

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM) Case No. 261-2006
OF JANICE M. EVANS,)

Claimant,)

vs.)

DEBRA KASPER SMA, D/B/A HEART TO)
HEART KENNEL,)

Respondent.)

**FINDINGS OF FACT;
CONCLUSIONS OF LAW;
AND ORDER**

* * * * *

I. INTRODUCTION

Debra Kaspersma d/b/a Heart to Heart Kennel appealed a determination from the Wage and Hour Unit which found that she owed Janice Evans additional wages and penalty as provided by law. Hearing Officer Gregory L. Hanchett conducted a contested case hearing in this matter on December 6, 2005 and January 12, 2006. Kaspersma represented herself and testified. Kaspersma's husband also testified on her behalf. Evans represented herself and testified. Marie Evans, Dustie Simmons, and Jeannine Willison also testified on behalf of Evans. The parties stipulated to the admission of Hearings Bureau Documents 1 through 55. Based on the evidence adduced at the hearing and the arguments of the parties, the Hearing Officer makes the following findings of fact, conclusions of law, and recommended decision.

II. ISSUE

Does Kaspersma owe Evans unpaid wages and penalty as prescribed by law?

III. FINDINGS OF FACT

1. Kaspersma hired Evans to work as an office manager in June 2004 and to help with other chores at Heart to Heart Kennel.

2. Kaspersma and Evans agreed that Evans would receive compensation in the amount of \$1,200.00 each month. Between March 1, 2005 and July 5, 2005, Kaspersma did not pay Evans. Evans worked for this four-month period at the rate of remuneration stated in Paragraph 1, earning a total of \$4,800.00 in regular wages during that time.

3. Evans and Kaspersma also entered into a written agreement that Kaspersma would sell Evans an automobile for \$3,500.00. The agreement further stated that Evans' payment for the car would be deducted from Evans' wages in the amount of \$50.00 per month until the car was paid in full (Document 11). Kaspersma provided the car to Evans, but has refused to transfer the car's title to Evans because Evans has not paid Kaspersma for the car. During the four months of employment at issue in this case, Kaspersma earned \$200.00 of deductions from unpaid wages due to Evans for the purchase of the car. In addition, the car, by Evans own estimation, retains a value of \$3,200.00 and Evans is willing to take the car in partial satisfaction of her claim.

4. While in Kaspersma's employ, Kaspersma paid Evans \$941.00 which consisted of \$200.00 in cash draws, payment of power bills totaling \$641.00 and sewer and water bills totaling \$178.00. Evans conceded at hearing that this amount should be deducted from the wages she is due. Deducting this amount from the total amount due to Evans leaves a balance due of \$3,859.00 ($\$4,800.00 - \$941.00 = \$3,859.00$).

5. Evans also seeks an additional \$5,000.00 for Kaspersma's breach of an alleged agreement to pay Evans for assistance with foaling. Evans also claims to be owed an additional \$500.00 for completing a web page for Kaspersma. Evans did not appeal from the wage and hour determination which found that these agreements were not part of the employment agreement and that Evans was not due these amounts under the wage and hour laws.

IV. DISCUSSION¹

A. *Kaspersma owes wages to Evans.*

Kaspersma does not dispute that Evans received no wages for the four months between March 1, 2005 and July 5, 2005. Rather, Kaspersma contends that Evans'

¹Statements of fact in this opinion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

wages must be offset by the amounts paid on Evans' behalf (the \$941.00 paid out on cash draws, the electric bills, and the sewer bills) and the value of the automobile that Kaspersma sold to Evans. Evans agrees that the \$941.00 should be deducted from the wages due, but disagrees that the value of the automobile should be deducted from the wages due. Evans also contends that she is due an additional \$5,500.00 for foaling duties and for providing Kaspersma with a web page.

Montana law requires that employers pay employees wages when due, pursuant to the employment agreement. Mont. Code Ann. § 39-3-204. Except for the minimum wage, the law allows the parties to agree upon the wage rate for work to be done. Mont. Code Ann. § 39-3-201(6); *see, Delaware v. K-Decorators, Inc.*, ¶ 33, 1999 MT 13, 293 Mont. 97, 973 P.2d 818. Evans has the burden to prove by a preponderance of the evidence that she earned additional wages in her employment. *Marias Health Care Services v. Turenne*, ¶¶13-14, 2001 MT 127, 305 Mont. 419, ¶¶13-14, 28 P.3d 494, ¶¶13-14 (holding that lower court properly concluded that the plaintiff's wage claim failed because the plaintiff failed to meet her burden of proof to show that she was not compensated in accord with her employment contract).

According to the agreement between the parties, Evans earned \$1,200.00 per month for her work from March 1, 2005 to July 5, 2005. She received no wages during that time and, in the absence of any legally cognizable basis for reducing the amount owed, is owed \$4,800.00. Since Evans conceded that \$941.00 was paid either to her or on her behalf during her employment, \$941.00 should be credited against the amount owed. This reduces the amount owed to \$3,859.00.

In addition, the Hearing Officer must take into account the parties' agreement that Evans would pay out of her wages the amount of \$50.00 per month to pay for a car she was in the process of purchasing from Kaspersma. The wage and hour statutes do not prohibit employees and employers from entering into agreements unrelated to the employment relationship. The wage protection statute "is designed to prevent an employer from depriving an employee of wages at the employer's instigation, or for the benefit of the employer. . . . Deductions voluntarily requested by the employee in his own behalf do not violate statutes such as Section 39-3-204(1)." *Christiansen v. Taylor Bros., Inc.*, (1987), 225 Mont. 318, 320, 732 P.2d 841, 843.

Evans and Kaspersma voluntarily entered into an agreement to deduct \$50.00 per month from Evans' pay check to pay for the car. It is clear that the parties intended their agreement that payments for the car would be deducted as part of the employment agreement. Indeed, Kaspersma's right to receive payment for the car

was secured by retention of the title and by Evans' agreement for a voluntary deduction of \$50.00 per month until she had paid for the car. This amount [a total of \$200.00 ($\$50.00 \times 4 \text{ months} = \200.00)] should also be credited against the unpaid wages due to Evans. This reduces the amount due to Evans to \$3,659.00 ($\$3,859.00 - \$200.00 \text{ deduction for car payments} = \$3,659.00$).

Evans retains possession of the car. The Hearing Officer lacks the power to order Kaspersma to transfer title to the car and to credit the amount still due against Evans' unpaid wages. However, if Evans receives the title to the car, she will get the full benefit of her bargain. Thus, if Kaspersma chooses to include the properly executed title transfer with payment of the additional amounts due, the value of the car, up to \$3,200.00 or the net wages due after appropriate deductions for income taxes and social security on the wage portion, whichever is smaller, will count as partial payment of the total amount due.²

The Hearing Officer has no jurisdiction over Evans' claims for recovery of amounts earned for foaling and for the web site. Evans did not appeal the portion of the wage and hour determination that found she was not due \$5,000.00 for foaling or \$500.00 for the web site. Mont. Code Ann. § 39-3-216 (3) requires that a party aggrieved by the finding of the Wage and Hour Unit must file an appeal within 15 days after the determination is mailed in order to be entitled to a contested case hearing on the issue. Evans did not file such an appeal in this case and therefore the foaling and web site claims were finally decided by the wage and hour determination.

B. Kaspersma Owes a Statutory Penalty on the Wages Due.

Montana law assesses a penalty when an employer fails to pay wages when they are due. Mont. Code Ann. §39-3-206. Admin. R. Mont. 24.16.7566 requires the imposition of a 55% penalty in all determinations issued by the department to which special circumstances (absent in this case) do not apply. Under the facts of this case, because there has been no payment of wages made prior to the determination in this case, the Hearing Officer is constrained to impose the 55% penalty. Applying this regulation, Kaspersma owes a statutory penalty of \$2,012.45 ($\$3,659.00 \times .55 = \$2,012.45$).

² Of course, if Kaspersma declines to turn over title to the car to Evans, the parties' dispute regarding the car will have to be resolved by a court of competent jurisdiction. This hearing officer's suggestion as to resolution of this case by transferring title to the car is not intended to limit, and cannot lawfully limit, the parties' respective rights to pursue disposition of the car/title issue by a court of competent jurisdiction.

Although Evans had the use of the car throughout this controversy, Kaspersma is not due any additional recoupment for the car out of the wages due and unpaid beyond the \$200.00 credited against those wages. Therefore, although Kaspersma can make a partial payment of the wages by providing the title to Evans, that partial payment is now too late to avoid imposition of the penalty on all the unpaid wages.

V. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this complaint. Mont. Code Ann. § 39-3-201 et seq. *State v. Holman Aviation* (1978), 176 Mont. 31, 575 P.2d 925.

2. Kaspersma owes Evans \$3,659.00 in unpaid wages.

3. If Kaspersma forwards title to the car in the manner stated below in the order, \$3,200.00 or the net wages due after appropriate deductions for income taxes and social security on the wage portion, whichever is smaller can be credited against the amount due to Evans.

4. Kaspersma owes Evans 55% penalty in the amount of \$2,012.45.

VI. ORDER

Debra Kaspersma, d/b/a Heart to Heart Kennel, is hereby ORDERED to tender a cashier's check or money order in the amount of \$5,671.45, representing \$3,659.00 in unpaid wages and \$2,012.45 in penalty, payable to Janice Evans, and mailed to the Employment Relations Division, P.O. Box 6518, Helena, Montana 59624-6518, no later than 30 days after service of this decision. In the alternative, Kaspersma may forward to the Employment Relations Division within the above time frame the properly notarized title transferring ownership of the automobile to Evans, in which case Kaspersma will receive a credit of \$3,200.00 or the net wages due after appropriate deductions for income taxes and social security on the wage portion, whichever is smaller, against the total amount due of \$5,671.45. If Kaspersma chooses this option of payment, she must also forward a cashier's check or money order for the balance due within the above time frame. No matter which option Kaspersma chooses, she may withhold appropriate deductions for income taxes and social security on the wage portion, but not the penalty portion, of the amounts due.³

³ Accompanying Kaspersma's copy of this decision are the originals of medical reports pertaining to her treatment for injuries received in an altercation with Evans. Kaspersma forwarded

DATED this 28th day of February, 2006.

DEPARTMENT OF LABOR AND INDUSTRY

By: /s/ GREGORY L. HANCHETT
Gregory L. Hanchett, Hearing Officer
Hearings Bureau

NOTICE: You are entitled to judicial review of this final agency decision in accordance with Mont. Code Ann. § 39-3-216(4), by filing a petition for judicial review in an appropriate district court within 30 days of service of the decision. See also Mont. Code Ann. § 2-4-702.

If there is no appeal filed and no payment is made pursuant to this Order, the Commissioner of the Department of Labor and Industry will apply to the District Court for a judgment to enforce this Order pursuant to Mont. Code Ann. § 39-3-212. Such an application is not a review of the validity of this Order.

Evans FOF ghp

these records to this office prior to the hearing. As was explained to the parties at the time of the hearing, the medical records were not relevant to the issues of this proceeding and, accordingly, were not made a part of the record. Because the records were not relevant to this proceeding and because the records contain confidential information, they are being returned to Kaspersma.