

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CASE NO. 2009-CA-01054

COOPER L. "PETE" MISSKELLEY

PLAINTIFF/APPELLANT

VS.

**CARROLL COUNTY, MISSISSIPPI and
CARROLL/MONTGOMERY REGIONAL
CORRECTIONAL FACILITY**

DEFENDANTS/APPELLEES

**APPEAL FROM THE CIRCUIT COURT
OF THE FIRST JUDICIAL DISTRICT
OF CARROLL COUNTY, MISSISSIPPI**

**BRIEF OF APPELLEES,
CARROLL COUNTY, MISSISSIPPI and
CARROLL/MONTGOMERY REGIONAL CORRECTIONAL FACILITY**

ORAL ARGUMENT NOT REQUESTED

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CORRECTIONAL FACILITY**

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following list of persons or parties have an interest in the outcome of this case. These representations are made in order that the judges of the Supreme Court may evaluate possible disqualification or recusal.

1. Honorable Clarence E. Morgan, III, Circuit Court Judge
P. O. Box 721, Kosciusko, Mississippi 39090
2. Webb Franklin, Esq., LOTT, FRANKLIN & FONDA, PLLC, P. O. BOX 1176
Greenwood, Mississippi 38935-1176, Attorney for Plaintiff Appellant;
3. Silas W. McCharen, Esq., DANIEL COKER HORTON & BELL, P.A.
P. O. Box 1084, Jackson, Mississippi 39215-1084, Attorney for Defendants
Appellees Carroll County, Mississippi and Carroll/Montgomery Regional
Correctional Facility;
4. Alan D. Lancaster, Esq., LISTON & LANCASTER, P. O. Box 645, Winona,
Mississippi, 38967, Attorney for Defendants Appellees Carroll County,
Mississippi and Carroll/Montgomery Regional Correctional Facility
5. Cooper L. "Pete" Misskelley;
6. Carroll County, Mississippi; and

7. Carroll/Montgomery Regional Correctional Facility.

THIS the 4th day of December, 2009.



SILAS McCHAREN

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Waggoner v. Williamson, 8 So.3d 147 (Miss. 2009).

STATE RULES OF PROCEDURE

Mississippi Rules of Civil Procedure 56 (c), (e)

STATEMENT OF THE ISSUES

- I. WHETHER MISSKELLEY'S CLAIM FOR BREACH OF HIS EMPLOYMENT CONTRACT FAILS AS A MATTER OF LAW WHEN MISSKELLEY TERMINATED THE CONTRACT VIA RESIGNATION IN APRIL OF 2007 AND WAS THUS AN AT-WILL EMPLOYEE AT ALL TIMES THEREAFTER.**
- II. WHETHER MISSKELLEY'S EMPLOYMENT WITH THE CARROLL/MONTGOMERY REGIONAL CORRECTIONAL FACILITY WAS EFFECTIVELY TERMINATED ON DECEMBER 31, 2007 WHEN THE CARROLL COUNTY BOARD OF SUPERVISORS NOTED MISSKELLEY'S "PENDING TERMINATION DATE" OF DECEMBER 31, 2007, A NEW WARDEN WAS HIRED FOR 2008, MISSKELLEY WAS PAID NO SALARY AFTER THAT DATE AND MISSKELLEY HAS NOT MADE ANY CLAIMS FOR SALARY AFTER THAT DATE.**
- III. WHETHER THE LOWER COURT PROPERLY GRANTED SUMMARY JUDGMENT TO APPELLEES WHEN THE CARROLL COUNTY BOARD OF SUPERVISORS STRICTLY FOLLOWED THE PERSONNEL POLICY WHICH UNAMBIGUOUSLY MANDATES THAT ALL UNUSED CATASTROPHIC LEAVE ACCRUED BY CARROLL/MONTGOMERY REGIONAL CORRECTIONAL FACILITY EMPLOYEES SHALL BE CERTIFIED TO THE RETIREMENT SYSTEM UPON TERMINATION OF EMPLOYMENT.**

STATEMENT OF THE CASE

I. COURSE OF PROCEEDINGS AND DISPOSITION IN THE COURT BELOW

The appeal before this Court stems from the Circuit Court of the First Judicial District of Carroll County, Mississippi. The Honorable Judge C.E. Morgan, III, issued an Order Granting Defendants, Carroll County, Mississippi and Carroll/Montgomery Regional Correctional Facility's (hereinafter CMRCF or the Correctional Facility), Motion for Summary Judgment on May 28, 2009. (R. 88-91). Appellant filed his Notice of Appeal to this Court on June 23, 2009. (R. 214).

II. STATEMENT OF RELEVANT FACTS

On January 20, 2004, Appellant Cooper L. "Pete" Misskelley (hereinafter Misskelley) entered into an employment contract to serve as Warden of the Correctional Facility. (R. 100-107). The initial term of the contract was to run for a period of one year beginning January 1, 2004, and ending January 3, 2005. (R. 102). The contract automatically renewed for regular periods of one year, "provided neither party submit(ted) a notice of termination prior to sixty (60) days of the expiration date or any subsequent renewal expiration dates of (the) Agreement." (R. 102-103). Essentially, termination via resignation was made possible if notice was received at least sixty days prior to December 31 of each year of Misskelley's employment under the contract. The contract could also be terminated by Misskelley's failure or refusal to adequately perform the duties of his employment as Warden. (R. 104).

In addition to the terms of his employment contract, Misskelley also received benefits under the CMRCF personnel policy (hereinafter the Policy), which covered all employees at the Correctional Facility. The Policy was set forth in a written handbook and included a "catastrophic leave" provision under which employees could accrue up to thirty days per year, or twenty hours per

month, for “catastrophic illness or injury.” (R. 108-109). However, employees were only qualified for catastrophic leave after exhausting all personal and sick leave that could not be carried over into the following calendar year. *Id.* Any unused catastrophic leave would be counted as creditable service for the purposes of the Public Employment Retirement System (hereinafter PERS) upon termination of employment. *Id.* The Policy specifically provided as follows:

The Facility shall allow thirty (30) days per year (20 hours per month) for catastrophic injury or illness for employees and appointed officials. A catastrophic injury or illness means a severe condition or combination of conditions affecting the mental or physical health of an employee or member of an employee’s immediate family that requires the services of a licensed physician for an extended period of time and that forces the employee to exhaust all personal and sick leave that cannot be carried over into the next calendar year. Unused catastrophic leave shall be carried over into subsequent calendar years and any unused leave shall be counted as creditable service for the purposes of the retirement system upon termination of employment. Catastrophic leave can only be used by employees or appointed officials upon approval of the Sheriff of Carroll County and the Board of Supervisors of Carroll County. Catastrophic leave shall be retroactive to all current covered employees in the retirement system beginning at their date of employment with Carroll County.

Id. (emphasis added). Misskelley was previously employed with Carroll County in a different capacity. Thus, according to the retroactive language of the Policy, Misskelley accrued a total of 275 days of catastrophic leave over the course of his employment. (R. 127).

Misskelley continuously served as Warden of the Correctional Facility from January 20, 2004 until April 22, 2007. On April 22, 2007, Misskelley resigned as Warden and his resignation was accepted by then-Sheriff Donald Gray, via correspondence to the Carroll County Chancery Clerk, on April 24, 2007. The following day, on April 25, 2007, Misskelley requested the remainder of his regular salary for the pay period as well as compensation for all unused vacation time and

compensatory time accrued over the course of his employment, the sum of which totaled \$14,800.80. (R. 121).

Due to Misskelley's unequivocal resignation of April 22, 2007, two other employees resigned. The day after Misskelley resigned, Amanda M. Wheatfield, a nurse for the Correctional Facility, submitted her written resignation, citing her reasons for leave as "the resignation of the Warden, Pete Misskelley." (R. 122). Three days later, Jennifer Marett, a counselor at the Correctional Facility, also submitted her written resignation, referencing Misskelley's departure as the basis for her resignation, as well. (R. 123).

On May 5, 2007, Misskelley was re-hired as Warden of the Correctional Facility. (R. 124). No new employment contract was entered into and, thus, Misskelley was considered to be an at-will employee. (R. 125). Shortly thereafter, in October 2007, Misskelley became physically unable to fulfill his duties as Warden of the Correctional Facility. In a letter dated October 26, 2007, Dr. Susan Jenay Neely wrote on behalf of Misskelley, stating, in pertinent part, the following:

This letter is written on behalf of my patient, Mr. Cooper "Pete" Misskelley, at his request. Mr. Misskelley suffers from severe arthritis which causes him to experience weakness, limited mobility, and chronic moderately severe pain. Mr. Misskelley's orthopedist has recommended that he have a knee and hip replacement. Due to the dysfunction caused by the severity of Mr. Misskelley's arthritis, I currently consider him to be disabled to perform the duties of his job.

(R. 114). Upon receipt of Dr. Neely's letter, Sheriff Gray made a written request to the Carroll County Board of Supervisors (hereinafter interchangeably referred to as the Board) for approval of catastrophic leave for Misskelley. (R. 110).

Thereafter, on November 5, 2007, the Board approved Sheriff Gray's request, pending determination of an ending date. (R. 115). The Board finalized authorization of Misskelley's catastrophic leave on November 16, 2007 and unanimously approved the leave from November 5,

2007 through December 31, 2007. (R. 118). The Board's use of the language "pending termination date" was in anticipation of Misskelley's termination of employment on December 31, 2007, as evidenced by the Board's deliberate decision to end the leave on December 31, 2007, and the fact that a new Warden had already been hired for 2008. (R. 212). In sum, the Board approved and compensated Misskelley from the date he requested catastrophic leave, November 5, 2007, until his termination date of December 31, 2007, totaling fifty-two days. As required by the terms of the Policy, the Board then certified Misskelley's 223 days of unused catastrophic leave to the Public Employment Retirement System (hereinafter PERS) for consideration as creditable service.

Misskelley subsequently requested and was granted permission to appear before the Board at the next scheduled meeting. Misskelley attended the meeting and petitioned the Board to pay him for the remaining 223 days of catastrophic leave instead of certifying the time to PERS, as was required by the Policy's terms. (R. 108-109; 128). Misskelley admitted that he was disabled and physically incapable of performing his job duties as Warden on and after November 5, 2007, but nonetheless claimed he was entitled to compensation for catastrophic leave time after termination of his employment on December 31, 2007. (Tr. 29).

The Board took no further action regarding Misskelley's claim, thus denying his informal request to pay him for the unused catastrophic leave instead of submitting it to PERS. Misskelley then filed a Notice of Claim on January 30, 2008, under the Mississippi Tort Claims Act. (R. 126-130). Misskelley failed to file an appeal or Bill of Exceptions with any circuit court at any time in regard to the Board's decision. On June 18, 2008, Misskelley filed this suit. (R. 93-98). He contends that the Board's action in allowing him only fifty-two days of catastrophic leave, the time remaining in his employment as Warden, was "unlawful, malicious, arbitrary and in direct violation of the County's written personnel policy, and in violation of Plaintiff's contract of employment."

(R. 96). Misskelley further alleges that he is entitled to payment for the remaining 223 unused days of catastrophic leave, the cost of obtaining private health insurance and the lost retirement benefit/credit for the remaining catastrophic leave time. (R. 134). Misskelley states that as a result of Defendants/Appellees' "independent, intentional tort" he is entitled to receive punitive damages and also an award for attorney's fees for breach of his employment contract. *Id.*

On January 14, 2009, Carroll County and the Correctional Facility filed their Motion to Dismiss and/or Motion for Summary Judgment. (R. 88-91). After hearing the Motion on April 14, 2009, the lower court issued its final Order and Opinion Granting Defendants' Motions on May 29, 2009. It is from that Order that Misskelley filed this appeal on June 23, 2009. (R. 214).

SUMMARY OF THE ARGUMENT

I. Misskelley terminated his employment by submitting his resignation well before sixty days of his employment contract's renewal date, as prescribed by the terms of the employment contract. No further employment contract was entered into between CMRCF and Misskelley after his resignation of April 22, 2007 was formally accepted on April 24, 2007. Accordingly, after April 24, 2007, Misskelley's employment with CMRCF was at-will only. As such, Misskelley's claim for breach of the employment contract was properly dismissed as a matter of law by the lower court.

II. Misskelley's employment with CMRCF was terminated on December 31, 2007. The Board intended this to be Misskelley's termination date, as evidenced by the language used in limiting Misskelley's catastrophic leave time only through December 31, 2007, thus "pending (his) termination date." Misskelley's scheduled departure of December 31, 2007 is further supported by undisputed facts showing that Misskelley openly admitted to being physically incapable of performing his job duties as of November 5, 2007, and, as a result, a new Warden was subsequently hired beginning January 1, 2008. Finally, no salary was paid to Misskelley after December 31, 2007,

and Misskelley has not made any claims for salary after that date. The lower court agreed that the facts clearly show Misskelley's employment was effectively terminated on December 31, 2007. After that date, any remaining unused catastrophic leave accrued by Misskelley was required to be certified to PERS pursuant to the terms of the Policy itself. Therefore, the lower court properly granted summary judgment to Carroll County and the Correctional Facility on this claim.

III. Carroll County and the Correctional Facility strictly followed the terms and procedures outlined in the Policy. Misskelley's employment was terminated on December 31, 2007, leaving Misskelley with 223 days of unused catastrophic leave. The Carroll County Board of Supervisors properly certified all 223 days to PERS for consideration as creditable services for Misskelley's retirement fund, as dictated by the terms of the Policy. Consequently, Misskelley's exclusive remedy, if any, exists under the statutes and regulations of PERS. The Policy is unambiguous regarding procuring, using and dispensing of catastrophic leave time for the Correctional Facility employees. The lower court did not err in its straightforward reading of the Policy. Accordingly, the grant of summary judgment to Carroll County and the Correctional Facility should be upheld as Misskelley's claims fail as a matter of law.

ARGUMENT

It is well-established that an appeal of a trial court's grant or denial of summary judgment is reviewed de novo. *One South, Inc. v. Hollowell*, 963 So.2d 1156, 1160 (Miss. 2007) (citing *Hubbard v. Wansley*, 954 So.2d 951, 956 (Miss. 2007)). Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Waggoner v. Williamson*, 8 So.3d 147, 152-53 (Miss. 2009) (citing Miss. R. Civ. P. 56(c)). The burden of proof rests on the moving party and evidence

is viewed in a light most favorable to the non-moving party. *Id.* However, once a motion for summary judgment has been made and properly supported, the non-movant “may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” Miss. R. Civ. P. 56(e). See also *Davis v. City of Clarksdale*, 18 So.3d 246 (Miss. 2009); *Grange Mut. Cas. Co. v. U.S. Fid. & Guar. Co.*, 853 So.2d 1187, 1190 (Miss. 2003).

I. MISSKELLEY’S RESIGNATION AND SUBSEQUENT FAILURE TO ENTER INTO ANOTHER EMPLOYMENT CONTRACT WITH THE CARROLL/MONTGOMERY REGIONAL CORRECTIONAL FACILITY RENDERED HIM AN AT-WILL EMPLOYEE AFTER APRIL 24, 2007 AND, THUS, HIS CLAIM FOR BREACH OF EMPLOYMENT CONTRACT FAILS AS A MATTER OF LAW.

Misskelley claims the failure to compensate him for unused catastrophic leave time after December 31, 2007 was a breach of his employment contract. In support thereof, Misskelley directs this Court’s attention to the termination provisions outlined in Section Five and Section Three of the written employment contract. (Appellant’s Br. 8). Misskelley references these provisions as the foundation for his allegations that both parties remained “bound under the contract...during its stated term.” *Id.* Section Five outlines specific events which would mandate the termination of the employment contract. However, more pointedly, Section Three of the contract states, in pertinent part, that the contract would automatically renew itself for regular periods of one year, “provided neither party submits a notice of termination prior to sixty (60) days of the expiration date or any subsequent renewal expiration dates of this Agreement.” (R. 102-103). Accordingly, Section Three of the contract allowed Misskelley to voluntarily terminate his employment as Warden by submitting notice of his resignation at least sixty days prior to December 31 of each renewed year of employment. While Misskelley fleetingly acknowledges the existence of the latter contractual provision, he quite notably fails to point out to the Court its applicability to the present case. The

evidence shows that Misskelley submitted his resignation to Carroll County Sheriff Donald Gray on April 22, 2007, and that the resignation was formally accepted by Sheriff Gray via letter to the Carroll County Chancery Clerk dated April 24, 2007. (R. 120). Indeed Misskelley's resignation was publicly known at the Correctional Facility and triggered the resignation of two other Correctional Facility employees. On April 23, 2007, the day after Misskelley terminated his employment, Amanda M. Whitfield, a nurse at the Correctional Facility, submitted a letter of resignation referencing "the resignation of the warden, Pete Misskelley" as her reason for leaving. (R. 122). Two days later, Jennifer Marett, a counselor at the Correctional Facility, submitted a letter of resignation, also citing "Warden Misskelley's departure from the facility" as the basis for terminating her employment. (R. 123).

A contract of employment "is terminated where the employee tenders his resignation and the proffer is accepted by the employer." *Blackwell v. MS Board of Animal Health*, 784 So.2d 996, 1000 (Miss. Ct. App. 2001). As stated *supra*, Misskelley tendered his resignation on April 22, 2007 and his resignation was accepted on April 24, 2007. (R. 120). The written contract of employment was therefore terminated on April 24, 2007. Although Misskelley was "rehired" by Sheriff Gray on May 4, 2007, Misskelley was considered by the Carroll County Board of Supervisors and the law to be an at-will employee at all times thereafter since no subsequent written employment contract was entered into. As such, there is no genuine issue of material fact regarding Misskelley's allegation of breach of his employment contract and the lower court's grant of summary judgment on the claim should be upheld.

II. MISSELLEY'S EMPLOYMENT WITH THE CARROLL/MONTGOMERY REGIONAL CORRECTIONAL FACILITY WAS UNEQUIVOCALLY TERMINATED ON DECEMBER 31, 2007, AS EVIDENCED BY BOTH PARTIES' ACTIONS OR INACTIONS AND THE BOARD'S REFERENCE TO MISSELLEY'S "PENDING TERMINATION DATE." NO GENUINE ISSUE OF MATERIAL FACT EXISTS AS TO THIS CLAIM.

Misskelley appears to argue that his employment contract was either never officially terminated or, in the alternative, that the termination date was unclear. With regard to the former allegation, Misskelley continues to reference the termination provisions within the written employment contract, including the sixty-day written notice requirement discussed *supra*, but nonetheless fails to acknowledge that he voluntarily terminated the contract as of April 24, 2007. (See Appellant's Br. 11; R. 120). Accordingly, any employment Misskelley had with CMRCF after April 24, 2007 was at-will only and therefore subject to the Carroll County Board of Supervisor's legal right to fire him at any time for "good reason, bad reason, or no reason at all excepting only reasons independently declared legally impermissible." *Shaw v. Burchfield*, 481 So.2d 247, 254 (Miss. 1985). Thus, while Misskelley fervently notes the Board's binding obligations under the employment contract given that the Board "unanimously adopted it and spread it upon its minutes," Misskelley's resignation of April 22, 2007 rendered his at-will employment termination of December 31, 2007 within the Board's legal power. *Id.*

In addition to the Board's legal right to fire Misskelley at any time and for any reason, Misskelley's physical ailments rendered him physically incapable of performing his job duties. Misskelley's physician, Dr. Susan Jenay Neely, wrote a letter dated October 26, 2007, on Misskelley's behalf, which was received by Sheriff Gray and forwarded to the Board on November 5, 2007. (R. 114). The letter discussed Misskelley's debilitating physical condition and his inability to perform his job and stated, in pertinent part, the following:

This letter is written on behalf of my patient, Mr. Cooper "Pete" Misskelley, at his request. Mr. Misskelley suffers from severe arthritis which causes him to experience weakness, limited mobility, and chronic moderately severe pain. Mr. Misskelley's orthopedist has recommended that he have a knee and hip replacement. Due to the dysfunction caused by the severity of Mr. Misskelley's arthritis, I currently consider him to be disabled to perform the duties of his job.

Id. When asked whether he was disabled to perform his job from November 5, 2007 and forward, Misskelley openly admits that he was, and still is, physically unable to serve as Warden of the Correctional Facility. (Tr. 29).

According to Section Five, Paragraph Two of the employment contract, CMRCF must terminate the employment contract if the Warden fails "to adequately perform the duties of his employment." (R. 104). As noted by the lower court, Misskelley's disabilities made for certain failure in his role as Warden of the Correctional Facility, rendering him incapable of fulfilling Section Five, Paragraph Two of his employment contract. (R. 212). Thus, assuming *arguendo* that the employment contract was applicable, the Board was within the purview of the contract when it scheduled termination of Misskelley's employment for December 31, 2007, since Misskelley's physical ailments officially prohibited him from serving as Warden as of November 5, 2007.

Misskelley alternatively argues that his employment was either never terminated at all or that the termination date was unclear. However, when Misskelley petitioned the Board for approval of catastrophic leave time, the Board did so and on November 16, 2007, the Board reflected in its minutes that catastrophic leave time had been approved for Misskelley through December 31, 2007, thus "pending (his) termination date." (R. 118). Indeed, Misskelley appeared before the Board following the Board's approval of his catastrophic leave through December 31, 2007, in an attempt to extend the ending date beyond December 31, 2007. This, coupled with the fact that a new Warden

was hired for 2008, shows the Board's scheduled termination of Misskelley's employment as December 31, 2007 and Misskelley's awareness that he was terminated as of that date.

Furthermore, as pointed out by the lower court, in addition to Misskelley's physical incapacity to perform his job and that a new Warden was hired in his place for 2008, it cannot be seriously argued that Misskelley either was or thought that he was employed past December 31, 2007 since no salary has been paid Misskelley since that date and he has made no claim for salary after that date. (R. 212). As such, actions on the part of both parties unambiguously indicate that Misskelley's termination of employment was scheduled to occur on December 31, 2007 and did officially occur on that date.

III. THE CARROLL COUNTY BOARD OF SUPERVISORS STRICTLY FOLLOWED THE UNAMBIGUOUS TERMS OF THE PERSONNEL POLICY BY CERTIFYING MISSELLEY'S UNUSED CATASTROPHIC LEAVE TO PERS AFTER MISSELLEY'S TERMINATION OF EMPLOYMENT ON DECEMBER 31, 2007. THE LOWER COURT'S ORDER GRANTING SUMMARY JUDGMENT TO APPELLEES SHOULD BE UPHELD.

Misskelley claims that the Board violated the Policy by failing to pay him for 223 days of unused catastrophic leave time after his termination of employment on December 31, 2007. The Policy clearly states the following in regard to an employee's catastrophic leave:

The Facility shall allow thirty (30) days per year (20 hours per month) for catastrophic injury or illness for employees and appointed officials. A catastrophic injury or illness means a severe condition or combination of conditions affecting the mental or physical health of an employee or member of an employee's immediate family that requires the services of a licensed physician for an extended period of time and that forces the employee to exhaust all personal and sick leave that cannot be carried over into the next calendar year. Unused catastrophic leave shall be carried over into subsequent calendar years and any unused leave shall be counted as creditable service for the purposes of the retirement system upon termination of employment. Catastrophic leave can only be used by employees or appointed officials upon approval of the Sheriff of Carroll County and the Board of Supervisors of Carroll County. Catastrophic leave shall

be retroactive to all current covered employees in the retirement system beginning at their date of employment with Carroll County.

(R. 108-109) (emphasis added). According to the Policy, Misskelley was not eligible for catastrophic leave time until he exhausted all personal and sick leave that could not be carried over into the following calendar year. Technically, Misskelley “exhausted” all applicable personal and sick leave in April of 2007 when he resigned and was paid more than \$14,000 for all unused vacation time and compensatory time he accrued over the course of his employment. (R. 121). However, the Policy expressly held that Misskelley was not eligible to receive catastrophic leave upon termination of his employment.

Misskelley contends that the lower court erred in its “interpretation” of the Policy and that Misskelley should have received payment for unused days of catastrophic leave upon his termination on December 31, 2007. (Appellant’s Br. 12-14). In support thereof, Misskelley reviews the policy sentence by sentence. However, Misskelley cannot point to any provision in the catastrophic leave policy nor in any other provision in the CMRCF personnel policy where it states that employees will receive monetary compensation for their unused catastrophic leave time. No logical interpretation of the Policy’s unambiguous terms requires the Board to pay terminated employees the monetary equivalent of their unused catastrophic leave time. The Policy unequivocally states that “**any unused leave shall be counted as creditable service for the purposes of the retirement system upon termination of employment.**”(R. 108) (emphasis added).

Misskelley accrued a total of 275 days of unused catastrophic leave over the course of his employment. (R. 127). The Board approved Misskelley’s request for catastrophic leave for a total of fifty-two days, from November 9, 2007 through his anticipated termination date of December 31, 2007. (R. 118). Misskelley’s employment with Carroll County was terminated on December 31,

2007. Pursuant to the express terms of the Policy, the Board then certified Misskelley's remaining 223 days of unused catastrophic leave to PERS for consideration as creditable service under PERS.

Misskelley's claim that the Board was in direct violation of its personnel policy by allowing him fifty-two days of catastrophic leave, the time remaining in his employment as Warden, fails outright. There exists no genuine issue of material fact to support Misskelley's claim that the Board violated the catastrophic leave policy. No logical interpretation of the Policy supports Misskelley's claim that the Board is required to pay him the cash equivalent of the 223 remaining days of unused catastrophic leave. The catastrophic leave policy is unambiguous. Accordingly, the lower court properly "interpreted" the Policy's straightforward terms. Moreover, the Board strictly followed the Policy regarding the certification of Misskelley's unused catastrophic leave to PERS following his termination. Therefore, the lower court's grant of summary judgment in favor of Carroll County and the Correctional Facility should be upheld.

CONCLUSION

Misskelley terminated his employment by submitting his resignation on April 22, 2007, well before sixty days of his employment contract's renewal date, as expressly provided by the terms of the contract. Misskelley's resignation was officially accepted on April 24, 2007. No further employment contract was entered into upon Misskelley's rehiring and as a result, his employment at all times after April 24, 2007 was at-will only. Misskelley's claims regarding breach of his employment contract by the Board were vitiated by his premature termination of the contract in April of 2007. Accordingly, the Board had every legal right to terminate Misskelley's employment at any time and for any legally permissible reason.

Misskelley's professed inability to perform his job duties served as reason for the Board to terminate his employment on December 31, 2007. This decision was evidenced by the Board's

language of November 16, 2007 regarding Misskelley's approved catastrophic leave time through December 31, 2007, thus "pending (his) termination date." Thereafter, a new Warden was hired for 2008. Misskelley himself was aware of the December 31, 2007 ending date and appeared before the Board between November 16, 2007 and December 31, 2007 to protest the ending date. Furthermore, no salary was paid to Misskelley after that date and Misskelley has not made any claims for salary after that date. Consequently, the lower court properly held that the facts show Misskelley's employment was effectively terminated on December 31, 2007.

Finally, the Policy clearly outlines procuring, using and dispensing of catastrophic leave time for CMRCF employees. The terms of the Policy unequivocally state that all unused catastrophic leave time is to be certified to PERS upon termination of employment. Misskelley can point to no provision in the Policy where it is mandated, suggested or even inferred that the Board was to immediately compensate employees for all remaining unused catastrophic leave upon their termination. The lower court correctly interpreted the unambiguous Policy. As such, the Board's express compliance with the Policy in its certification of Misskelley's 223 remaining days of unused catastrophic leave to PERS was proper. There exists no genuine issue of material fact to support Misskelley's claim that he should be paid for his unused catastrophic leave time. Therefore, the lower court's grant of summary judgment to Carroll County and the Correctional Facility should be affirmed.

CERTIFICATE OF SERVICE

I, Silas McCharen, attorney for Defendants/Appellees, Carroll, County, Mississippi and the Carroll/Montgomery Regional Correctional Facility, hereby certify that I have this day served a copy of the Foregoing **Brief of Appellees** on the following:

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Attorney for Plaintiff/Appellant Cooper L. "Pete" Misskelley

Honorable Clarence E. Morgan, III
Circuit Court Judge
P.O. Box 721
Kosciusko, Mississippi 39090

SO CERTIFIED, this the 4th day of December, 2009.



SILAS McCHAREN (MS # [REDACTED])

CERTIFICATE OF FILING

I, Silas McCharen, attorney for Defendants/Appellees, Carroll County, Mississippi, and the Carroll/Montgomery Regional Correctional Facility, hereby certify that I have this day served the Office of the Clerk, Supreme Court of Mississippi and counsel of record, via U.S. Mail, postage pre-paid, a copy of the foregoing Brief of Appellees.



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