IN THE COURT OF APPEALS OF IOWA

No. 6-1002 / 04-1838
Filed February 28, 2007

RONALD CRISMAN,
Plaintiff-Appellant,

vs.

NANCY ECKERT, CLERK OF THE CITY OF WATERLOO, IOWA, et al.,
Defendants-Appellees.

Appeal from the Iowa District Court for Black Hawk County, Thomas N. Bower, Judge.

The plaintiff, a fire fighter, appeals from the district court's ruling affirming the Waterloo Civil Service Commission's affirmance of the termination of his employment. **AFFIRMED.**

Thomas P. Frerichs, of Frerichs Law Office, P.C., Waterloo, for appellant.

James E. Walsh, Jr., City Attorney, Waterloo, for appellee City of Waterloo.

Christopher S. Wendland, of Clark, Butler, Walsh & Hamann, Waterloo, for appellee Eckert.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MILLER, J.

Ronald Crisman appeals from the district court's ruling affirming the Waterloo Civil Service Commission's (the Commission) affirmance of the termination of his employment. He contends the district court erred in not determining his termination by the City was arbitrary in violation of Iowa Code section 400.18 (2001), and in concluding the Commission's order was subject to interpretation as a contract. We affirm.

I. BACKGROUND FACTS AND PRIOR PROCEEDINGS.

The City hired Crisman as a fire fighter in September of 1995. In approximately 1998 Crisman also took on duties as a paramedic. During his employment he had been disciplined for various incidents. On October 24, 2002, Crisman had a severe confrontation with another firefighter while on duty. This incident led to his termination on November 4, 2002.

Crisman appealed his termination to the Commission. A hearing was scheduled for December 19, 2002. However, before the hearing took place Crisman and the City worked out the terms of a stipulated agreement. It provided that Crisman could return to work if he fulfilled certain terms and conditions within a specified period of time. The parties signed the agreement and presented it to the Commission. The Commission adopted the agreement as an order. The stipulated order provided, in relevant part,

> 1. Employee is to complete an acceptable anger management training/counseling course and provide the Department with written proof of completion.

> 2. Employee is to obtain a written opinion from a recognized professional that he is fit for duty as a firefighter and/or paramedic and deliver it to the Department.
>
> 3. After Items 1 and 2 above have been completed, Employee will be returned to work (within seven days thereafter) in the same rank, position and seniority as previously held. Should Items 1 and 2 not be completed within 6 months of this Order, the Employee will be terminated without further order or appeal.

Crisman immediately provided proof he had completed an anger management course with Ronald Larson, LISW, BCD, and a written certification of his fitness to return to duty from Dr. P.B. Raju, M.D. After receiving these documents from Crisman, the City's human resources manager, Cheryl Huddleston, advised Mr. Powers, a firefighter and Crisman's union steward, that Crisman would be required to undergo and pass a pre-employment physical examination, which would include a drug test, to satisfy the requirement under paragraph two of the Commission's order that he was "fit for duty" as a fire fighter and/or paramedic, before returning to employment. Powers did not agree that a drug test was required by the stipulated order. However, according to Powers's testimony both Huddleston and the fire chief, Ned DeBerg, said the physical and drug test were required by the order to show Crisman was fit to return to duty. Powers then spoke with Crisman and Crisman agreed to the physical and drug test in order to get back to work and because he felt he had nothing to worry about.

Crisman was given a complete physical and drug test on December 20, 2002. He passed the physical and was allowed to return to work on December 22, 2002, before the results of the drug test were known. He had been working

for approximately twenty-four hours when he was advised, on December 23, 2002, that his urine test had come back with a result of positive, dilute, for cannabinoids, which indicates marijuana use. On that same day the City issued written notice to Crisman that his November termination would stand. The notice stated

> Pursuant to the terms of numbered paragraph 2 of the Civil Service Commission's ruling dated December 19, 2002, you were required to pass a return-to-work physical and provide proof of your fitness for duty as a firefighter and/or paramedic prior to being reinstated to service.
>
> In light of your failure to satisfactorily pass the drug screen, the termination of your employment effective November 4, 2002, shall stand.

Crisman gave a second urine specimen for drug testing on December 23 and it again came back positive for marijuana. He appealed to the Commission on December 30, 2002. Crisman took a third drug test on December 31, which showed no illegal drugs in his system. He took a fourth drug test on January 24, 2003, the result of which was "negative-dilute" for any of the illegal drugs for which he was tested.

At a second appeal hearing, Crisman argued that because he had produced a drug screen test result that was negative for illegal drugs within the six-month period permitted by paragraph three of the Commission's order he should be able to return to work. On January 29, 2003, the Commission issued a ruling summarily affirming termination of Crisman's employment.

Crisman then appealed the Commission's January 29, 2003 order to the district court. Applying contract principles to the Commission's stipulated order, the district court concluded that when Crisman agreed to undergo the pre-

employment physical and drug screening he acquiesced in "a change in the agreement" entered into between him and the City. The court determined Crisman could have objected to this change or reserved his rights under the agreement but failed to do so, thereby acquiescing in the drug screening requirement. Finally, the court concluded that allowing Crisman six months after he returned to his employment to provide a clean drug test was not a plausible or correct interpretation of the order. The district court concluded,

> Mr. Crisman was to comply with all of the terms and conditions, including the new terms and conditions that he acquiesced to, before returning to work. Mr. Crisman returned to work and provided a positive urinalysis for marijuana. Therefore he did not comply with the terms and conditions of the agreement entered into on December 10, 2002, and his termination is appropriate.

Crisman appeals from the district court ruling. He claims that (1) because he met all the requirements in the Commission's order for him to return to work his termination was arbitrary, and (2) the court erred in concluding the Commission's agreed-to order was subject to interpretation as a contract. More specifically, as we read his argument concerning the first issue, Crisman argues the terms of the Commission's order did not require him to take a pre-employment physical and drug test in order to show he was "fit for duty," and even if he did acquiesce in those requirements by submitting to them without objection, if he complied with those requirements within six months (specifically provided a clean drug test in that time) he should have been reinstated. We review Crisman's claims in reverse order.

II. SCOPE AND STANDARDS OF REVIEW.

Our review of the decision by the district court is de novo. Iowa Code § 400.27; *Doland v. Civil Serv. Comm'n,* 634 N.W.2d 657, 662 (Iowa 2001). We give weight to the findings of the district court but are not bound by them. *Doland,* 634 N.W.2d at 662. We confine our review to the record made in the district court. *Id.*

III. MERITS.

> The [water pollution control] commission's consent orders are like consent judgements. "Judgments by consent are contractual in nature and are, in effect, contracts of parties acknowledged in court. They do not result from a judicial determination of the rights of the parties or the merits of the case, but are merely recitals of their agreements."

Iowa Water Pollution Control Comm'n v. Town of Paton, 207 N.W.2d 755, 760 (Iowa 1973) (quoting 47 Am. Jur. 2d *Judgments* § 1082, at 140); *see also Hughes v. Burlington N. R.R. Co.,* 545 N.W.2d 318, 320 (Iowa 1996) ("A judgment by consent is in substance a contract of record made by the parties and approved by the court."). "Because a judgment by consent is regarded as a contract, the contract rules of construction apply." *Fed. Land Bank of Omaha v. Bollin,* 408 N.W.2d 56, 60 (Iowa 1987).

We view stipulated orders the same as judgments by consent. *Id.* (citing *World Teacher Seminar, Inc., v. Iowa Dist. Court,* 406 N.W.2d 173, 176 (Iowa 1987)). Consent orders of a state administrative agency are similar to consent judgments entered by a court. *Paton,* 207 N.W.2d at 760. Consent orders entered by government agencies are to be construed as contracts, because they have many of the attributes of ordinary contracts. *United States v. ITT Cont'l*

Baking Co., 420 U.S. 223, 236, 95 S. Ct. 926, 934, 43 L. Ed. 2d 148, 161-62 (1975). Reliance upon accepted aids to construction of contracts is proper in construing a consent decree or order. *Id*. at 238, 95 S. Ct. at 935, 43 L. Ed. 2d at 162.

Based on the case law set forth above, we conclude the district court was well within its authority to treat the Commission's stipulated order as a contract and apply contract principles to it.[1] Furthermore we, like the district court, believe the doctrine of acquiescence is properly applicable here.

It is clear from the evidence in the record that some of the language in the stipulated order, in particular that in paragraph two, was general, lacked any detail, and thus was ambiguous and unclear to the parties despite the fact the order was based on their signed consent agreement. Huddleston testified that she interpreted the language of paragraph two requiring Crisman to "obtain a written opinion from a recognized professional that he was fit for duty as a firefighter or paramedic" to include taking and passing a physical examination including a drug screen test. Chief DeBerg testified that it was not discussed at the time the agreement was made what exactly the term "fit for duty" meant, he himself was not sure what that would include, and that he would rely on legal counsel and human resources staff to determine what the specifics would be. He did, however, testify that the requirement of being "fit for duty" would go beyond anger management issues and touched upon a broad range of concerns, including drug-related issues. Powers, however, testified that his reading and

[1] We note that in his reply brief Crisman now parenthetically concedes the district court "had the authority" to determine that the Commission's order constituted a contract between the City of Waterloo and Crisman.

interpretation of the agreed-to order did not require Crisman to take a drug test in order for him to be reinstated.

Thus, the differing interpretations of what precisely the language of the stipulated order required demonstrate its ambiguity. It is clear that almost as soon as the order was signed a dispute arose as to its interpretation. On the same day as the December 19, 2002 hearing Huddleston informed Powers that she interpreted the order as requiring Crisman to take and pass a pre-employment physical examination including a drug test. Powers disagreed. Crisman testified that he did not understand that the terms of the agreed-to order required him to go through a physical examination and drug screen. At that point, Crisman could have protested taking the drug test and sought a clarification of the language from the Commission, or taken the test under reservation of a right to object. He did neither. Instead, Powers apparently spoke to Crisman about those requirements and Crisman simply agreed to the physical and drug test in order to get back to work as quickly as possible.

We conclude, as the district court did, that by taking the drug test instead of in some manner protesting or seeking clarification of the vague and general language of the Commission's order, Crisman acquiesced in the City's interpretation of what was required of him to show he was "fit for duty" under paragraph two of the stipulated order.

Having determined the district court did not err in applying the contract doctrine of acquiescence in the Commission's stipulated order, and that Crisman in fact acquiesced in the City's interpretation of the order by undergoing a

physical examination and drug test, we must now address Crisman's other argument. He contends that because paragraph three of the agreed-to order allows him six months in which to comply with its terms, and he completed a drug test free of illegal drugs within that six month period, he fully complied with the order and thus should have been allowed to return to work.

We conclude it is simply not reasonable to interpret the order as allowing Crisman to test positive for use of illegal drugs and still have the remainder of the six months in which to produce a negative drug test. Under his interpretation he could repeatedly test positive for use of illegal drugs for almost six months, then test drug-free and thus be able to return to employment as a fire fighter. We agree with the district court this is not a reasonable interpretation of the terms of the order. Under any reasonable interpretation, Crisman would have the six months to complete the required anger management training/counseling and seek and secure the required opinion that he was fit for duty, but would not qualify for return to duty if he tested positive for use of illegal drugs. We conclude Crisman did not comply with the terms and conditions of the December 19, 2002 order of the Commission. Thus, his termination by the City was not arbitrary as claimed.

IV. CONCLUSION.

We conclude the district court was correct in applying the contract doctrine of acquiescence to the Commission's stipulated order and we agree with the court that Crisman did in fact acquiesce in the City's interpretation of the order by submitting to drug testing. We further conclude any reasonable interpretation of

the order would require that Crisman not test positive for use of illegal drugs in order to return to work, and because he did test positive his termination by the City was not arbitrary.

AFFIRMED.