

IN THE COURT OF APPEALS OF IOWA

No. 8-463 / 07-1699
Filed October 1, 2008

MARK E. PICKINPAUGH,
Plaintiff-Appellant,

vs.

**THE GREAT WESTERN RAILWAY
COMPANY OF IOWA, L.L.C., a
limited liability company; and
OMNITRAX LEASING, L.L.C.,
a limited liability company,,**
Defendants-Appellees.

Appeal from the Iowa District Court for Pottawattamie County, J.C. Irvin,
Judge.

Plaintiff appeals the summary judgment entered in favor of defendants on
plaintiff's unpaid wages claim. **AFFIRMED.**

Christopher Welsh of Welsh & Welsh, P.C., Omaha, Nebraska, for
appellant.

Bryan S. Hatch, Omaha, Nebraska, and Robert Sims of Stinson, Morrison,
Hecker, L.L.P., Des Moines, for appellees.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

Mark E. Pickenpaugh appeals the summary judgment entered in favor of the Great Western Railway Company of Iowa, L.L.C. and Omnitrax Leasing, L.L.C. on Pickenpaugh's unpaid wages claims. We affirm.

I. Background Facts and Proceedings

This case arises from an employment dispute. Pickenpaugh entered into an employment contract with Great Western Railway Company of Iowa, L.L.C. and Omnitrax, Inc. (Defendants) in April 1992. The employment contract provided Pickenpaugh an annual salary, and included a provision for bonus payments based on incremental business, to be made to Pickenpaugh quarterly. On April 1, 2003, Defendants terminated Pickenpaugh's employment by hand-delivered letter and paid Pickenpaugh the unpaid balance of his base salary.

Pickenpaugh filed suit on August 30, 2005,¹ claiming Defendants, in bad faith, withheld bonus payments due to him under the employment contract in the amount of \$1.5 million.² Defendants filed for summary judgment on March 16, 2006, contending Pickenpaugh's claims were time-barred under the applicable two-year statute of limitations. In an order filed June 30, 2006, the district court granted partial summary judgment to Defendants finding Pickenpaugh's claims for unpaid wages time-barred under Iowa Code section 614.1(8) (2005). However, the court denied summary judgment to Defendants with regard to Pickenpaugh's claims for unpaid bonuses, finding that the compensation

¹ Pickenpaugh filed an amended petition on September 9, 2005.

² Pickenpaugh also made a claim for punitive damages.

agreement between the parties could be considered an open account, making the claims for unpaid bonuses timely.

On January 16, 2007, Defendants filed a motion to reconsider the order on summary judgment, again contending Pickenpaugh's claim for unpaid bonuses was untimely. In an order filed July 18, 2007, the court reconsidered its prior order and found it to be "a strained conclusion, unsupported by the facts." The court therefore dismissed Pickenpaugh's case in its entirety, determining his claim for unpaid bonuses was founded on a claim for wages and subject to the two-year statute of limitations. The court further determined Pickenpaugh did not perform services after his termination and any unpaid bonuses became due and payable on the date he was terminated. Therefore, the court concluded Pickenpaugh's claim for bonuses began to accrue on April 1, 2003, and was time-barred. Pickenpaugh now appeals.

II. Scope and Standards of Review

We review the district court's summary judgment ruling for the correction of errors at law. Iowa R. App. P. 6.4; *Lobberecht v. Chendrasekhar*, 744 N.W.2d 104, 106 (Iowa 2008). We may uphold the ruling on any ground raised before the district court, even if that ground was not a basis for the court's decision. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3); *Lobberecht*, 744 N.W.2d at 106. The moving party has the burden to establish it is entitled to

judgment as a matter of law, and the evidence must be viewed in the light most favorable to the nonmoving party. *Hunter v. City of Des Moines Mun. Hous. Auth.*, 742 N.W.2d 578, 584 (Iowa 2007).

We review issues of statutory interpretation for corrections of errors of law. *In re N.N.E.*, 752 N.W.2d 1, 6 (Iowa 2008); *In re Detention of Pierce*, 748 N.W.2d 509, 511 (Iowa 2008). Thus, whether the payments owed constitute “wages” for purposes of Iowa Code section 614.1(8) is a question of law for the court to decide. See Iowa R. App. P. 6.4.

III. Merits

Under Iowa Code section 614.1(8), actions may be brought “on claims for wages or for a liability or penalty for failure to pay wages, within two years.” A bonus meets the statutory definition of “wages.” *Runyon v. Kubota Tractor Corp.*, 653 N.W.2d 582, 585-86 (Iowa 2002). The district court barred Pickenpaugh’s claim for unpaid bonuses because it determined the two-year statute of limitations for such claims began to accrue on the date he was terminated, April 1, 2003, and was therefore time-barred. Pickenpaugh argues the court erred in calculating the appropriate commencement date for the statute of limitations. He contends his claim for bonuses is not time-barred because (1) on the date he was terminated, his unpaid bonus payments had yet to be calculated, estimated, and/or made payable to him, and therefore the bonus payments were not yet “due and payable”; and (2) the claim is based on an open and continuous account, and therefore the statute of limitations does not bar any part of the claim.

Pickenpaugh entered into the employment contract with Defendants in April 1992. The contract provided that Pickenpaugh was to be paid \$27,500 yearly plus a bonus of three percent of incremental business sourced by him and payable quarterly. In January 1998 Defendants instituted a written "Incentive Compensation Program" (ICP), which superseded any previous compensation arrangements Defendants held with employees. The ICP provided employees with a bonus if they met certain performance goals for the fiscal year. Employees received bonuses only if they met those performance goals. The ICP also states that no bonuses would be paid to employees who were terminated for cause. Pickenpaugh received a written copy of the ICP. He also received a letter written on March 30, 1998, outlining the ICP. Bonuses were paid to Pickenpaugh in accordance with the ICP on September 30, 1998; March 18, 1999; March 27, 2000; and April 9, 2001. No bonuses were paid to Pickenpaugh after April 9, 2001.³

On April 1, 2003, Defendants terminated Pickenpaugh's employment for cause. On that day, Pickenpaugh was notified of the termination by hand-delivered letter and was paid the unpaid balance of his base salary. Pickenpaugh did not perform any further services for Defendants after his termination. On August 30, 2005, Pickenpaugh filed suit claiming Defendants withheld bonus payments due to him under the employment contract in the amount of \$1.5 million.

³ Bonuses were reported to payroll department for payment to employees. No bonuses were reported for payment to Pickenpaugh after April 9, 2001.

As of January 1998, the employment contract Pickenpaugh originally signed was not the controlling agreement between the parties with regard to Pickenpaugh's compensation plan. The ICP superseded any prior agreement between the parties. Under the ICP, no bonus payments were made to employees who were terminated for cause. Therefore, assuming *arguendo* that Pickenpaugh was owed a bonus payment for his performance prior to his termination, he was not eligible to receive that payment because he was not in good standing with Defendants at the time his employment terminated and that payment became due.

Even if we were to assume the clear language of the ICP did not apply to Pickenpaugh's termination, we still find any unpaid wages or bonuses became due and payable on the date his employment terminated. Because Pickenpaugh's incentive program was based on performance, not sales commissions, any bonuses he was to be paid were fully calculable at the date his employment terminated. We do not find Pickenpaugh's claim for bonuses to be based on an open and continuous account, nor on a collected revenues theory. Defendants were able to determine any bonuses Pickenpaugh may have been owed on April 1, 2003, and such payments were due and payable at that time. *Runyon*, 653 N.W.2d 582, 586 (Iowa 2002); *Gabelmann v. NFO, Inc.*, 571 N.W.2d 476, 482 (Iowa 1997). The two-year statute of limitations therefore began to accrue on April 1, 2003. Because Pickenpaugh did not file this action until August 30, 2005, his claims are time-barred.

We agree with the district court that Pickenpaugh's unpaid bonuses claims are barred by the applicable two-year statute of limitations for wages under Iowa Code section 614.1(8). Accordingly, we affirm.

AFFIRMED.