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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

C.L. KNOX, INC.,

Plaintiff and Appellant,

v.

NORM FOX,

Defendant and Respondent.

F063400

(Super. Ct. No. S-1500-CV-270615)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Sidney P. Chapin, Judge.

Muzi & Associates, Andrew C. Muzi, Charles C. Slater and Matt Krepper for Plaintiff and Appellant.

Dixom G. Kummer for Defendant and Respondent.

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C.L. Knox, Inc., doing business as Advanced Industrial Services (Advanced), appeals from the judgment in consolidated actions. Advanced sued its former employee, Norm Fox, for breach of contract and misappropriation of trade secrets, among other

* Before Hill, P. J., Wiseman, J., and Poochigian, J.

causes of action; Advanced also appealed the decision of the Labor Commissioner imposing waiting time penalties for failure to pay Fox his earned wages and vacation pay immediately upon termination. Advanced contends the judgment of the trial court, which found Advanced owed Fox vacation pay and imposed waiting time penalties on it, should be reversed because the statement of decision was inadequate and the penalty imposed was not supported by substantial evidence. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 2003, Fox began working as an independent contractor consultant for Advanced, in its safety department. On March 19, 2008, Fox was converted to the status of an employee. Fox negotiated terms of employment with Leslie Knox, president and majority owner of Advanced. He worked three days per week; there was sharply conflicting evidence regarding his entitlement to vacation pay. On or about April 9, 2010, Advanced terminated Fox's employment. Fox was in North Dakota at the time. He came into the office at Advanced on April 12 or 13 and picked up his final paycheck. The check was dated April 16.

Fox filed a complaint with the Labor Commissioner, claiming he was entitled to unpaid wages, vacation wages and waiting time penalties; Advanced appealed an adverse determination in that proceeding. Advanced filed a court action against Fox, alleging breach of contract, misappropriation of trade secrets, and other causes of action. The two proceedings were consolidated. They were tried by the court in June 2011. The trial court found in favor of Advanced on only one cause of action of its complaint, and awarded damages of \$14,130. On the appeal of the Labor Commissioner's decision, the trial court awarded Fox unpaid vacation pay of \$6,038.52, and waiting time penalty wages of \$15,096.63. The trial court issued its statement of decision, over objections by Advanced. Advanced appeals, contending the statement of decision is insufficient and the waiting time penalties are not supported by substantial evidence.

DISCUSSION

I. Sufficiency of Statement of Decision

“The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial.” (Code Civ. Proc., § 632.) “A trial court in rendering a statement of decision under Code of Civil Procedure section 632 is required only to state ultimate rather than evidentiary facts. [Citation.]” (*People v. Casa Blanca Convalescent Homes, Inc.* (1984) 159 Cal.App.3d 509, 524 (*Casa Blanca*)). “If the judgment is supported by factual findings based on substantial evidence, the reviewing court affirms.” (*People v. Orange County Charitable Services* (1999) 73 Cal.App.4th 1054, 1071.) “Conflict in the evidence is of no consequence. Our reviewing power ““begins and ends with a determination as to whether there is *any* substantial evidence to support [the factual findings]; [we have] no power to judge of the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or *in the reasonable inferences that may be drawn therefrom*.” [Citation.]’ [Citation.]” (*Id.* at pp. 1071–1072, last bracketed insertion added.) “Only where a trial court fails to make findings as to a material issue which would fairly disclose the determination by the trial court would reversible error result. [Citation.]” (*Casa Blanca, supra*, 159 Cal.App.3d at p. 524.)

A party who requests a statement of decision must “specify those controverted issues as to which the party is requesting a statement of decision.” (Code Civ. Proc., § 632; *Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1394.) The trial court, however, “need not discuss each question listed in a party’s request; all that is required is an explanation of the factual and legal basis for the court’s decision regarding the principal controverted issues at trial as are listed in the request. [Citation.]” (*Hellman v. La Cumbre Golf & Country Club* (1992) 6 Cal.App.4th 1224, 1230.)

Advanced asserts that it requested a statement of decision, but it failed to include the request in the record, preventing us from determining what issues it asked the trial court to address in the statement of decision. Advanced complains that the statement of decision failed to include an explanation of the factual and legal basis for: finding that Fox was entitled to four weeks of vacation in 2010, rather than the one week after two years of employment that Advanced claimed was its companywide policy; calculating how much vacation was owed, in light of testimony Fox took all of his vacation time for 2009; finding that Fox was entitled to payment for four weeks of vacation for 2010, although he was terminated less than four months into that year; and failing to reduce or deny vacation pay because of the days Fox took off in April 2010.

The issue raised at trial was whether, at the time of termination, Fox was owed vacation pay that was not included in his final check. The evidence was in conflict. Advanced presented evidence that its companywide vacation policy entitled full-time employees to begin accruing one week of annual vacation after working for the company for two years. Fox had been employed with Advanced for just a little over two years at the time of his termination, so Advanced contended he had not accrued even a full week of vacation at that time. Even if he was entitled to a week's vacation, Advanced claims, it was undisputed Fox had already taken at least four weeks of vacation prior to 2010, so he had no unpaid vacation time outstanding when he was terminated.

It was undisputed, however, that Fox was a part-time employee; the written vacation policy, by its terms, applied only to full-time employees. Additionally, Fox testified he negotiated with Knox when he was converted from an independent contractor to an employee, and they agreed to four weeks of annual vacation (twelve days total, because he worked only three days per week), beginning his first year of employment. He testified his vacation time could be taken at any time, at his discretion. He took paid vacation in 2008 and 2009 without any objection or adverse reaction by Advanced.

The trial court found Fox was entitled to four weeks (12 working days) of vacation per year, starting his first year of employment, pursuant to the agreement between Fox and Knox. It awarded him payment for four weeks of vacation for 2010, pursuant to that agreement, even though he was terminated in April 2010. The trial court found Advanced's witnesses lacked credibility.

The statement of decision set out findings of the ultimate facts necessary to resolve the vacation pay issue. Substantial evidence supported its findings. Fox testified his agreement with Knox entitled him to four weeks of vacation per year from the outset of his employment. Contrary to Advanced's assertion, the evidence did not indicate this vacation time accrued monthly, so that Fox was only entitled to a fraction of his annual vacation pay at the time of his termination. Fox testified he was entitled to four weeks of vacation each year and he could take it at any time. We find no inadequacy in the statement of decision on the issue of vacation pay, and the factual findings it contains on that issue are supported by substantial evidence.

II. Waiting Time Penalties

Advanced asserts waiting time penalties should not have been imposed against it because its conduct was not willful. It asserts there was a good faith dispute between the parties regarding whether any wages were due, and that dispute precludes imposition of such penalties.

“If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” (Lab. Code, § 201, subd. (a).) If an employer willfully fails to pay wages due pursuant to Labor Code section 201, “the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid,” but not more than 30 days. (Lab. Code, § 203, subd. (a).) “The settled meaning of “willful,” as used in section 203, is that an employer has intentionally failed or refused to perform an act which was required to be done. [Citations.] “[T]he

employer's refusal to pay need not be based on a deliberate evil purpose to defraud workmen of wages which the employer knows to be due." [Citations.]' [Citation.]" (*Baker v. American Horticulture Supply, Inc.* (2010) 186 Cal.App.4th 1059, 1075, fn. omitted, last bracketed insertion added.) A good faith dispute about whether any wages are due precludes imposition of the penalty. (Cal. Code Regs., tit. 8, § 13520.)

"A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist. Defenses presented which, under all the circumstances, are unsupported by any evidence, are unreasonable, or are presented in bad faith, will preclude a finding of a 'good faith dispute.'" (*Id.*, subd. (a).)

Whether a good faith dispute exists is judged by an objective standard. (*FEI Enterprises, Inc. v. Yoon* (2011) 194 Cal.App.4th 790, 802.)

Witnesses for Advanced testified Fox's employment was terminated on Friday, April 9, 2010. Advanced did not pay Fox his earned, but unpaid, wages on that date, because Fox was not in the office to pick up his check that day. Jay Marett, Fox's supervisor, told Fox when he fired him that he could pick up his check on Monday. Both Knox and the girls in the office knew that a check had to be prepared immediately to pay someone who was fired. Knox testified a handwritten check was prepared for Fox initially, but the amount was wrong, so she had it voided and had a second check prepared by the payroll service. That check was in the office on April 13 and Fox picked it up that day; it was dated April 16, 2010, however.

While Knox denied intentionally withholding earned wages from Fox at the time of termination, she admitted that she and the employees in Advanced's office were aware of the obligation to pay terminated employees immediately. Her only explanation for the failure to give or send the check to Fox on the date he was terminated was that he was not in the office to pick it up. She failed to explain why the check was not prepared correctly

and mailed to him that day. Substantial evidence supports a finding that Advanced acted willfully. It knew of its obligation under Labor Code section 201 to pay an employee any unpaid wages immediately upon termination, yet intentionally failed to comply. A malicious intent was not necessary.

Advanced argues that a good faith dispute existed because it asserted the company policy (five days of vacation after two years) applied to Fox, and under that policy he was not entitled to any vacation pay upon termination. The written policy, by its express terms, however, did not apply to part-time employees like Fox. Additionally, the trial court apparently credited Fox's testimony that he negotiated terms of employment with Knox, and the terms included an agreement to four weeks of vacation. Since this oral agreement was within the knowledge of Knox, the trial court could have concluded there was no good faith dispute, because Knox knew Fox was not covered by the general company vacation policy. Substantial evidence supports the award of a waiting time penalty for willfully failing to pay Fox his vacation time wages immediately upon termination.

DISPOSITION

The judgment is affirmed. Fox is awarded his costs on appeal.