

STATE OF MICHIGAN
COURT OF APPEALS

JAMES DOUGLAS,

Plaintiff-Appellant,

v

CITY OF SALINE,

Defendant-Appellee.

UNPUBLISHED

November 26, 1996

No. 185668

LC No. 94-002589-CZ

Before: Gribbs, P.J., and Markey and T.G. Kavanagh,* JJ.

PER CURIAM.

Plaintiff, who voluntarily terminated his employment as defendant's chief of police at age forty-seven, brought suit seeking payment for accumulated sick leave and a declaratory judgment ordering defendant to pay plaintiff's health insurance premiums once he reaches the age of fifty-five. Plaintiff appeals as of right from the trial court's order granting summary disposition to defendant pursuant to MCR 2.116(C)(8) and (C)(10). We affirm.

I.

First, plaintiff claims that he is entitled to payment for the sick leave he accumulated over the course of his employment with defendant. We disagree.

Contractual language is construed according to its plain and ordinary meaning, and technical or constrained constructions are to be avoided. *Pakideh v Franklin Commercial Mortgage Corp*, 213 Mich App 636, 640; 540 NW2d 777 (1995). Defendant's personnel policies, which were incorporated into plaintiff's employment contract, state that upon retirement, an employee is entitled to payment for accumulated sick leave. The policy in question allows retirement for an employee who reaches fifty-five years of age with twenty years of service. Because plaintiff terminated his employment with defendant before age fifty-five, he did not satisfy the requirements of defendant's retirement policy; consequently, he is not entitled to payment for his accumulated sick leave. Because there is no genuine issue of material fact on this point, summary disposition was proper. MCR 2.116(C)(10).

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

Plaintiff also argues that he had legitimately expected payment of his accumulated sick leave under *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 598; 292 NW2d 880 (1980). In light of the written policy disseminated to the entire workforce, however, plaintiff could not have legitimately expected to receive payment for his accumulated sick leave when, at age forty-seven, he voluntarily terminated his employment with defendant. Defendant's policy statements are incapable of being objectively interpreted in the manner advocated by plaintiff. *Rood v General Dynamics Corp*, 444 Mich 107, 138, 140; 507 NW2d 591 (1993). Plaintiff's subjective expectation is not sufficient to recover under *Toussaint, supra*. *Singal v General Motors, Corp*, 179 Mich App 497, 504-505; 447 NW2d 152 (1989).

II.

Next, plaintiff claims that upon his reaching the age of fifty-five, defendant must pay his health insurance premiums. We disagree.

The parties cite the following city council resolution as controlling:

[A]ll city employees who retire after twenty-five (25) years of service to the City, and have reached the age of fifty-five (55) years as of the date of such retirement, shall continue to receive full payment by the City of the premiums for their medical and life insurance coverage in effect on the date of such retirement.

Plaintiff claims that because he met the resolution's length of service requirement prior to his resignation, once he reaches the age of fifty-five, even though he resigned his position at age forty-seven, he should be considered to be "retired," and defendant should then "continue," after the seven-year interruption, to pay his insurance premiums.

The plain language of the provision renders plaintiff's argument meritless. Plaintiff recognizes that he ceases to have insurance coverage from the time of his resignation until he reaches the age of fifty-five. Thus, even assuming that plaintiff will be considered "retired" when he reaches age 55, the resolution cannot apply and defendant is not required to pay any premiums because no insurance will be "in effect on the date of such retirement." Plaintiff offers a constrained interpretation to an unambiguous provision. Because there is no genuine issue of material fact on this issue, summary disposition was proper. MCR 2.116(C)(10).

Affirmed.

/s/ Jane E. Markey

/s/ Roman S. Gibbs

/s/ Thomas Giles Kavanagh