

[Cite as *Thompson v. Dawson*, 2003-Ohio-3291.]

STATE OF OHIO, COLUMBIANA COUNTY  
IN THE COURT OF APPEALS  
SEVENTH DISTRICT

ROBERT E. THOMPSON,	)	
	)	CASE NO. 02 CO 56
PLAINTIFF-APPELLEE,	)	
	)	
- VS -	)	OPINION
	)	
BERT A. DAWSON, et al.,	)	
	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Columbiana County Common Pleas Court, Case No. 01 CV 792.
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JUDGMENT:	Reversed.
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APPEARANCES:	
For Plaintiff-Appellee:	Attorney Dennis Haines GREEN, HAINES, SGAMBATI P.O. Box 849 Youngstown, OH 44501

For Defendant-Appellant:	Attorney Robert L. Herron Columbiana County Prosecutor Attorney Nicholas M. Barborak Columbiana County Asst. Prosecutor 105 S. Market Street Lisbon, OH 44432
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JUDGES:  
Hon. Mary DeGenaro  
Hon. Cheryl L. Waite  
Hon. Gene Donofrio

Dated: June 18, 2003

DeGenaro, J.

{¶1} This timely appeal comes for consideration upon the record in the trial court and the parties' briefs. Defendant-Appellant, Bert Dawson, appeals the judgment of the Columbiana County Court of Common Pleas which found Plaintiff-Appellee, Robert Thompson, was not entitled to legal relief, but granted him equitable relief. Dawson challenges the trial court's ability to grant equitable relief when the trial court cannot grant legal relief. In addition, he argues the trial court erred when it failed to grant summary judgment to him before trial.

{¶2} This court recently held that a trial court may not grant equitable relief to a party if that party is not entitled to legal relief. Thus, the trial court erred when it granted equitable relief to Thompson while acknowledging it could not grant legal relief. The trial court's judgment is reversed and this case is remanded for further proceedings.

#### Facts

{¶3} In 1999, Thompson had been an employee of Columbiana County, Ohio, for 28 years and employed in the County Engineer's department for 27 years. During the entire period of Thompson's employment, Dawson was the Columbiana County Engineer. Thompson operated tandem unit 23, a truck that was an integral part of the county's summer and winter road control programs. Because he was needed most during the summer and winter, Thompson attempted to make himself available during those periods of time over the years.

{¶4} During his employment with the county, Thompson accumulated sick leave and vacation time which he did not use. The contract between the county and the union, which Thompson belonged to, only allowed for accumulation of vacation time over the previous three years. Any vacation time accumulated before that was lost. However, due to a bureaucratic mistake, when the employees were informed how much vacation time they accumulated they were told their total vacation time accumulated, not the vacation time accumulated in the past three years.

{¶5} In 1995, Dawson's administrative assistant, Bob Hadley, retired. At that time, Dawson realized that Hadley had been paying employees for their entire accumulated vacation time at their retirement, rather than for the previous three years. At

the time of Hadley's retirement, the county went ahead and paid him for his entire accumulated vacation time as well. However, after this Dawson posted a policy which stated as follows:

{¶6} "The following is to clarify any misunderstanding on vacation leave upon separation from work with the County. This policy is based upon the ORV 325.19(C) and OAF 89-012.

{¶7} "No vacation leave shall be carried over for more than three years. An employee is entitled to compensation, at his current rate of pay, for the prorated portion of any earned but unused vacation leave for the current year to his credit at time of separation, and in addition shall be compensated for any unused vacation leave accrued to his credit, with the permission of the appointing authority, for the three years immediately preceding the last anniversary date of employment.

{¶8} "A county appointing authority may pay a county employee, at the time of separation, for any unused vacation leave accrued to his credit during the current year and for any such leave accumulated for the three years immediately preceding the employee's last anniversary date of employment."

{¶9} Thompson acknowledged that he saw and understood this posted policy.

{¶10} After the policy was posted in 1995, another long time employee, Rick Kuhns, was nearing his retirement. Kuhns had accumulated quite a bit of sick and vacation time which he did not use in the years prior to the immediately previous three years. Kuhns was allowed to use that accumulated time prior to his retirement.

{¶11} In 1999, Thompson decided he would begin to use some of his accumulated sick time before he retired. His intention was to use the accumulated time

to take the winter of 1999-2000 off, then work in the spring and summer of 2000 training his replacement, and then retire in the fall of 2000. Although he had accumulated more during the length of his employment, Thompson intended to use three months of leave and then forget the rest of the accumulated time upon his retirement. Dawson learned of Thompson's plans for retirement. He informed Thompson that his plans were unacceptable given the need for Thompson during the winter.

{¶12} At the conclusion of this meeting, Thompson was under the impression that if he did not either return to work or retire, then he would be terminated. This impression was supported by an unnamed employee and the general foreman of the garage, Gary Kaser. Although no management member told him so, he believed that he would lose his accumulated sick time if he was terminated. In order to preserve his ability to obtain this sick and vacation time, he retired in December 1999. At that time, the county paid him for the vacation time accumulated in the year of his retirement and the previous three years, but refused to pay him for the vacation time accumulated prior to this period.

{¶13} After Thompson retired, Dawson and the union modified the collective bargaining agreement. The addendum provided employees a year to exercise one of two options, if they so chose. An employee could elect to have a one time buyout of half of the vacation time accumulated beyond the three year period or the employee could elect to use that vacation time within the year provided.

{¶14} Thompson filed a complaint against Dawson and the Board of Commissioners seeking to be paid for the vacation hours he accumulated in the years prior to the three year period, \$13,748.00. The defendants moved for summary judgment and the trial court granted a portion of that motion, stating that Thompson was not an

employee of the Board of Commissioners. But the trial court denied the remainder of that motion. After a bench trial, the trial court found that Dawson did not threaten Thompson, as Thompson alleged in his complaint. Nevertheless, the trial court found the situation was one which "cries out for equity in favor of the Plaintiff." Thus, the trial court granted judgment in favor of Thompson and awarded him \$7,600.00. It is from this judgment that Dawson timely appeals.

#### Equitable Relief

{¶15} In his first assignment of error, Dawson argues:

{¶16} "The trial court erred as a matter of law in ruling that Thompson is entitled to compensation for unused vacation time accumulating for a period of time greater than the period allowed by statute."

{¶17} Dawson argues that Thompson clearly had no legal recovery and, therefore, the trial court erred when it relied on equity to grant him relief. He argues a trial court cannot use equity to make a party whole when that party is not entitled to legal relief. In response, Thompson argues that the maxim "equity follows the law" does not apply in all cases and that the trial court had "broad discretion to fashion a remedy for the particular circumstances of this case."

{¶18} On appeal, neither party disputes the trial court's conclusion that Thompson was not entitled to recovery under the law. The applicable statute clearly states that employees are only entitled to the vacation leave they accumulated in the three years immediately preceding the present year.

{¶19} "Vacation leave shall be taken by the employee during the year in which it accrued and prior to the next recurrence of the anniversary date of the employee's

employment, provided the appointing authority may, in special and meritorious cases, permit such employee to accumulate and carry over the employee's vacation leave to the following year. *No vacation leave shall be carried over for more than three years.* An employee is entitled to compensation, at the employee's current rate of pay, for the prorated portion of any earned but unused vacation leave for the current year to the employee's credit at time of separation, and in addition shall be compensated for any unused vacation leave accrued to the employee's credit, with the permission of the appointing authority, for the three years immediately preceding the last anniversary date of employment." R.C. 325.19(C).

{¶20} The Ohio Attorney General has issued an opinion concluding that in enacting R.C. 325.19(C) "the General Assembly has limited a county appointing authority's power with regard to establishing a policy for his employees concerning the use and accrual of vacation leave." Ohio Atty.Gen. 89-012, 2-53. In contrast, R.C. 124.39 provides that political subdivisions may make payment for unused sick leave upon retirement a subject of a collective bargaining agreement. Accordingly, on appeal Thompson argues there did not need to be any legal relief in order for the trial court to fashion an equitable remedy.

{¶21} As Dawson points out, we have recently dealt with a similar issue. In *Mosesson v. Rach* (Mar. 28, 2001), 7th Dist. No. 99 CA 321, the plaintiffs and defendants owned adjoining properties and the plaintiffs used a portion of the defendants' lot as a driveway. The plaintiffs sued the defendants, claiming adverse possession, seeking an injunction preventing the defendants from interfering with their use of the driveway, and claiming a violation of Ohio's occupying claimant law. The matter proceeded before a

magistrate who found against the plaintiff's legal claims. However, the magistrate applied equity and ordered the defendants sell the disputed land to the plaintiffs for an amount the magistrate determined to be the fair market value of the land. The trial court overruled the magistrate's decision to force the defendants to sell their land, but adopted the remainder of the magistrate's decision. On appeal, the plaintiffs argued the trial court erred by finding the magistrate could not, as a matter of law, invoke equity in this situation. We rejected their argument.

{¶22} "Notwithstanding the failed attempt on the part of appellants to acquire the land through the appropriate actions, the magistrate ordered appellees to sell their land for an amount that he, without any supporting evidence, deemed fair. He justified this result by stating that, 'in equity a court tries to do what is right or just.' However, the Ohio Supreme Court has held that when there is no cause of action at law, there can be none in equity. *Salem Iron Co. v. Hyland* (1906), 74 Ohio St. 160, 167, 77 N.E. 751. The Court further noted in *Schwaben v. School Emp. Retirement Sys.* (1996), 76 Ohio St.3d 280, 285, 667 N.E.2d 398, that, while it may be tempting to decide a case on subjective principles of equity and fundamental fairness, courts have a greater obligation to follow the law. Unlike Solomon, today's judges cannot base their decisions only on fundamental fairness. *Id.* In this case, appellants failed to prove the elements of their claims against appellees. As such, no legal remedies were available to them. Therefore, the magistrate could not invent a remedy under the guise of equity." *Id.* at 2.

{¶23} This rationale applies just as forcefully in this case. We understand the frustration both Thompson and the trial court felt when looking at the facts of the situation and we sympathize with the trial court's desire to resolve this case under principles of

equity and fairness. But as we said in *Mosesson*, "courts have a greater obligation to follow the law." *Id.* Courts simply cannot apply equitable principles if the plaintiff has failed to prove all the elements of his legal claim against a defendant. Thompson's claims are barred by both R.C. 325.19 and the collective bargaining agreement. Thus, Thompson had no cause of action in law and, pursuant to *Salem Iron* and *Mosesson*, he cannot recover in equity. Dawson's first assignment of error is meritorious.

Denial of Summary Judgment

{¶24} In his second assignment of error, Dawson argues:

{¶25} "The trial court erred in overruling County Engineer Bert Dawson's motion for summary judgment."

{¶26} Because Dawson's first assignment of error is meritorious and dispositive of the appeal, this assignment of error is moot. App.R. 12(A)(1)(c). Accordingly, we will not address Dawson's argument that Thompson failed to exhaust his administrative remedies.

{¶27} Because Thompson was not entitled to legal relief, the trial court erred when it granted him equitable relief. Accordingly, the trial court's judgment is reversed and judgment is entered in favor of Appellant, Bert Dawson.

Waite, P. J., and Donofrio, J., concur.