IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-3737
Summary Calendar

BILLY D. MARTIN,

Plaintiff-Appellant,

versus

GEORGIA GULF CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court for the
Middle District of Louisiana
(CA-88-134-B-M2)

(May 17, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:[*]

A employee sued his former employer to obtain full vesting of stock purchased under a Restricted Stock Purchase Agreement as a "disabled purchaser." After a bench trial, the district court determined that the employee was not entitled to immediate full vesting because he was not a "disabled purchaser." The employee appeals, but because we find no error, we affirm.

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

I

While employed by Georgia Gulf Corporation as a safety analyst, Billy D. Martin participated in a Restricted Stock Purchase Agreement, under which he purchased 150 shares of Georgia Gulf stock for one dollar per share. According to the agreement, twenty percent of the stock would vest each year on April 16, beginning in 1987 and continuing through 1991, so long as Martin remained an employee. If Martin's employment terminated before complete vesting, Martin would be required to sell all non-vested shares back to Georgia Gulf at one dollar per share. However, in the event that Martin became a "disabled purchaser" under the terms of the agreement, all of the stock would immediately vest.

As a safety analyst at Georgia Gulf, Martin was in charge of the safety procedures implemented by Georgia Gulf. In late 1986 and early 1987, Martin became increasingly uncomfortable with Georgia Gulf's safety procedures, and on January 19, 1987, Martin resigned by delivering a handwritten note to his supervisors. Almost immediately after resigning, Martin sought treatment from several doctors for various symptoms, including insomnia, moodiness, and inability to focus. These doctors examined Martin and concluded that, although Martin did not suffer from any neurological disorders, he did appear to suffer from severe depression. Martin began taking an anti-depressant, and he immediately improved. One doctor then wrote Georgia Gulf suggesting that Georgia Gulf rehire Martin for a position other than that of safety analyst. Georgia Gulf received this request eleven days after Martin resigned, but the company refused to rehire Martin.

II

In February 1988, Martin sued Georgia Gulf in Louisiana state court for specific performance of the Restricted Stock Purchase Agreement, arguing that because he was a "disabled purchaser," he was entitled to all 150 shares of stock. In August 1992, after the case had been removed to federal court, the liability issues were tried to the court. During Martin's case in chief, Dennis Chorba, vice-president of Legal Affairs during Martin's employment, testified that he made the decision to deny Martin's status as a disabled purchaser without consulting the Stock Option Committee. Martin argued that this violated the Restricted Stock Purchase Agreement, which provided that the determination of whether a person was a "disabled purchaser" under the agreement was to be made solely by the Stock Option Committee. The district court made a partial finding that Chorba did not possess the authority to determine whether Martin was a "disabled purchaser." The court stayed the proceedings, ordering the parties to submit all evidence to the committee for a determination of disability. The committee ultimately determined that Martin was not a "disabled purchaser" because Martin was not completely unable to engage in his regular occupation, and that his disability, if any, did not continue for a substantial period of time as implicitly required by the agreement. After the committee rendered its decision, the case returned to the district court to continue the liability proceedings. At the end of the trial, the district court agreed with the committee's determinations, and dismissed Martin's suit with prejudice, assessing all costs against Martin. Martin now appeals.

III

On appeal, the parties and the district court agree that the Louisiana Supreme Court decision in Hay v. South Central Bell Telephone Co., 475 So.2d 1052 (La. 1985), governs the standard of review. Under Hay, the Stock Option Committee's factual determinations may be overturned only if they are found to be manifestly erroneous. Hay v. South Cent. Bell Tel. Co., 475 So.2d at 1055. In areas where the committee may exercise discretion, we review for arbitrary and capricious decisions. Id. Pure questions of law, or questions interpreting constitutional or statutory provisions are reviewed de novo. Id.

A

Martin first argues that the district court erred in affirming the committee's determination that the term "disabled purchaser" requires a degree of permanency of disability. Under Hay, we interpret a provision of a contract as a matter of law, subject to the de novo standard of review, and in accordance with the intention of the contract and any applicable case law or statutes. Hay v. South Cent. Bell Tel. Co., 475 So.2d at 1056. When construing a contract, we must consider all general principles of statutory construction, and as noted in Hay, "[t]he purpose of the language in the contract is the critical factor. . . ." Hay, 475 So.2d at 1056 (emphasis supplied). Here, the Purchase Agreement states that a disabled purchaser is "a Purchaser who, as determined by a licensed physician acceptable to the Committee, and evidenced by a certificate to the Company, is completely unable to engage in his regular occupation as an employee of the Company. . . ." We agree with the committee's determination that the context in which the term appears encompasses an element of permanency. The vesting provision of the plan was intended to encourage long-term employment. Under this agreement, the stock vests immediately only in those cases where an employee is unable to continue working either permanently, i.e., death, retirement, or permanent disability, or for an extended period of time, i.e., long-term disability. To allow vesting for a condition less than a long-term disability would defeat the very purpose of the vesting requirement, because without an element of permanency, any disability or injury, no matter how fleeting, would trigger full vesting. Thus, when viewed in the overall context of the vesting provision, it is clear that the term "disabled purchaser" impliedly requires that the disability endure for a sufficient period of time. Therefore, we hold that the district court did not err in affirming the committee's interpretation of the term "disabled purchaser."[1]

B

Second, Martin contends that the district court erred in concluding that the Stock Option Committee correctly determined that Martin was not disabled at the time he resigned. We review the district court's factual determinations for manifest error. Hay v. South Cent. Bell Tel. Co., 475 So.2d at 1055. The district court, in its opinion, stated that "the committee's findings were supported by the evidence presented to the committee and this Court. Accordingly, the Court finds as a matter of fact and law that the plaintiff was not a `disabled purchaser' under the terms of the agreement." After reviewing the record, we conclude that the district court did not err. As the district court noted, Martin voluntarily resigned from his position as a safety analyst, citing intolerable differences of opinions concerning safety

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[1]According to Martin, the district court erred in affirming the committee's interpretation of the term "disabled purchaser" because ambiguities in the contract must be construed against Georgia Gulf, the drafter of the contract, citing Article 2056 of the Louisiana Civil Code. Article 2056 states that "[i]n case of doubt that cannot be otherwise resolved, a provision in a contract must be interpreted against the party who furnished its text. A contract executed in a standard form of one party must be interpreted, in case of doubt, in favor of the other party." LA. CIV. CODE ANN. art. 2056 (West 1987) (emphasis added). If we had been unable to ascertain the intent of the parties, or if we were truly in doubt as to the meaning of the term "disabled purchaser," we would have turned to this rule of statutory construction. See Fee v. Vancouver Plywood Co., 331 So.2d 151, 155 (La. Ct. App. 1976).

procedures. Moreover, Martin was cleared by his physician to return to work on a little more than a month after he resigned. Thereafter, Martin continually attempted to be reinstated at Georgia Gulf. These actions do not support Martin's contention that he was suffering a long-term complete disability.

C

Martin presents several other arguments for review, none of which have merit. First, he argues that the district court erred in determining that the Stock Option Committee's actions were not arbitrary and capricious. Martin cites specific conduct of Georgia Gulf, including its refusal to rehire Martin after his resignation, and its refusal to grant Martin requested sick leave after his resignation. None of these actions, however, are actionable. Martin also cites the fact that Georgia Gulf allowed a non-committee member to make a determination concerning Martin's disabled purchaser status. Although it is true that the manner in which Martin's status was initially determined was improper, Martin's disabled status was ultimately considered and rejected by the Stock Option Committee. Thus, that error was harmless.

Martin also contends that the district court erred in dismissing his suit without a trial that would allow him an opportunity to prove that he is entitled to nominal damages resulting from Georgia Gulf's failure to follow company procedure in making the disability determination. A district court has discretion in determining whether nominal damages are appropriate.

See, e.g., Standard Plumbing Supply Co. v. United States Steel Corp., 703 F.2d 802, 804 (5th Cir. 1983). On the record before us, we find the district court did not abuse its discretion in concluding that nominal damages were inappropriate, and thus dismissing Martin's suit.

Finally, Martin asserts that the district court abused its discretion in assessing all costs against Martin because the district court held that Georgia Gulf breached its contract by failing to properly determine Martin's disabled status via the Stock Option Committee. We review an award of costs only to correct an abuse of discretion. United States v. Mitchell, 580 F.2d 789, 793 (5th Cir. 1978). In the light of the fact that Georgia Gulf prevailed on the ultimate issue--whether Martin was entitled to immediate and full vesting because he was a "disabled purchaser"--we cannot conclude that the district court abused its discretion in charging costs against Martin.

IV

For the foregoing reasons, the judgment of the district court is

A F F I R M E D.