

IN THE COURT OF APPEALS OF IOWA

No. 9-474 / 08-0828
Filed July 22, 2009

KERRY NEIBERGALL,
Plaintiff-Appellant,

vs.

JOHN DEERE CREDIT CORP.,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Appeal from the district court's grant of summary judgment in favor of the defendant. **AFFIRMED.**

Gordon Fischer of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellant.

Frank Harty and Anna Mundy of Nyemaster, Goode, West, Hansell & O'Brien, P.C., Des Moines, for appellee.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

SACKETT, C.J.

Plaintiff-appellant, Kerry Neibergall, appeals from the district court's grant of summary judgment for defendant in her suit alleging breach of oral and written contracts and violation of the Iowa Wage Payment and Collection Act.¹ She contends the court erred in holding there were no genuine issues of material fact concerning her claims. She further contends the court erred in not holding its decision in abeyance until she could complete discovery. We affirm.

I. Background.

Neibergall was employed by defendant John Deere Credit Corp. for about eight years until her position was eliminated in October of 2004. During several years, she was given stock options, confirmed by an award letter. Based on advice from her financial advisor, Neibergall did not exercise her stock options as they became available. On October 25, 2004, Neibergall's manager told her that her position had been eliminated. She was given a packet of information including a severance agreement and release to review. She consulted her financial advisor. Her employment ended on November 1, 2004. She signed the severance agreement and release on November 10. In consideration, she received three and one-half months of salary and life and health benefits. In January of 2005, when Neibergall considered exercising some stock options, she was informed they expired on the date her employment was terminated.

On October 26, 2006, Neibergall filed suit against John Deere Credit, alleging (1) defendant did not provide stock options that were due her under Iowa

¹ The Iowa Wage Payment & Collection Act is found in Iowa Code chapter 91A (2005).

Code chapter 91A, (2) defendant breached oral agreements to provide her with stock options, and (3) defendant “breached the intent of the stock option award” and company policy by canceling the stock option awards she had been given. On February 4, 2008, about two months before the end of discovery, defendant moved for summary judgment on all three claims. Hearing on the motion was set for April 4. Neibergall filed her resistance on March 27.

Following the April 4 hearing, Neibergall requested, and defendant agreed to deposition of three employees of defendant. The depositions were scheduled for mid-May. On April 26, the district court filed its ruling on defendant’s motion for summary judgment, granting summary judgment on all claims and dismissing Neibergall’s petition. Defendant then filed a motion to quash the scheduled depositions. On April 29, Neibergall filed a motion for the court to hold its ruling granting summary judgment in abeyance until after the scheduled depositions. On May 6, the court denied Neibergall’s motion to hold in abeyance and granted defendant’s motion to quash.

Neibergall appeals from all the court’s rulings.

II. Scope and Standards of Review.

We review a district court’s ruling on summary judgment for correction of errors at law. *Overturff v. Raddatz Funeral Servs., Inc.*, 757 N.W.2d 241, 244 (Iowa 2008). A party is entitled to summary judgment when the record shows no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3). “In ascertaining whether there is a genuine issue of material fact, we review the record in the light most favorable to

the non-moving party.” *Anderson v. Nextel Partners, Inc.*, 745 N.W.2d 464, 466 (Iowa 2008). “A question of fact exists ‘if reasonable minds can differ on how the issue should be resolved.’” *Murtha v. Cahalan*, 745 N.W.2d 711, 713 (Iowa 2008) (quoting *Walker v. Gribble*, 689 N.W.2d 104, 108 (Iowa 2004)).

We review a district court’s rulings on post-trial motions for correction of errors at law. *Lovick v. Wil-Rich*, 588 N.W.2d 688, 692 (Iowa 1999). However, its rulings on the discovery process are reviewed for an abuse of discretion. *Baker v. City of Iowa City*, 750 N.W.2d 93, 97 (Iowa 2008). An abuse of discretion occurs when the district court exercises its discretion on grounds or for reasons that are clearly untenable or to a clearly unreasonable extent. *Id.*

III. Merits.

Summary Judgment. In its ruling on defendant’s motion for summary judgment, the court discussed the settlement agreement and release that Neibergall signed. The court determined that the language of the release precludes pursuit of any claims that arise or occur before the date of the release. The court stated, “If it is determined that Plaintiff’s claims arose prior to the signing of the Release, Plaintiff’s claims must be dismissed.” The court then analyzed the contract claims to determine when Neibergall’s claim arose or accrued.

The district court determined the written stock option plans in effect when Neibergall was awarded the stock options all provided that the options expire upon termination of employment for reasons other than death, disability or retirement. All of the award letters provided that the stock option award was

governed by the provisions of the stock option plan. In addition, at least two of the award letters noted that “options will be canceled upon date of termination of employment for reasons other than death, disability, or retirement.” The court concluded defendant did not breach the written agreement.

The court also determined Neibergall failed to prove the existence of any separate oral contracts that would allow her to exercise her stock options after termination of employment or that modified the terms of the written agreements. Based on its conclusion that Neibergall was not entitled to exercise her stock options after termination of her employment, the court concluded her wage claim under Iowa Code chapter 91A failed as a matter of law.

From our review of the record and consideration of the arguments of the parties, we agree with the district court’s determination there are no genuine issues of material fact. We find no error in its legal analysis of the contract and wage claims. The language of the release precludes pursuing “any and all demands, claims, charges, or suits, known or unknown . . . relating in any manner whatsoever to Ms. Neibergall’s employment or termination thereof.” It expressly does not prohibit “filing a claim, charge, or lawsuit for rights or claims that arise or occur after the date this document is signed.” The district court did not err in determining that all of Neibergall’s claims arose prior to the date she signed the release. Defendant was entitled to summary judgment as a matter of law. We affirm the grant of summary judgment.

Post-trial Motions. In considering Neibergall’s motion to hold the ruling on summary judgment in abeyance, the court noted that she did not advise the

court before it ruled that she wanted it to withhold ruling on the motion for summary judgment until she could take the additional depositions. The record reveals Neibergall did not request the additional depositions until after the hearing on the motion for summary judgment, which was held two months after the motion was filed. The resistance to the motion for summary judgment contained no assertion that additional discovery was necessary in order to resist the motion adequately. See Iowa R. Civ. P. 1.981(5) (allowing for a continuance “to permit affidavits to be obtained or depositions to be taken or discovery to be had”). “[T]here is no requirement in rule [1.981] that summary judgment not be entered until all discovery is completed.” *Bitner v. Ottumwa Cmty. Sch. Dist.*, 549 N.W.2d 295, 302 (Iowa 1996). We conclude the district court did not err in denying the motion to hold the ruling in abeyance.

The district court also granted defendant’s motion to quash the notices of deposition for the three scheduled depositions. The district court already had granted summary judgment and dismissed Neibergall’s petition. As there was no pending case, there could be no need for depositions. We conclude the district court did not abuse its discretion in granting the motion to quash.

AFFIRMED.