in terms of evidence of a guarantee, we are left with Hines’s after-the-fact testimony that he believed Schram had a guarantee. That is not enough.

Dr. Bilgi raises other objections to Schram’s claim for overtime pay. He contends that Schram lacks “legitimate proof” and there are “obvious errors” on her timecards. The district court did not address these matters, because it did not need to, since it concluded she was an exempt employee. We reverse the

district court's judgment to the extent it found Schram was an exempt employee, and remand for further consideration of these other matters.

REVERSED AND REMANDED.