

IN THE COURT OF APPEALS OF IOWA

No. 2-948 / 12-1018
Filed December 12, 2012

JOHN DOE and JANE DOE,
Petitioners-Appellants,

vs.

KIMBERLY KOENIGS,
Respondents-Appellee.

Appeal from the Iowa District Court for Mitchell County, Christopher C. Foy, Judge.

Plaintiffs appeal the district court's grant of summary judgment on their claim of improper disclosure of child abuse information. **AFFIRMED.**

Matthew G. Sease of Kemp Sease & Dyer, Des Moines, for appellants.

Joel J. Yunek of Yunek Law Firm P.L.C., Mason City, for appellee.

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

VOGEL, J.

In this appeal from summary judgment, the facts are undisputed. The Iowa Department of Human Services (DHS), assisted by the Worth County Sheriff's Office, conducted an investigation of John Doe and Jane Doe (the Does). As a result of the investigation, DHS prepared an assessment report of founded child abuse, with the Does as perpetrators. Consequently, on December 10, 2010, the Does were placed on the child abuse registry. Defendant, Kimberly Koenigs, as the mother of the minor children involved in the child abuse investigation, received a copy of the DHS report completed by the investigating DHS worker. On or about February 25, 2011, Koenigs gave a copy of the DHS report to the Worth County Sheriff's office. The Does filed a petition against Koenigs on August 16, 2011, alleging improper disclosure of child abuse information pursuant to Iowa Code section 235A.20 (2011). Koenigs moved for summary judgment alleging that section 235A.20 does not create a cause of action for monetary damages against a private party. The district court granted Koenigs's motion on May 30, 2012, finding section 235A.20 only allows for injunctive relief against a private person, not monetary damages. The Does appeal.¹

We review a district court's ruling on summary judgment for errors at law. *Cawthorn v. Catholic Health Initiatives Iowa Corp.*, 806 N.W.2d 282, 286 (Iowa

¹ The petition also included "John Doe #2" as a defendant, but the Does dismissed this person without prejudice on June 4, 2012. Also, Koenigs filed a motion to dismiss asserting Iowa law does not allow for confidential "John Doe" petitions. Concluding interpretation of section 235A.20 to be dispositive of the case, the district court did not rule on the motion to dismiss. Because we affirm the district court, we too will not address the propriety of "John Doe" petitions.

2011). We also review a district court's interpretation of statutes for correction of errors of law. *State v. Iowa Dist. Ct.*, 616 N.W.2d 575, 578 (Iowa 2000).

I. Iowa Code Section 235A.20

The Does assert the district court erred in determining Iowa Code section 235A.20 creates a cause of action for money damages solely against the State and not against a private citizen. Our goal in interpreting statutes is to determine legislative intent. *State v. Wagner*, 596 N.W.2d 83, 87 (Iowa 1999). We determine the intent from what the legislature said, not from what it might or should have said. If the language is clear and unambiguous, we apply a plain and rational meaning in light of the subject matter of the statute. *City of Waukee v. City Dev. Bd.*, 590 N.W.2d 712, 717 (Iowa 1999). However, if reasonable minds could disagree over the meaning of a word or phrase of a statute, the statute is ambiguous, and we resort to the rules of statutory construction. *Id.* When construing the statute, we read the language used and give effect to every word. *State v. Osmundson*, 546 N.W.2d 907, 910 (Iowa 1996). We apply all relevant doctrines of construction in determining intent. *Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Shell Oil Co.*, 606 N.W.2d 376, 379-80 (Iowa 2000).

Iowa Code section 235A.20 reads in its entirety:

Any aggrieved person may institute a civil action for damages under chapter 669 or 670 or to restrain the dissemination of child abuse information in violation of this chapter, and any person, agency or other recipient proven to have disseminated or to have requested and received child abuse information in violation of this chapter, or any employee of the department who knowingly destroys assessment data except in accordance with rule as established by the department for retention of child abuse information under section 235A.18 shall be liable for actual

damages and exemplary damages for each violation and shall be liable for court costs, expenses, and reasonable attorney's fees incurred by the party bringing the action. In no case shall the award for damages be less than one hundred dollars.

In granting summary judgment to Koenigs, the district court relied on the “under chapter 669 or 670” language to determine money damages are only available against the State or a government subdivision and not available against private persons.² However, the district court declined to address the second clause of section 235A.20 that begins after the first comma: “and any person, agency or other recipient proven to have disseminated or to have requested and received child abuse information in violation of this chapter . . . shall be liable for actual damages and exemplary damages for each violation”

Under the rules of grammar, an independent clause is one that contains a subject and a predicate and makes sense standing alone; that is, it expresses a complete thought. *Hamilton v. Werner Co.*, 268 F. Supp. 2d 1085, 1088 (S.D. Iowa 2003). The clause after the comma here is an independent clause, expressing the complete thought that “any person . . . proven to have disseminated . . . child abuse information in violation of this chapter . . . shall be liable for actual damages and exemplary damages for each violation.”

² Iowa Code chapter 669 is the Iowa Tort Claims Act and Iowa Code chapter 670 governs tort liability for government subdivisions. It is significant that chapter 669 is not applicable to “persons.” Under chapter 669 a “person” cannot be sued; the State must be substituted as the party if its employee commits the wrong in the course of employment. Iowa Code § 669.5. If the wrong is not in the course of employment, “a person” can of course be sued, but then it is not under chapter 669.

Under chapter 670, a person can be a party, but not in his/her individual capacity—she/he must be sued as an employee or officer of a municipality—she/he cannot be personally liable, and the municipality must defend the employee. Iowa Code § 670.2.

Accordingly, the plain, unambiguous language of Iowa Code section 235A.20 states that “any person” can be held liable for “damages.”

However, syntax, rules of grammar, and punctuation are merely guides; they are not “a highly persuasive factor in interpreting a statute, and will not defeat clear legislative intent.” *Shell Oil*, 606 N.W.2d at 380. Here, the legislative intent is revealed as:

1. The general assembly finds and declares that a central registry is required to provide a single source for the statewide collection, maintenance, and dissemination of child abuse information. The existence of the central registry is imperative for increased effectiveness in dealing with the problem of child abuse. The general assembly also finds that vigorous protection of rights of individual privacy is an indispensable element of a fair and effective system of collecting, maintaining, and disseminating child abuse information.

2. The purposes of this section and sections 235A.13 through 235A.24 are to facilitate the identification of victims or potential victims of child abuse by making available a single, statewide source of child abuse data; to facilitate research on child abuse by making available a single, statewide source of child abuse data; and to provide maximum safeguards against the unwarranted invasions of privacy which such a registry might otherwise entail.

Iowa Code § 235A.12.

The purpose of this chapter is thus twofold: (1) to provide one source of child abuse data and (2) to protect unwarranted intrusions of privacy by setting up rules and procedures governing the dissemination of child abuse information. As such, the plain language of the statute, as supported by its stated purpose, shows the legislature intended for individuals such as the Does to have a cause of action for money damages against violators of this chapter, whether it is the State, a government subdivision, or an individual. *Id.* § 235A.20. We therefore disagree with the district court’s finding upon which it granted summary judgment

to Koenigs. However, we do not reverse the district court’s ultimate ruling, as its ruling on summary judgment can be affirmed on another ground.

“As we have indicated many times before, we will uphold a district court ruling on a ground other than the one upon which the district court relied provided the ground was urged in that court.” *King v. State*, 818 N.W.2d 1, 11 (Iowa 2012) (citations omitted). Although not ruled on by the district court, Koenigs also asserted she did not violate Iowa Code chapter 235A, as her disclosure of the information is not prohibited under section 235A.15(2)(b)(3). We agree.

Koenigs, as a parent of a child victim, was authorized to access child abuse report data and disposition data subject to placement in the central registry. Iowa Code § 235A.15(2)(a)(2). Accordingly a copy of the DHS report was given to Koenigs. The Worth County Sheriff’s office to which Koenigs gave a copy of the report was also authorized to have access to the report as it was the very office involved with DHS in assisting the investigation. Iowa Code section 235A.15(2) provides in relevant part:

2. Access to report data and disposition data subject to placement in the central registry pursuant to section 232.71D is authorized only to the following persons or entities:

....

a. Subjects of a report as follows:

....

(2) To a parent or to the attorney for the parent of a child named in a report as a victim of abuse.

....

b. Persons involved in an assessment of child abuse as follows:

....

(3) To a law enforcement officer responsible for assisting in an assessment of a child abuse allegation or for the temporary emergency removal of a child from the child’s home.

It is this code section which nullifies the Does' complaint. On this scant record, it is clear that Koenigs was given a copy of the DHS report. Next, the deputy who assisted in the investigation provided an affidavit which stated: "I do recall receiving a copy of the DHS Report; there is not a copy in the Worth County Sheriff's Office." The deputy received her copy of the report from Koenigs as a follow-up to her participation in the investigation. Why a copy was not found in the Sheriff's office is unexplained on this record, but as the deputy did receive a copy, the information would have been imputed to the Sheriff's office as the office which DHS contacted to assist in the investigation. See *State v. Satern*, 516 N.W.2d 839, 841 (Iowa 1994) (imputing knowledge of one peace officer to another peace officer). No information was provided to any person or entity that was not already privy to the investigation or entitled to receive the report.

Nonetheless, the Does assert Koenigs did not strictly follow the directives of Iowa Code section 235A.17(1):

1. A person, agency or other recipient of child abuse information authorized to receive such information shall not disseminate such information, except that dissemination shall be permitted when all of the following conditions apply:
 - a. The dissemination is for official purposes in connection with prescribed duties or, in the case of a health practitioner, pursuant to professional responsibilities.
 - b. The person to whom such information would be disseminated would have independent access to the same information under section 235A.15.
 - c. A written record is made of the dissemination, including the name of the recipient and the date and purpose of the dissemination.
 - d. The written record is forwarded to the registry within thirty days of the dissemination.

The only possible failure the Does assert in this respect is that Koenigs did not memorialize and report to the registry that she gave the Sheriff's office

information that they already knew. We find this assertion to be disingenuous. The Worth County Sheriff's office was the assisting arm of DHS in conducting the investigation. The deputy who went to the Does' home would have been intimately aware of the details of the investigation. As Koenigs argued, should the children again be in harm's way or need protection from further abuse by the Does, it is absurd to conclude the very law enforcement involved in the investigation should not have a copy of the report available to them. That same Sheriff's office would need to respond to protect the children, and the information contained in the report would assist the deputies in doing so.

We therefore affirm the granting of summary judgment because Koenigs did not disseminate the DHS report to anyone who was not already privy to the information, or authorized to receive such information under the Code.

II. Conclusion

We conclude that Iowa Code section 235A.20 does provide that a private person can be held liable for monetary damages—actual and exemplary—in an amount no less than one hundred dollars for disseminating or requesting and receiving child abuse information in violation of chapter 235A. However, because the assessment report was provided to the very office that assisted in the investigation, for the protection of the minor children involved, and Iowa Code section 235A.15(2)(b)(3) allows for an exception to access this otherwise protected information, we affirm the district court's grant of summary judgment to Koenigs.

AFFIRMED.