IN THE COURT OF APPEALS OF IOWA

No. 2-1011 / 12-0700
Filed January 9, 2013

SHANNON KNUDSEN (Individually and as Next Friend for Claire Knudsen), JOSEPH KNUDSEN (Individually and as Next Friend for Claire Knudsen), and CLAIRE KNUDSEN,
Plaintiffs-Appellants,

vs.

TIGER TOTS COMMUNITY CHILD CARE CENTER, CORPORATION, MADRID HOME FOR THE AGING, DEBORAH WIBE and KEITH KUDEJ,
Defendants-Appellees.

Appeal from the Iowa District Court for Boone County, Kurt J. Stoebe, Judge.

Plaintiffs contend that the district court erred in granting defendants' motion for summary judgment, asserting that the court incorrectly determined that a child's tree nut allergy is not protected under the Iowa Civil Rights Act. **REVERSED AND REMANDED.**

Eric M. Updegraff of Stoltze & Updegraff, P.C., Des Moines, for appellants.

John D. Jordan and Meredith C. Mahoney Nerem of Jordan & Mahoney Law Firm, P.C., Boone, for appellees.

Heard by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

VAITHESWARAN, J.

We must decide whether summary judgment was appropriate in an action for disability discrimination under the Iowa Civil Rights Act.

I. Background Facts and Proceedings

The material facts are essentially undisputed. Shannon Knudsen, mother of a young child, approached the management of Tiger Tots Community Care Center about enrolling her child at the center. Knudsen disclosed that the child had a tree nut allergy. She discussed an emergency care plan with director Deborah Wibe and volunteer executive director Keith Kudej. Wibe informed her that her demands could not be met because of staffing and liability issues. In response to Knudsen's request to have the decision reduced to writing, Wibe wrote:

> We carefully reviewed the special care needs outlined by you for your daughter . . . who has a sensitive allergy. We have determined that we are unable to meet those special needs with our current staffing levels. We are sad to inform you that we are unable to provide preschool and daycare services for [your daughter] at this time.

Knudsen[1] sued Tiger Tots, Wibe, and Kudej,[2] alleging the defendants' refusal to admit the child to the center amounted to disability discrimination under the Iowa Civil Rights Act (ICRA). The defendants moved for summary judgment, which Knudsen resisted.

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[1] The plaintiffs were Shannon Knudsen, individually and as next friend of the child; Joseph Knudsen, individually and as next friend of the child; and the child. We will refer to the plaintiffs as "Knudsen."

[2] Knudsen also sued the Madrid Home for the Aging but later dismissed this defendant without prejudice.

On the question of whether the child had a "disability," the district court found "no Iowa case on point" but stated "Iowa law mimics federal legislation found at 42 U.S.C. Section 12205A, 42 U.S.C. Section 12101 through 12101."[3] The court then considered a federal opinion cited by the defendants, which the court characterized as having facts "remarkably similar to those in the present case." *See Land v. Baptist Med. Ctr.*, 164 F.3d 423 (8th Cir. 1999).

In *Land*, a mother sued a daycare center for disability discrimination under the ADA and the Arkansas Civil Rights Act after her child had an allergic reaction to peanuts while at the center. The appellate court applied federal case law to both claims and affirmed the district court's grant of summary judgment in favor of the center. 164 F.3d at 425–26.

The district court in this case acknowledged but rejected Knudsen's argument that an amendment to the ADA called *Land* into question. Noting there was "no similar amendment to the Iowa statutes," the court determined the ICRA "should be interpreted as static and not an evolving law." Without further analysis of the facts, the court concluded as a matter of law that "the physical condition advanced by the plaintiffs does not constitute a disability contemplated by Iowa Code section 216.7." The court granted the defendants' summary judgment motion and this appeal followed.

Summary judgment is appropriate if the record establishes "'no genuine issue as to any material fact'" and "'the moving party is entitled to a judgment as a matter of law.'" *Virden v. Betts & Beer Constr. Co.*, 656 N.W.2d 805, 806 (Iowa 2003) (quoting Iowa R. Civ. P. 1.981).

[3] This statute, the Americans with Disabilities Act, will be referred to as the ADA.

II. Analysis

Iowa Code section 216.7(1)(a) (2011) states in pertinent part:

> 1. It shall be an unfair or discriminatory practice for any owner, lessee, sublessee, proprietor, manager, or superintendent of any public accommodation or any agent or employee thereof:
>
> > a. To refuse or deny to any person because of . . . disability the accommodations, advantages, facilities, services, or privileges thereof, or otherwise to discriminate against any person because of . . . disability in the furnishing of such accommodations, advantages, facilities, services, or privileges.

"Disability" is defined as "the physical or mental condition of a person which constitutes a substantial disability . . . ." Iowa Code § 216.2(5).

This appeal centers on the proper role of federal law in an evaluation of "disability" under the ICRA. The Iowa Supreme Court has addressed this question on several occasions. In *Bearshield v*. *John Morrell & Co*., 570 N.W.2d 915, 918 (Iowa 1997), the court stated:

> Given the common purposes of the ADA and the ICRA's prohibition of disability discrimination, as well as the similarity in the terminology of these statutes, we will look to the ADA and underlying federal regulations in developing standards under the ICRA for disability discrimination claims.

The court proceeded to apply a federal analytical framework to Bearshield's federal and state disability claims stating, "[O]ur subsequent discussion of whether Bearshield is disabled applies equally to her claims under both statutes." *Bearshield*, 570 N.W.2d at 918.

The court reiterated this principle in *Vincent v*. *Four M Paper Corp*., 589 N.W.2d 55, 59–60 (Iowa 1999), stating:

> In our prior cases involving claims of disability discrimination, we have recognized the common purposes of the federal

> Americans with Disabilities Act (ADA), *see* 42 U.S.C. § 12101 et seq. (1994), and the ICRA as well as the similarity in terminology of the statutes. *Bearshield v. John Morrell & Co*., 570 N.W.2d 915, 918 (Iowa 1997). Moreover, we have looked to the ADA and federal regulations implementing that act in developing standards under the ICRA for disability discrimination claims. *See id*; *see also Probasco v. Iowa Civil Rights Comm'n*, 420 N.W.2d 432, 435–36 (Iowa 1988) (noting similarity in federal and state statutes and regulations governing disability discrimination and incorporating federal definitions of relevant terms into Iowa law).

In *Casey's General Stores*, *Inc*. *v*. *Blackford*, 661 N.W.2d 515, 519 (Iowa 2003), the court again stated,

> The Iowa Civil Rights Act prohibits an employer from discriminating against a qualified person with a disability because of the person's disability. The statute, however, only pronounces a general proscription against discrimination and we have looked to the corresponding federal statutes to help establish the framework to analyze claims and otherwise apply our statute.

(Citations omitted.) Based on these formulations, we are persuaded that federal law establishes the framework for an analysis of "disability" under state law.

In pertinent part, the ADA defines "disability" as follows: "a physical or mental impairment that substantially limits one or more major life activities of such individual." 42 U.S.C. § 12102(1)(A). The ADA additionally prescribes "[r]ules of construction" regarding the definition. *Id.* § 12102(4). One of those rules states: "An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active." *Id.* § 12102(4)(D). This rule was added to the ADA in 2008. ADA Amendments Act of 2008, Pub. L. No. 110-325, § 4, 122 Stat. 3553 (2008).

There is no dispute that the child's nut allergy was episodic or in remission. Applying the federal framework for analysis of disability claims, the

question is whether her allergy would substantially limit a major life activity "when active." 42 U.S.C. § 12102(4)(D). As the district court did not consider this question, we reverse and remand for further proceedings.

REVERSED AND REMANDED.

Eisenhauer, J., concurs; Vogel, J., dissents.

Vogel, J. (dissenting)

I must respectfully dissent. The Iowa Supreme Court has ruled that we are to look to federal case law for guidance in interpreting the Iowa Civil Rights Act because the federal act mirrored in many ways Iowa law. *See Probasco v. Iowa Civil Rights Comm'n*, 420 N.W.2d 432, 435 (Iowa 1988) ("On several occasions, our courts have looked to the federal system for guidance in construing our similar civil rights legislation. We employ this approach again today because, as demonstrated below, the civil rights legislation and implementing rules involved in this case *mirror* those adopted on the federal level." (emphasis added) (citations omitted)). However, in 2008, Congress amended the federal law, greatly expanding its scope with respect to the definition of a disability. The Iowa legislature has not correspondingly expanded Iowa's law in this area, and thus, our statute no longer mirrors the federal statute. *See Vincent*, 589 N.W.2d at 59–60 ("In our prior cases involving claims of disability discrimination, we have recognized the common purposes of the federal Americans with Disabilities Act (ADA), and the ICRA as well as *the similarity in terminology* of the statutes." (emphasis added)); *Bd. of Supervisors v. Iowa Civil Rights Comm'n*, 584 N.W.2d 252, 255 (Iowa 1998) ("Federal cases provide guidance only to the extent that the statutory scheme they are interpreting and applying resembles our own civil rights legislation."); *Fuller v. Iowa Dep't of Human Servs.*, 576 N.W.2d 324, 329 (Iowa 1998) (finding the term disability was similarly defined under the ADA and the ICRA); *Bearshield*, 570 N.W.2d at 918 ("Given the common purposes of the ADA and the ICRA's prohibition of disability discrimination, *as well as the similarity in the terminology of these statutes*, we

will look to the ADA and underlying federal regulations in developing standards under the ICRA for disability discrimination claims." (emphasis added)); s*ee also Deboom v*. *Raining Rose*, *Inc*., 772 N.W.2d 1, 7 (Iowa 2009) ("[W]e must be mindful not to substitute 'the language of the federal statutes for the clear words of the Iowa Civil Rights Act.'" (quoting *Hulme v*. *Barrett*, 449 N.W.2d 629, 631 (Iowa 1989))).

Because the Iowa legislature has to date chosen not to act by expanding the definition of disability to mirror 42 U.S.C. § 12102 (2009), I do not believe it to be the role of the courts to do so. We should leave that function to the legislature. *See State v*. *Wagner*, 596 N.W.2d 83, 88 (Iowa 1999) ("[T]he court's role is to give effect to the law as written, not to rewrite the law in accordance with the court's view of the preferred public policy."). If we look to federal case law it should only be to the pre-2008 federal amendment, as the federal statute at that point was similar to the current Iowa Civil Rights Acts.

I would affirm the summary judgment ruling of the district court finding the physical condition advanced by Knudsen—a tree nut allergy—does not constitute a disability under the current Iowa Civil Rights Act.