IN THE COURT OF APPEALS OF IOWA

No. 6-691 / 05-1927
Filed October 11, 2006

MARY SCHMIT,
Plaintiff-Appellant,

vs.

IOWA MACHINE SHED CO.,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Richard G. Blane, II, Judge.

Plaintiff appeals from the district court's grant of summary judgment in her wrongful discharge suit. **AFFIRMED.**

Mark Sherinian and Andrew L. LeGrant of Sherinian & Walker Law Firm, West Des Moines, for appellant.

James Gilliam, Ann Kendall, and Laura Martino of Brown, Winick, Graves, Gross, Baskerville and Schoenebaum, P.L.C., Des Moines, for appellee.

Considered by Sackett, C.J., and Vaitheswaran, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

SACKETT, C.J.

Plaintiff-appellant, Mary Schmit, a former employee of defendant-appellee, Iowa Machine Shed Company, appeals from the district court ruling granting summary judgment in favor of defendant in her wrongful termination suit. She contends the court erred in finding no clearly established public policy exists that protects the conduct for which she claims she was discharged. We affirm.

I. Relevant facts and proceedings

Plaintiff worked for defendant as a server most recently from 1991 until her termination on April 23, 2004. During 2003 she received four customer complaints. After the fourth, plaintiff was informed "the next offense will result in suspension or termination."

On April 2, 2004, a hostess showed plaintiff several children's menus that had been printed on the back of defendant's labor report forms. The forms contained employee information including names, identification numbers, and social security numbers for nearly eighty of defendant's employees. The hostess stopped distributing the menus and they collected those they could locate. Plaintiff informed the manager. He indicated the menus were collected and destroyed as soon as the problem came to the attention of management. Plaintiff took several menus home to show her husband.

On April 3, plaintiff spoke with one of the owners of the restaurant and another manager about her concerns with the menus. She continued to raise the issue with other employees and management in the following weeks. She discussed it again with a manager on April 14. On April 23, a customer

complained about plaintiff's service. After a discussion among managers, plaintiff was terminated.

Plaintiff filed suit for wrongful termination, alleging she was terminated in violation of public policy for complaining about the menus. She claimed defendant violated her right to privacy and her right to be protected from identity theft. *See* Iowa Code 715A.8 (2003) (defining the crime of identity theft). After discovery, defendant moved for summary judgment. Following a contested hearing, the district court granted defendant's motion. The court noted Iowa courts have adopted the "discharge in violation of public policy" exception to the at-will employment doctrine. After examining the statutes cited by plaintiff in support of her argument that her actions were protected by public policy, the court ruled:

> The statutes identified by the plaintiff, even if viewed together, clearly do not expressly protect her conduct and the court finds nothing which can be inferred from the language of the statutes to clearly establish the public policy asserted. . . . Even assuming that the plaintiff was fired for attempting to prevent the dissemination of employee information, her claim still fails because the public policy against discharge that plaintiff asserts is neither clearly defined nor well recognized.

II. Scope of review

Review of a district court's ruling on a motion for summary judgment is for corrections of errors of law. Iowa R. App. P. 6.4; *Kennedy v. Zimmermann*, 601 N.W.2d 61, 63 (Iowa 1999). Summary judgment is proper where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3). The existence of a public policy against discharge is a question of law for the court to resolve. *Lloyd v. Drake Univ.*, 686 N.W.2d 225, 228 (Iowa 1994).

III. Discussion

Plaintiff was an at-will employee. Defendant could fire her for any lawful reason or for no reason at all. *Theisen v. Covenant Med. Ctr., Inc.*, 636 N.W.2d 74, 82 (Iowa 2001). However, defendant could not discharge plaintiff if such discharge violated public policy. *See Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d 275, 281-82 (Iowa 2000). To prevail in her wrongful discharge action based on violation of public policy, plaintiff must prove:

> (1) The existence of a clearly defined public policy that protects an activity.
> (2) This policy would be undermined by a discharge from employment.
> (3) The challenged discharge was the result of participating in the protected activity.
> (4) There was lack of other justification for the termination.

Lloyd, 686 N.W.2d at 228 (citing *Davis v. Horton*, 661 N.W.2d 533, 535 (Iowa 2003)).

The district court determined plaintiff failed to demonstrate a clearly defined public policy that protected the actions for which she claims she was discharged. Because the court determined plaintiff failed to prove the first element of her claim, it found it unnecessary to address the three other elements of the claim.

The first two elements of plaintiff's claim present questions of law for a court to resolve. *Fitzgerald*, 613 N.W.2d at 282. As the district court only ruled on the first element, the public policy exception, only that element is before us on appeal. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (noting appellate review normally is limited to issues both raised in and decided by the district court).

Public policy exception to at-will employment. When Iowa courts "have not previously identified a particular public policy to support an action, the employee must first identify a clear public policy which would be adversely impacted if dismissal resulted from the conduct engaged in by the employee." *Fitzgerald*, 613 N.W.2d at 282.

> We do not limit the public-policy exception to at-will employment relationships to the mandates of specific statutes but may imply a prohibition against termination if the policy basis for so doing clearly appears from other sources. In so doing, however, *we proceed cautiously and will only extend such recognition to those policies that are well recognized and clearly defined*.

Davis v. Horton, 661 N.W.2d 533, 536 (Iowa 2003) (citations omitted) (emphasis added).

Plaintiff contends there is a public policy allowing her to assert her right to privacy and to maintain the confidentiality of her social security number. In support of her claim, she points to Iowa Code sections 715A.8 (2005) (defining the crime of identity theft), 22.7(28) (defining "confidential records" for purposes of Iowa's open records law), and 252G.3(5) (setting forth state agency access to confidential records). She also points to various federal statutes and regulations relating to the collection and dissemination of an individual's social security number.

Section 715A.8 concerns identity theft. There is no allegation defendant committed identity theft or that any unknown person used the employee information from the menus to steal any employee's identity. The State enforces its criminal laws. The supreme court has refused to recognize a public policy exception to the at-will employment doctrine for a private citizen to investigate crime and make arrests. *Lloyd*, 686 N.W.2d at 230-31. The district court was

correct in concluding plaintiff did not demonstrate a public policy claim based on section 715A.8.

Section 22.7(28) describes what information in public records is to be kept confidential, and includes social security numbers. Plaintiff does not contend defendant is subject to Iowa's open meetings law or that the menus were public records. We conclude this statutory provision does not provide the basis for a clearly defined and well recognized public policy in this case. The district court correctly analyzed this statutory provision.

Section 252G.5 concerns the records in the central employee registry, which was designed to help the state in recovering child support payments and in making eligibility determinations for benefit and entitlement payments. *See* Iowa Code §§ 252G.5(1)-(2). The statute was not directed at private enforcement of confidentiality of personal information such as a social security number. We conclude the district court correctly analyzed this statutory provision as not providing the basis for a clearly defined and well recognized public policy that would protect plaintiff's conduct.

The federal statutes, regulations, and cases cited by plaintiff do not create a specific right or benefit in an employee with an enforcement mechanism or prohibit termination from employment for conduct such as plaintiff's. "Public policy involves a careful balance of competing interests, and we will not interfere with an employer's interest in running its business as it sees fit unless a clear, well-recognized public policy exists." *Fitzgerald*, 613 N.W.2d at 285. The statutes, regulations, and cases plaintiff cites "clearly do not expressly protect [her] conduct and we find nothing which can be inferred from the language of the

statutes to establish the broad public policy suggested." *Id.* We conclude the district court correctly analyzed the authorities cited by plaintiff.

Plaintiff also makes a general claim based on her constitutional right to privacy. The majority of Iowa cases addressing the right to privacy are criminal appeals challenging searches and seizures, and are inapplicable to the circumstances before us. Other broad categories are doctor-patient privilege, the rape shield law, and insurance contract provisions. We do not see and cannot infer any clearly defined and well recognized public policy that would protect plaintiff's conduct.

We agree with the district court's analysis of the plaintiff's contention that a public policy that protects her from discharge for her actions to protect her right to privacy and to protect her social security number. We conclude the district court did not err in concluding the plaintiff failed to demonstrate such a public policy. Based on our survey of Iowa cases and the authorities cited by plaintiff, we will not articulate such a public policy. Consequently, we affirm the district court's grant of summary judgment.

AFFIRMED.