IN THE COURT OF APPEALS OF IOWA

No. 23-0300
Filed March 27, 2024

ASHLEY LYNN KOESTER,
Plaintiff-Appellant,

vs.

EYERLY-BALL COMMUNITY MENTAL HEALTH SERVICES, REBECCA PARKER, and MONICA VAN HORN,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Samantha Gronewald, Judge.

A terminated employee appeals the dismissal of her claims against the employer for wrongful termination and retaliation. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.**

Breanne A. Stoltze and Bruce H. Stoltze Jr. of Stoltze Law Group, PLC, Des Moines, for appellant.

Ryan Stefani and Frank B. Harty of Nyemaster Goode, P.C., Des Moines, for appellees.

Heard by Tabor, P.J., and Badding and Buller, JJ.

TABOR, Presiding Judge.

Lynn Koester appeals the dismissal of her petition alleging (1) wrongful termination in violation of public policy under common law and (2) wrongful termination and retaliation under Iowa Code chapter 91A (2022). On the first claim, the district court found Koester's petition did not state a claim on which relief could be granted because she did not identify a viable public policy violation. The court found the second claim was barred by the statute of limitations and, like the first claim, offered no right of recovery.

Because Koester did identify a public policy justification undermined by her termination, we reverse the dismissal of her common-law claim. But we agree with the district court that her statutory count is barred by the statute of limitations. So we affirm in part, reverse in part, and remand for further proceedings.

I. Facts and Prior Proceedings

Koester joined Eyerly-Ball Community Mental Health Services as an on-call mobile crisis counselor in July 2019.[1] She was a non-exempt employee, meaning she worked as needed on an hourly basis. Early in her employment, Koester contacted the Iowa Department of Labor and learned that she was eligible for overtime pay. Eyerly-Ball's employee handbook advised non-exempt employees that "[o]vertime work must be approved before it is performed." But supervisors encouraged employees to pick up extra shifts. So Koester applied for more shifts through the software program used by Eyerly-Ball to set employee schedules. She

[1] To review the ruling on Eyerly-Ball's motion to dismiss, we accept as true the petition's well-pleaded factual allegations. *See Benskin, Inc. v. W. Bank*, 952 N.W.2d 292, 298 (Iowa 2020).

was never told that she could not work overtime. Indeed, Koester's overtime hours were always approved and paid out in her wages.

When it came to getting paid, Eyerly-Ball employees were responsible for their own timekeeping. Employees were expected to send completed timesheets to their supervisor, who would review, sign, and submit them to the human resources department for processing. Koester used this process to submit her hours—including overtime—to her supervisor, Monica Van Horn.

While Koester routinely received overtime pay, she discovered through conversations with coworkers that they did not. Word spread through Eyerly-Ball about potential wage inconsistencies. Van Horn and Rebecca Parker, director of human resources, met with Koester to discuss overtime pay. According to Koester, they accused her of "stealing from the company" and "lacking integrity." Eyerly-Ball terminated Koester's employment in January 2020.

In June 2022, Koester filed a petition claiming wrongful termination in violation of public policy, citing the "clearly defined and well-recognized public policy" under Iowa Code chapter 91A providing for wage payment collection.[2] In September 2022 Koester amended the petition to add a second count, titled wrongful termination and retaliation under Iowa Code chapter 91A. Eyerly-Ball moved to dismiss both counts. The district court granted the motion. Koester appeals.

[2] Her petition names Van Horn, Parker, and Eyerly-Ball as defendants. Unless it's necessary to be more specific, we will refer to them jointly as Eyerly-Ball.

II. Scope and Standards of Review

We review a dismissal for correction of legal error. *Nahas v. Polk Cnty.*, 991 N.W.2d 770, 775 (Iowa 2023). Eyerly-Ball filed a pre-answer motion to dismiss under Iowa Rule of Civil Procedure 1.421(1)(f), alleging Koester failed to state a claim upon which relief may be granted. That motion would prevail only if Koester's petition, on its face, showed no right of recovery under any state of facts. *See Young v. HealthPort Techs., Inc.*, 877 N.W.2d 124, 127 (Iowa 2016). "Although we accept the *factual* assertions in a petition as true when ruling on a motion to dismiss, we do not likewise accept as true a petition's *legal* assertions." *Carver-Kimm v. Reynolds*, 992 N.W.2d 591, 604 (Iowa 2023).

III. Analysis

A. Wrongful Termination in Violation of Public Policy—Failure to State a Claim upon which Relief May Be Granted

Koester first contends the district court erred in dismissing her claim of wrongful termination in violation of public policy. That common law action is a narrow exception to the rule that at-will employees, like Koester, are "subject to discharge at any time, for any reason, or for no reason at all." *See French v. Foods, Inc.*, 495 N.W.2d 768, 769 (Iowa 1993).

To succeed in her wrongful-discharge claim, Koester must prove four elements:

> (1) the existence of a clearly defined and well-recognized public policy that protects the employee's activity; (2) this public policy would be undermined by the employee's discharge from employment; (3) the employee engaged in the protected activity, and this conduct was the reason the employer discharged the employee; and (4) the employer had no overriding business justification for the discharge.

See Carver-Kimm, 992 N.W.2d at 598 (quoting *Berry v. Liberty Holdings, Inc.*, 803 N.W.2d 106, 109–10 (Iowa 2011)). The first two elements present "questions of law for the court to resolve." *Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d 275, 282 (Iowa 2000). But the third and fourth elements (examining causation and motive) are more suited to resolution by the trier of fact. *Id.*

To prove the public policy aspect of the first two elements, Koester argues that Eyerly-Ball violated the public policy recognized in the Iowa Wage Payment Collection Law,[3] when it terminated her for requesting overtime wages and for discussing pay with her fellow employees. She relies on *Tullis v. Merrill*, which held that "Iowa Code chapter 91A plainly articulates a public policy prohibiting the firing of an employee in response to a demand for wages due under an agreement with the employer." 584 N.W.2d 236, 239 (Iowa 1998).

The district court disagreed when it granted Eyerly-Ball's motion to dismiss:

> The facts presented in this case are outside the scope of the intended public policy of [chapter] 91A expressed in *Tullis*. Koester did not demand wages. The demand for wages is a requirement of [chapter] 91A. Further, Koester is not due any wages. Koester applied for overtime and received such wages . . . . As such, the Court concludes Defendants have shown Plaintiff has failed to state a claim for which relief can be granted under Count I.

In essence, the district court found that chapter 91A only protects employees who suffer wage deprivation. Because Koester was not owed wages, the court determined that her employer did not undermine a clearly defined and well-recognized public policy when it fired her.

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[3] "The purpose of the Iowa Wage Payment Collection Law is to facilitate the collection of wages owed to employees." *Phipps v. IASD Health Servs. Corp.*, 558 N.W.2d 198, 201 (Iowa 1997).

On appeal, Koester first argues that the court erred in dismissing her petition because she satisfied notice pleading requirements and the matter was "more appropriate for summary judgment." Eyerly-Ball counters that Koester "misses the mark" with her notice pleading argument. According to the employer, the issue is not whether she put it on notice of her claims, "but whether she has failed to state a claim on which relief can be granted." We agree and move to that more substantive question.

On that question, Koester confronts the district court's view that she "did not demand wages" from Eyerly-Ball. As an initial response, Koester asserts that she suffered a "technical deprivation of wages" because she demanded overtime pay when turning in her timesheets and was terminated for doing so. Then, in the alternative, she argues that deprivation of wages is not required to show her claim falls within the protections of chapter 91A.[4]

Eyerly-Ball responds, "Courts have never recognized a public policy under Chapter 91A that protects employees who have been fully paid or overpaid." Like Koester, Eyerly-Ball cites *Tullis*, but reads it more narrowly. *See* 584 N.W.2d at 236. In *Tullis*, the employer assured an employee that it would pay health insurance premiums. *Id.* at 237. When the employer deducted those premiums from his paychecks, Tullis complained and demanded reimbursement, but nothing changed. *Id.* After months of escalating requests for reimbursement, the employer terminated Tullis. *Id.* at 238. Tullis sued for breach of contract, unpaid wages, and

[4] She also argues that Eyerly-Ball violated provisions of the Iowa Administrative Code which also articulates public policies she may pursue. But because the district court did not rule on those arguments, we do not consider them here. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

retaliatory discharge based on a violation of public policy as expressed in chapter 91A. *Id.* The employer argued that medical benefits were not wages, so its "conduct violated no public policy giving rise to an exception to the employment-at-will doctrine." *Id.* Citing the statutory definition of wages, the court disagreed. *Id.* The court found Tullis's reimbursement request "clearly constituted a claim for wages under the statute." *Tullis*, 584 N.W.2d at 239.

Like the district court, Eyerly-Ball reads *Tullis* to require a failed demand for unpaid wages before an employee may harness the public-policy exception under chapter 91A. The employer also relies on *Morris v. Conagra Foods, Inc.*, a federal district court case. 435 F. Supp. 2d 887 (N.D. Iowa 2005). There, the employer overpaid employee Morris and sought his agreement to deduct installments from future paychecks. *Id.* at 894. Morris didn't agree, and Conagra made no deductions. *Id.* Morris declined to return to work and sued for retaliatory discharge. *Id.* at 895. The federal court granted summary judgment because Morris was overpaid, not underpaid. *Id.* at 912.[5]

On top of *Tullis* and *Morris*, Eyerly-Ball cites *Bjorseth v. Iowa Newspaper Ass'n*, No. 15-2121, 2016 WL 6902745, at *1 (Iowa Ct. App. Nov. 23, 2016). In that case, employee Bjorseth had used all her accrued leave and asked her supervisor for an extra day off. *Id.* Her supervisor advised that if she took the day off, eight hours of pay would be deducted from her check. *Id.* She didn't take the

[5] In reaching that decision, *Morris* cited *Kavanagh v. KLM Royal Dutch Airlines*, 566 F. Supp. 242, 243 (N.D. Ill. 1983). There, the employer accidentally overpaid the employee by $21,000. The federal court found Kavanagh lacked standing to assert rights under the Illinois Wage Payment and Collection Act because KLM never made a deduction from his salary. *Kavanagh*, 566 F. Supp. at 245.

time off and suffered no deduction but was fired for poor performance. *Id.* Bjorseth sued for a violation of chapter 91A and for wrongful discharge in violation of public policy. *Id.* The district court recognized that chapter 91A was "indeed an express public policy exception to the general at-will employment approach." But it granted the employer's motion for summary judgment, reasoning that the purpose of the chapter "would not be furthered by providing protection in employment disputes that do not result in withheld wages." *Id.* We affirmed. *Id.* at *1–2. Pulling together the threads from those cases, Eyerly-Ball urges that we affirm the district court's finding that Koester has no public-policy justification for her suit because she was not deprived of wages.

We understand the temptation to read *Tullis*—and in turn *Morris* and *Bjorseth*—as requiring a discharged employee to make an unsuccessful claim for wages under chapter 91A before invoking that statute as the clearly defined and well-recognized public policy that protected the employee's activity. But that hyper-focus on statutory minutiae misconstrues the common law exception for wrongful discharge in violation of public policy. That cause of action is not driven by the procedural details of the identified statute. The statute is just a source for the public policy fueling the tort's first element. *See Fitzgerald*, 613 N.W.2d at 283 ("Some statutes articulate public policy by specifically prohibiting employers from discharging employees for engaging in certain conduct or other circumstances. Yet, we do not limit the public policy exception to specific statutes which mandate protection for employees.").

To underscore that point, our supreme court has found legislative enactments expressing a public policy even when there is "no express statutory

mandate of protection" from adverse employment action. *Teachout v. Forest City Cmty. Sch. Dist.*, 584 N.W.2d 296, 300 (Iowa 1998). For example, in *Springer v. Weeks and Leo Co., Inc.*, the court found that the legislature clearly expressed the public policy of an employee's right to seek compensation for work-related injuries by including this sentence in Iowa code chapter 85: "No contract . . . shall operate to relieve the employer . . . from any liability created by this chapter . . . ." 429 N.W.2d 558, 560 (Iowa 1988).

Likewise in *Lara v. Thomas,* the court found a clear expression of public policy protecting employees who sought unemployment compensation from this statement in chapter 96: "Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state." 512 N.W.2d at 782. And in *Teachout*, the court found an employee protected from discharge for reporting child abuse by this statement in chapter 232: "It is the purpose and policy of this [statute] to provide the greatest possible protection to victims or potential victims of abuse through encouraging the increased reporting of suspected cases of such abuse . . . ." 584 N.W.2d at 300.

More recently in *Carver-Kimm*, the court found that a state employee alleging she was fired for fulfilling her duty under the open records law could look to this language in chapter 22: "[T]he policy of this chapter [is] that free and open examination of public records is generally in the public interest even though such examination may cause inconvenience or embarrassment to public officials or others." 992 N.W.2d at 599.

Applying those cases to Koester's wrongful discharge claim, we find a clearly defined and well-recognized public policy in this legislative expression: "An

employer shall pay all wages due its employees . . . ." Iowa Code § 91A.3.[6] As Koester argues on appeal, the holding in *Tullis* uses "very similar language, allowing a suit for wrongful discharge if an employee is fired "in response to a demand for wages due." 584 N.W.2d at 239. Contrary to the district court's dismissal order, nothing in chapter 91A excludes employees—who are fired after demanding and receiving wages due—from invoking the public-policy protection.

Finding the first prong met, we consider the second element: did firing Koester undermine the recognized public policy? The wrongful discharge claims in *Bjorseth* and *Morris* failed to satisfy this element. For instance, in *Bjorseth*, the court ruled that the purpose of chapter 91A was not furthered by protecting a poorly performing employee fired after the employer threatened to deduct wages from her paycheck but did not act on the threat. 2016 WL 6902745, at *2. And the basis for summary judgment was similar in *Morris*; the federal district court said: "the nexus between Morris's discharge and the Iowa Wage Payment Collection Law is too attenuated." 435 F. Supp. 2d at 912.

But attenuation is not a problem for Koester. Taking her allegations as true, her supervisors accused her of "stealing from the company" and "lacking integrity" for receiving overtime pay due. And then she was fired. That firing undermined the public policy of chapter 91A. *See Carver-Kimm*, 992 N.W.2d at 601 ("The very

[6] The legislature also expressed the public policy protecting an employee's right to wages due in this provision: "An employer shall not discharge or in any other manner discriminate against any employee because the employee has filed a complaint, assigned a claim, or brought an action under this section or has cooperated in bringing any action against an employer." Iowa Code § 91A.10. Employee complaints under this statute may take various forms. *See Tullis*, 584 N.W.2d at 240.

point of the wrongful-discharge-in-violation-of-public-policy tort is to protect employees from being fired when that protection is necessary to vindicate *some other* legal mandate."). As Koester points out, under Eyerly-Ball's position, all an employer must do to escape liability for wrongful discharge in a wage-related dispute is to pay what is due before firing the demanding employee. In that scenario, the injury remains: the employee has lost a job for reasons that offend public policy considerations expressed by the legislature.

When their claims are stripped down, Koester is in the same boat as Tullis. *See Tullis*, 584 N.W.2d at 239. Accepting her alleged facts as true, Koester was fired for the wage-related actions she took—investigating her eligibility for overtime and demanding the wages due on her time sheets. Chapter 91A is a clearly defined and well-recognized public policy that protected Koester's demands for overtime pay, and that policy would be undermined if she could lose her job for successfully making those demands. Unlike Bjorseth and Morris, she draws a nexus between her demand for overtime wages and her discharge. *Contrast Bjorseth*, 2016 WL 6902745, at *2; *Morris*, 435 F. Supp. 2d at 912.

In sum, the district court erred in dismissing Koester's claim of wrongful discharge in violation of public policy. We recognize that Koester still must show that she was discharged for engaging in protected activity, and that her employer had no overriding business justification for the discharge. "But this appeal comes to us on a motion to dismiss, and we have a liberal pleading standard in Iowa." *Carver-Kimm*, 992 N.W.2d at 602. Reading her allegations in full, we find it possible that Koester was fired for seeking and accepting overtime wages due to her under Eyerly-Ball's employment policies and protected by chapter 91A. For

those reasons, we reverse the dismissal of the wrongful-discharge claim and remand to the district court for further proceedings.

B. Wrongful Termination and Retaliation under Chapter 91A—Barred by Statute of Limitations

Koester's second claim alleges wrongful termination and retaliation in violation of Iowa Code section 91A.10(5). That statute provides, "[a]n employer shall not discharge or in any other manner discriminate against any employee because the employee has filed a complaint, assigned a claim, or brought an action under this section . . . against an employer." While the alleged retaliation—her termination—happened in January 2020, Koester did not sue until June 2022—two years and five months later. The district court decided that the statutory claim was precluded by the two-year limitations period in Iowa Code section 614.1(8) (addressing actions "founded on claims for wages or for liability or penalty for failure to pay wages"). Koester now contends that the action falls under the five-year statute of limitations outlined in section 614.1(4) (addressing claims "founded on unwritten contracts, those brought for injuries to property, or for relief on the ground of fraud in cases heretofore solely cognizable in a court of chancery, and all other actions not otherwise provided for in this respect").

In trying to fit her claim under the longer limitations period, Koester argues that she is "basing her cause of action on the termination itself, not her wages." Koester points to *Springer* which recognized that wrongful discharge in violation of public policy can support a claim for tortious interference with an employment contract. *See* 429 N.W.2d at 559–60 ("[E]ven under employment-at-will relationships, a remedy for damages may exist when the employment is terminated

for reasons contrary to public policy."). Springer brought a common-law claim of wrongful discharge, alleging she was fired because she filed a workers' compensation claim. *Id.* at 559. The court characterized her claim as tortious interference with the contract of hire, noting that an employee's right to seek workers' compensation should not be interfered with, regardless of the terms of the employment contract, because it "offends against a clearly articulated public policy." *Id.* at 559–60. Koester insists that, like the claim in *Springer*, a tort arises when the alleged reason for firing is retaliation for receiving overtime pay in violation of chapter 91A. She contends that she is seeking compensatory damages for the retaliation and wrongful termination, not the wages themselves, taking her claim out of the two-year statute of limitations.

Koester also relies on *Vrban v. Deere & Co*., which addresses a statute-of-limitations issue. 129 F.3d 1008, 1010 (8th Cir. 1997). The Eighth Circuit reasoned that given Iowa's well-recognized policy of encouraging employees to seek workers' compensation benefits, "the [five-year] statute of limitations applicable to a tortious interference with a business relationship claim" applied to Vrban's claim. *Id.* (citing *Springer*, 429 N.W.2d at 560).

But as we understand it, Koester's second claim is not a common law action for wrongful discharge in violation of public policy, mirroring her first claim.[7] Rather, it is a claim directly based on section 91A(10)(5). This allegation, rooted in the wage-claim statute, differs from *Springer* and *Vrban* which were wrongful

[7] Koester's counsel explained at oral argument that she amended the petition to add the statutory claim in case the public-policy tort in count one failed. Still, she continued to insist it was not a wage dispute but a retaliation claim. We read count two as a statutory claim under chapter 91A as counsel initially conceded.

discharge claims under the common law. Still, Koester argues we must focus on the "actual nature of the action," not the relief requested. But she fails to show how the foundation of her section 91A.10 action is anything but a wage claim that would fall under the two-year statute of limitations in section 614.1(8). Koester points to no case in which a court has applied a five-year limitations period to a claim under chapter 91A.

On the other side, Eyerly-Ball relies on *Waterman v. Nashua-Plainfield Cmty. Sch. District*, which applied section 614.1(8) to a wage claim under chapter 91A. 446 F. Supp. 2d 1018, 1022 (N.D. Iowa 2006). Waterman brought a chapter 91A claim against her former employer, seeking a lump-sum payment of early retirement benefits. *Id.* Because the purpose of chapter 91A is to facilitate the payment of wages owed to employees, the federal district court found that claims under chapter 91A carry a two-year limitations period. *Id.* at 1027. The second count in Koester's petition is founded on her claim for overtime wages. So, like Waterman's wage claim, it falls under section 614.1(8). Because Koester filed her statutory claim more than two years after her termination, it is time barred. We thus affirm the district court's grant of summary judgment on the second count of Koester's petition.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.