IN THE COURT OF APPEALS OF IOWA

No. 0-937 / 09-1763
Filed March 21, 2011

MERSED DAUTOVIC,
Plaintiff-Appellant,

vs.

JUDY BRADSHAW, Individually, and in her Capacity as Chief of the City of Des Moines Police Department, and THE CITY OF DES MOINES,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson, Judge.

Mersed Dautovic appeals the district court's dismissal of his cause of action alleging violations of Iowa Code chapter 80F. **AFFIRMED.**

Benjamin G. Humphrey and Mark T. Hedberg of Hedberg & Boulton, P.C., Des Moines, for appellant.

Steven C. Lussier, Assistant City Attorney, Des Moines, for appellees.

Heard by Sackett, C.J., and Potterfield and Mansfield, JJ.

MANSFIELD, J.

The sole question presented by this appeal is whether a private right of action exists to enforce the "Peace Officer, Public Safety, and Emergency Personnel Bill of Rights" contained in Iowa Code chapter 80F (2009). Because we find the legislature did not create a private cause of action for violations of this statute, we affirm the dismissal of the plaintiff's claims.

I. Background Facts and Proceedings

In June 2009, Mersed Dautovic was terminated as a City of Des Moines police officer after an investigation into his use of physical force during an arrest. Following his termination, Dautovic filed a petition in district court against the City and its police chief alleging the following violations of Iowa Code chapter 80F:

> (1) The investigation (which lasted about nine months) was not completed in a reasonable time as required by subsection 80F.1(3);
> (2) A written summary of the complaint was not provided to him prior to his interview as required by subsection 80F.1(5);
> (3) Witness statements and investigative agency reports were not provided to him upon his request as required by subsection 80F.1(9); and
> (4) His discharge was not held in abeyance for ten days upon his allegation of violations in writing as required by subsection 80F.1(19).

Dautovic requested a preventive injunction, compensatory and punitive damages, reinstatement, copies of requested documents, costs, expenses, reasonable attorney fees, and any such other relief as the court might deem just and proper.

On August 17, 2009, the defendants responded with a motion to dismiss alleging lack of subject matter jurisdiction and failure to state a claim upon which any relief may be granted. *See* Iowa R. Civ. P. 1.421(1)(*a*), (*f*). In summary, the

defendants claimed "the exclusive remedy, if any exists, for alleged violations of Iowa Code section 80F.1, is contained in subsection 80F.1(19), which does not allow a direct civil law action."

On October 29, 2009, the district court entered a detailed ruling agreeing with defendants' arguments and granting their motion to dismiss. Dautovic appeals.

II. Standard of Review

We review a district court's ruling on a motion to dismiss for the correction of errors at law. *McGill v. Fish*, 790 N.W.2d 113, 116 (Iowa 2010). A motion to dismiss should only be granted "if the petition shows no right of recovery under any state of the facts." *Southard v. Visa U.S.A. Inc.*, 734 N.W.2d 192, 194 (Iowa 2007).

III. Is There a Private Right of Action Under the Officers' "Bill of Rights"?

In 2007, the General Assembly enacted the "Peace Officer, Public Safety, and Emergency Personnel Bill of Rights." *See* 2007 Iowa Acts ch. 160 (codified at Iowa Code ch. 80F).[1] This law provides "officers"–as defined in the statute–with certain rights and procedural protections, particularly during the course of investigations into complaints of alleged misconduct. *See* Iowa Code § 80F.1. The law does not contain an express private right of action. That is, nowhere

[1] Sixteen other states have enacted "Bills of Rights" for public safety officers. *See* Ark. Code Ann. §§ 14-52-301 to -307; Cal. Gov't Code §§ 3300-3313; Del. Code Ann. tit. 11, §§ 9200-9209; Fla. Stat. §§ 112.531-112.535; 50 Ill. Comp. Stat. 725/1 to 725/7; La. Rev. Stat. Ann. §§ 40:2531-40:2535; Md. Code Ann., Pub. Safety §§ 3-101 to -113; Minn. Stat. § 626.89; Nev. Rev. Stat. §§ 289.020-289.120; N.M. Stat. Ann. §§ 29-14-1 to -11; R.I. Gen. Laws §§ 42-28.6-1 to -17; Tenn. Code Ann. §§ 38-8-301 to -310; Tex. Loc. Gov't Code Ann. §§ 143.123, 143.312; Va. Code Ann. §§ 9.1-500 to -507; W. Va. Code §§ 8-14A-1 to -5; Wis. Stat. §§ 164.01-164.06. However, their remedial provisions vary and there is no direct analogue to Iowa's chapter 80F.

does the statute say that an officer who believes a violation of the "Bill of Rights" has occurred may bring a lawsuit in district court.

Rather, the statute sets forth the following remedy for violations:

> An allegation of a violation of this section may be raised and given due consideration in any properly authorized grievance or appeal exercised by an officer, including but not limited to a grievance or appeal exercised pursuant to the terms of an applicable collective bargaining agreement and an appeal right exercised under section 341A.12 or 400.20.

Id. § 80F.1(19). In addition, addressing a specific circumstance not present here, chapter 80F provides that "[a]n officer shall have the right to pursue civil remedies under the law against a citizen arising from the filing of a false complaint against the officer." *Id.* § 80F.1(13). That subsection appears to be simply a savings provision: It reaffirms an officer's preexisting right to pursue "civil remedies under the law." Here, Dautovic has not sued a "citizen" and does not allege he was the subject of a "false complaint." *Id*. Thus, for Dautovic to be entitled to relief, he must demonstrate that chapter 80F contains an *implied* private right of action.

In determining whether a private cause of action may be implied from a statute, we consider four factors:

> (1) Is the plaintiff a member of the class for whose benefit the statute was enacted?
> (2) Is there any indication of legislative intent, explicit or implicit, to either create or deny such a remedy?
> (3) Would allowing such a cause of action be consistent with the underlying purpose of the legislation?
> (4) Would the private cause of action intrude into an area over which the federal government or a state administrative agency holds exclusive jurisdiction?

Sanford v. Manternach, 601 N.W.2d 360, 371 (Iowa 1999) (citing *Cort v. Ash*, 422 U.S. 66, 78, 95 S. Ct. 2080, 2088, 45 L. Ed. 2d 26, 36-37 (1975)). "[B]ecause the ultimate question is one of legislative intent, the determinative factor is whether there is any indication of [legislative] intent to create a private remedy." *Sturm v. Peoples Trust & Sav. Bank*, 713 N.W.2d 1, 4 (Iowa 2006) (citing *Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11, 15-16, 100 S. Ct. 242, 245, 62 L. Ed. 2d 146, 152 (1979)).

As a law enforcement officer employed by a municipality, Dautovic is a member of the class for whose benefit Iowa Code chapter 80F was enacted. *See* Iowa Code § 80F.1(1)(e) (defining "officer"). However, for the reasons discussed below, we find no indication the General Assembly intended to create a private remedy. Further, if such a cause of action were deemed to exist, we believe it would intrude into an area over which state, county, or municipal administrative agencies hold exclusive jurisdiction.

The district court's thorough reasoning is persuasive to us. In our view, subsection 80F.1(19) provides a strong signal the legislature did *not* intend to create a private right of action. This subsection comes at the very end of chapter 80F, and it provides an explicit remedy for violations. In particular, it states that a violation "may be raised and given due consideration in any properly authorized grievance or appeal . . . ." Under the principle of *expressio unius est exclusio alterius*, because the legislature expressly authorized officers to raise "Bill of Rights" violations in grievance and administrative proceedings, it did not mean to authorize them to raise such violations in direct court actions as well. *See*

Kucera v. Baldazo, 745 N.W.2d 481, 487 (Iowa 2008) (recognizing and applying the canon *expressio unius est exclusio alterius* to legislative enactments).

Moreover, layered on top of the familiar rule of *expressio unius* is another principle: "'[W]hen a statute grants a new right and creates a corresponding liability unknown at common law, and at the same time points to a specific method for enforcement of the new right, this method must be pursued exclusively.'" *Walthart v. Bd. of Dirs. of Edgewood-Colesburg Cmty. Sch. Dist*., 667 N.W.2d 873, 878 (Iowa 2003) (quoting *Van Baale v. City of Des Moines*, 550 N.W.2d 153, 155 (Iowa 1996)). Some of the provisions of chapter 80F grant new rights, e.g., the right to a written summary of the complaint, the right to witness statements and investigative agency reports, and the right to have an investigation held under abeyance for ten days. *See* Iowa Code § 80F.1(5), (9), (19). Indeed, the presence of these new rights explains why Dautovic invoked chapter 80F in the first place. Having created new rights, the legislature was entitled to define how they would be enforced, and we believe it did so in subsection 80F.1(19).

Dautovic contends the legislature's use of the word "may" in subsection 80F.1(19) evinces an intent that the officer would have a choice of forums where violations may be heard. According to Dautovic, this wording means the officer "may" raise the violation in a grievance or administrative proceeding, or he/she "may" raise it by a direct court action. We disagree. In this context, we believe "may" confers only the option to raise–or not raise–the violation in a grievance or administrative proceeding. If the legislature intended "may" to refer to a choice between two different remedies, rather than a choice between exercising and not

exercising a remedy, it would have mentioned both remedies. *See Andover Volunteer Fire Dep't v. Grinnell Mut. Rein. Co.*, 787 N.W.2d 75, 81 (Iowa 2010) (noting that "[u]ncertainty is inherent in statutes largely because it is inherent in the English language itself," but that uncertainties in the application of statutes must be resolved "in a way that captures the will of the legislature").

Also, in ascertaining legislative intent, we "will construe a statute in conformity with its dominating general purpose and will read the text in light of overall context." *H & Z Vending v. Iowa Dep't of Inspections & Appeals*, 511 N.W.2d 397, 398 (Iowa 1994). Reading chapter 80F as a whole, its principal purpose was to establish certain workplace rights for "officers" vis-a-vis their state, county, or municipal employer. Generally speaking, though, Iowa already has administrative procedures in place to govern the relations between these officers and the public entities that employ them. Subsection 80F.1(19) specifically provides three examples of a "properly authorized grievance or appeal": (1) grievances or appeals under a collective bargaining agreement; (2) an appeal under section 341A.12; or (3) an appeal under section 400.20. In each of these instances, administrative hearings and procedures must occur before suit can be filed in district court. *See* Iowa Code § 20.18 (setting forth administrative grievance procedures for "public employees"); *id*. § 341A.12 (setting forth administrative hearings and appeals for deputy county sheriffs); *id*. §§ 400.18-.20 (setting forth administrative hearings and appeals for employees covered by civil service). In addition, the definition of "officer" in chapter 80F encompasses certain other employees from public agencies and departments across municipal, county, and state levels. These officers may have to resort to

other forums, but they are still administrative ones. *See*, *e.g.*, *id*. § 8A.415 (setting forth grievance and discipline resolution for state "merit system" employees); *id*. § 80.15 (setting forth appeals for peace officers in the Department of Public Safety). In short, chapter 80F clearly operates in an area historically occupied by administrative processes. Inferring a private right of action would result in an unwarranted intrusion on those administrative processes. *See Sanford*, 601 N.W.2d at 371.

For example, here, Dautovic had the ability to raise the same alleged violations of chapter 80F in an administrative appeal to the civil service commission from his dismissal. *See* Iowa Code §§ 80F.1(19), 400.1, 400.20. Indeed, at oral argument, his counsel conceded he had done so. We believe it would undermine the purpose and structure of chapter 400 if an officer could also file a parallel lawsuit in district court seeking reinstatement based on the same matters. *See generally Van Baale*, 550 N.W.2d at 156 (holding "chapter 400 proceedings must be considered the exclusive means of challenging the arbitrariness of a civil service employee's discharge").

In sum, after reviewing the four-factor test for whether a statute implicitly creates a private cause of action, we find the legislature did not intend for violations of Iowa Code chapter 80F to be directly actionable in district court. Accordingly, we affirm the district court's dismissal of Dautovic's petition.

AFFIRMED.