

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

KANSAS CITY UNIVERSITY OF MEDICINE AND BIOSCIENCES,

Respondent,

v.

KAREN L. PLETZ,

Appellant.

DOCKET NUMBER WD73991

Date: November 1, 2011

Appeal from:
Jackson County Circuit Court
The Honorable James D. Youngs, Judge

Appellate Judges:
Division One: Victor C. Howard, P.J., Alok Ahuja and Karen King Mitchell, JJ.

Attorneys:
Charles W. German, Brandon J. Boulware and Joletta M. Friesen, Kansas City, MO, for
appellant.
David F. Oliver, Jeffrey D. Morris, Timothy S. Millman, Timothy R. West, Jonathan Scott
Kemp, Kansas City, MO; and Jeremy S. Weis, Prairie Village, KS, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT

KANSAS CITY UNIVERSITY OF MEDICINE AND BIOSCIENCES

Respondent,

v.

KAREN L. PLETZ,

Appellant.

WD73991

Jackson County

Before Division One: Victor C. Howard, P.J., Alok Ahuja and Karen King Mitchell, JJ.

Karen Pletz served as President and Chief Executive Officer of Kansas City University of Medicine & Biosciences (“KCUMB”). Based on its investigation of allegations that Pletz had misappropriated corporate funds, KCUMB terminated Pletz’s employment on December 18, 2009. Prior to terminating Pletz’s employment, KCUMB had paid Pletz’s legal expenses concerning the matter, as those expenses were incurred. On the date it terminated her, KCUMB ceased advancing her legal defense costs.

Pletz filed this suit against KCUMB on March 22, 2010, alleging among other things that KCUMB was obligated to continue to advance her legal expenses. As relevant here, Pletz bases her claim of a right to advancement on provisions of KCUMB’s Articles of Incorporation and Bylaws adopted on April 20, 2010, after this suit was filed, and well after the termination of Pletz’s employment.

The circuit court dismissed Pletz’s advancement-related claims, and certified its ruling as final for purposes of appeal pursuant to Rule 74.01(b).

AFFIRMED.

Division One holds:

Pletz is not entitled to advancement of her legal expenses under KCUMB’s 2010 Articles of Incorporation or Bylaws. The Articles obligate the corporation to “indemnify and defend any trustee or officer of the Corporation” in certain circumstances. However, at the time the 2010 Articles of Incorporation were adopted, Pletz was not a “trustee or officer of the corporation”; she was a *former* KCUMB officer. The indemnification provision of the 2010 Articles of

Incorporation cannot be read to apply to former officers, particularly when the language of the Articles is contrasted with the corresponding provisions of KCUMB's Bylaws and the authorizing statutes, both of which refer to indemnification of a person who "is *or was*" a corporate representative.

Pletz's claims under KCUMB's 2010 Bylaws fare no better. Under the Bylaws, advancement of legal expenses is only permitted "as authorized by the Board of Trustees of the Corporation *in the specific case.*" Pletz argues that "the specific case" refers to a particular set of operative facts, or a particular matter under investigation; because *other* KCUMB trustees or officers were authorized to receive advancement in connection with the same underlying allegations, Pletz argues that she is authorized to receive advancement also. We conclude, however, that "the specific case" in which authorization must occur refers to the particular individual seeking advancement. This is confirmed by the plain and ordinary meaning of the words used; other provisions of the Bylaws which indicate that an individual-specific determination must be made; and the manner in which the phrase "the specific case" is used in the statutes authorizing indemnification and advancement by not-for-profit corporations. Because Pletz concedes that KCUMB's Board of Trustees has not authorized advancement of legal expenses to her individually, the trial court did not err in dismissing her claim for advancement under the 2010 Bylaws.

Pletz argues, finally, that denying her advancement violates the public policy favoring the advancement of legal expenses to corporate representatives accused of misconduct. Despite such public policy considerations, however, Pletz's right to advancement is controlled by the terms of the KCUMB corporate documents creating the advancement right. Public policy considerations cannot override the limitations on advancement specified in the governing documents.

Opinion by: Alok Ahuja, Judge

November 1, 2011

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