MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Monte Endris, et al.,
on behalf of themselves and all others similarly situated,

Appellants-Plaintiffs,

v.

Hubler Chevrolet, Inc.,

Appellee-Defendant.

February 10, 2021

Court of Appeals Case No. 20A-PL-1628

Appeal from the Marion Superior Court

The Honorable Patrick J. Dietrick, Judge

Trial Court Cause No. 49D12-1810-PL-40781

Bailey, Judge.

Case Summary

[1] This class action lawsuit was brought against Hubler Chevrolet, Inc. ("Hubler") on behalf of certain Hubler sales associates (the "Plaintiffs"). The lawsuit concerns, *inter alia*, whether Hubler made excessive payroll deductions. Hubler obtained partial summary judgment on the deduction-related claims. The court then directed entry of a final judgment under Trial Rule 56(C). The Plaintiffs now appeal, arguing that the court erred in granting partial summary judgment.

[2] Because we identify a genuine issue of material fact regarding the scope of Hubler's wage obligations, we reverse and remand for further proceedings.

Facts and Procedural History[1]

[3] Monte Endris ("Endris") initiated this action regarding, *inter alia*, commission payments to Hubler sales associates. The trial court later certified a class action. It is undisputed that the Plaintiffs worked for Hubler as sales associates. Hubler paid minimum wage in weeks when sales commissions did not exceed minimum wage. If commissions later exceeded minimum wage, Hubler would pay the commissions less any prior-paid amount needed to reach minimum wage. The parties agree that the following table depicts the payment system:

[1] Hubler's brief contains an argumentative Statement of Facts. We remind counsel that "[t]he facts shall be stated in accordance with the standard of review appropriate to the judgment or order being appealed." Ind. Appellate Rule 46(A)(6)(b).

Workweek	Hours Worked	Minimum Wage	Commissions Earned	Total Paid
1	40	40 x $7.25 = $290	$100	$290
2	40	40 x $7.25 = $290	$500	$310

[4] In the table, the commissions earned in the second workweek are adjusted by $190. That $190 reflects the difference between the $100 in commissions earned in the previous workweek—an amount that fell below minimum wage—and the $290 actually paid to reach minimum wage. Although the parties agree that the table depicts how Hubler paid the Plaintiffs, the parties disagree as to whether Hubler was contractually allowed to offset commissions. According to the Plaintiffs, they independently earned minimum wage in slow sales weeks.

[5] In Count II of the complaint, the Plaintiffs alleged that Hubler had violated an Indiana wage statute because its wage-payment system involved unauthorized deductions from the Plaintiffs' commissions. The Plaintiffs alleged that they "can pursue a cause of action for violation of the [the deduction-related statute] under the [Indiana] Wage Payment Act." App. Vol. 2 at 49. The Plaintiffs ultimately sought to recover the alleged improper deductions from their wages.

[6] Hubler moved for partial summary judgment, focusing on Count II. Among Hubler's designated evidence is a document titled "Vehicle Salesperson Compensation [P]lan" (the "Plan"). *Id.* at 81-82. The Plan sets forth a "commission percentage breakdown" corresponding to the number of vehicles sold each month. *Id.* at 81. At the bottom of the Plan, there are signature

blocks for a sales associate and a manager. The Plan states that the "document does not constitute an employment contract" and that the "employment with [Hubler] is 'at will', which means [the] employment with [Hubler] may be terminated by [the sales associate or Hubler] at any time," with or without cause. *Id.* at 82. The Plan does not address minimum wage. The Plan also does not contain a clause stating that it is a fully integrated compensation plan.

[7] In seeking summary judgment, Hubler argued that the Plaintiffs' claims under Count II turned on whether the Plaintiffs "were paid less than the amount that they earned under . . . [the] Plan." *Id.* at 15. Hubler asserted that "[s]ales associates are entitled to receive only commissions earned, nothing more." *Id.* at 16. In support of its motion, Hubler pointed out that "[t]here is nothing in the . . . Plan that entitles sales associates to receive commissions *plus* minimum wage[.]" *Id.* According to Hubler, whenever commissions fell below minimum wage and Hubler paid minimum wage, Hubler was paying "more than the amount to which [the sales associate] is entitled (as measured by commissions) for that pay period." *Id.* Hubler argued that any subsequent offsetting corrected the prior overpayment and that "it is impossible for [the] Plaintiffs to show that, at any given time, they were paid *less* than the full commissions earned up to that given moment[.]" *Id.* at 17. Hubler ultimately argued that there had been "no deduction made from the wages earned," *i.e.*, no underpayment, and so Hubler was entitled to partial summary judgment. *Id.*

[8] In response, the Plaintiffs asserted that Hubler's motion for summary judgment was "based on a faulty premise" that the Plaintiffs were entitled to receive only

commissions. *Id.* at 88. The Plaintiffs designated deposition testimony from Endris, who explained his understanding of the compensation arrangement: "My understanding is that when somebody doesn't earn at least minimum wage through their commissions, that they're entitled to minimum wage[.]" *Id.* at 105. Endris noted that Hubler had sales associates "in a clock in and clock out situation" and that, in weeks when he received minimum wage, the payments "match[ed] up with [the] exact hours [he] clocked in and out per week[.]" *Id.* Endris testified that he earned commissions based upon the terms set forth in the Plan, but that he earned minimum wage in slow sales weeks in exchange for the hours he worked. *Id.* at 105-06. Endris noted that, to earn his paycheck, Hubler required him to "run cars through the wash[.]" *Id.* at 106.

[9] Following a hearing, the trial court granted summary judgment as to Count II. Upon a joint motion, the court amended its written order, identifying no just reason for delay and directing entry of a final judgment under Trial Rule 56(C).

[10] The Plaintiffs now appeal.

Discussion and Decision

[11] Summary judgment is proper "if the designated evidentiary matter shows 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." Ind. Trial Rule 56(C). The party seeking summary judgment bears the initial burden of "making a prima facie showing" that there is no genuine issue as to any material fact. *Burton v. Benner*,

140 N.E.3d 848, 851 (Ind. 2020). "The burden then shifts to the non-moving party to show the existence of a genuine issue." *Id.* "A fact is 'material' if its resolution would affect the outcome of the case, and an issue is 'genuine' if a trier of fact is required to resolve the parties' differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences." *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014) (quoting *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009)). We review an order granting or denying summary judgment *de novo*, resolving all doubts in favor of the non-moving party. *Bules v. Marshall Cnty.*, 920 N.E.2d 247, 250 (Ind. 2010). Moreover, although "the non-moving party has the burden on appeal of persuading us that the grant of summary judgment was erroneous, we carefully assess the trial court's decision to ensure that [the non-moving party] was not improperly denied his day in court." *Hughley*, 15 N.E.3d at 1003 (quoting *McSwane v. Bloomington Hosp. & Healthcare Sys.*, 916 N.E.2d 906, 909-10 (Ind. 2009)).

[12] Indiana Code Section 22-2-6-2(a) (the "Deduction Statute") specifies that the wages of an employee are subject to deduction only if certain conditions are satisfied. One such condition is that the employee has executed a written wage assignment. *Id.* The Plaintiffs argued below, and reassert on appeal, that Hubler's payment system resulted in unauthorized deductions from their commission-based wages because the Plaintiffs "did not execute a valid wage assignment covering the minimum[-]wage payments." Br. of Appellant at 12.

[13] As an initial matter, we observe that our legislature did not expressly create a private right of action for a violation of the Deduction Statute. *See* I.C. ch. 22-

2-6. Moreover, the Plaintiffs are not arguing that there is an implied private right of action for a violation of the Deduction Statute. *See, e.g.*, *Doe #1 v. Ind. Dep't of Child Servs.*, 81 N.E.3d 199, 202-04 (Ind. 2017) (examining legislative intent to determine whether there was an implied private right of action). Rather, the Plaintiffs asserted that they may pursue their claim under the Wage Payment Act ("WPA"). The essence of Count II is that Hubler made improper wage assignments—*i.e.*, deductions—resulting in the underpayment of earned wages. *Cf.* Br. of Appellee at 12 (acknowledging that, for the Plaintiffs to prevail on their deduction claim, the Plaintiffs "must prove that they were paid less than . . . they earned[.]"). Whereas the Deduction Statute is concerned with the process of authorizing wage deductions, the WPA imposes a duty upon employers to pay all wages due to employees. *Compare* I.C. § 22-2-6-2 *with* I.C. § 22-2-5-2. Indeed, the WPA expressly confers a private right of action, directing that an employer "shall be liable to the employee for the amount of unpaid wages, and the amount may be recovered in any court having jurisdiction of a suit to recover the amount due to the employee." I.C. § 22-2-5-2; *see also Walczak v. Labor Works-Ft. Wayne LLC*, 983 N.E.2d 1146, 1149 (Ind. 2013) (noting that the WPA "create[d] a private right of action").

[14] In seeking partial summary judgment, Hubler focused on the Plan, contending that the Plan requires only the payment of commissions. In response, the Plaintiffs noted that the Plan was silent regarding (1) minimum wage and (2) the possibility of offsetting. The Plaintiffs designated deposition testimony from Endris in which he explained his understanding that, in slow sales weeks, he

earned minimum wage independent of commissions by performing ancillary tasks during work hours. The Plaintiffs focused on that deposition testimony at the hearing, noting that Endris said "he was also entitled to minimum wage when he didn't earn enough in commissions." Tr. Vol. II at 12. The Plaintiffs ultimately asserted that there was a "factual dispute" as to the wages owed. *Id.*

[15] In now challenging summary judgment, the Plaintiffs maintain that "[a]ll the . . . Plan addresses is payment of commissions earned based on gross profit of vehicle sales." Br. of Appellant at 11. They argue that summary judgment was improper because nothing in the Plan, "or anything anywhere else in the record," authorized Hubler to "characterize previously paid minimum wages as subsequently earned commissions." *Id.* at 12. Citing Endris's testimony, the Plaintiffs assert that they "understood they were being paid minimum wage based on their hours worked, not based on their vehicle sales." Reply Br. at 6.

[16] Below and on appeal, Hubler has regarded the Plan as contract-like, treating its terms regarding earnings as exclusive, controlling, and dispositive. We note that the Plan states that it "does not constitute an employment contract[.]" App. Vol. 2 at 82. In any case, "[c]ontractual obligations between an employer and [an] employee may be created by policy statements contained in a handbook or manual, or otherwise communicated." 30 C.J.S. *Employer-Employee* § 31 (2020) (footnotes omitted). Because there appears to be no real dispute as to the contractual nature of the Plan, we will regard it as a contract.

[17] The terms of a contract are exclusive only if the contract is fully integrated. *See Integration*, Black's Law Dictionary (11th ed. 2019) (defining complete integration as "[t]he quality, state, or condition of fully expressing the intent of the parties"). Thus, if the Plan is not fully integrated, there could be consistent additional terms regarding earnings and the basis for minimum wage. *See, e.g.*, Restatement (Second) of Contracts § 216 (1981) (noting that "[e]vidence of a consistent additional term" is generally admissible to supplement an agreement "unless the court finds that the agreement was completely integrated").

[18] Generally, "[w]hether a writing has been adopted as an integrated agreement is a question of fact to be determined in accordance with all relevant evidence." Restatement (Second) of Contracts § 209 cmt. c. (1981). Indeed, "whether a written contract represents the parties' complete and integrated agreement is a question of fact that may turn on parol evidence despite what the written contract itself may say." *Jones v. Oakland City Univ.*, 122 N.E.3d 911, 921 (Ind. Ct. App. 2019), *trans. denied*. Although integration is usually a question of fact, the issue may be decided as a matter of law "where the facts are undisputed and only a single inference can be drawn from those facts." *Id.* (quoting *Hinkel v. Sataria Distrib. & Packaging, Inc.*, 920 N.E.2d 766, 768-69 (Ind. Ct. App. 2010)).

[19] In granting partial summary judgment, the trial court implicitly determined that the Plan was the exclusive, controlling source of wage obligations to the Plaintiffs. Indeed, the trial court determined that the Plan "requires Hubler to pay its employees their earned commissions" and that Hubler "fulfilled its obligations under the . . . Plan." App. Vol. 2 at 129. Having focused on the

Plan, the trial court generally noted that there is "no evidence in the record, in the form of an agreement or otherwise, supporting the proposition that Hubler is required to pay sales associates minimum wage *plus* commissions." *Id.*

[20] Critically, however, Endris's testimony indicates that there was a consistent additional compensation term regarding minimum wage, which is that the Plaintiffs earned minimum wage independent of subsequent commissions, in exchange for performing ancillary tasks. The testimony about minimum wage raises a genuine issue of material fact regarding the scope of Hubler's wage obligations, *i.e.*, whether Hubler was obligated to pay the Plaintiffs minimum wage for hours worked on the lot without regard to any subsequently earned commissions. We therefore conclude that it was improper to grant partial summary judgment upon the designated evidence. *See, e.g.*, *Hughley*, 15 N.E.3d at 1004 (noting that "Indiana consciously errs on the side of letting marginal cases proceed to trial on the merits, rather than risk short-circuiting meritorious claims" and that even "perfunctory and self-serving" evidence will preclude summary judgment where the evidence raises a genuine issue of material fact); Restatement (Second) of Contracts § 209 (1981) (referring to the factual issue of integration as an issue to be resolved "preliminary to" addressing other issues).

[21] All in all, we conclude that the trial court improvidently granted partial summary judgment. We therefore reverse and remand for further proceedings.

[22] Reversed and remanded.

Robb, J., and Tavitas, J., concur.