IN THE COURT OF APPEALS OF IOWA

No. 8-154 / 07-0818
Filed July 16, 2008

MARY CONRAD,
Plaintiff-Appellant,

vs.

IOWA CENTRAL COMMUNITY COLLEGE,
and ROBERT PAXTON,
Defendants-Appellees.

Appeal from the Iowa District Court for Webster County, Joel E. Swanson, Judge.

Mary Conrad appeals the district court's grant of a motion for directed verdict in favor of the defendants. She also challenges an evidentiary ruling. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR NEW TRIAL**.

Jill Zwagerman of Fiedler & Newkirk, P.L.C., Urbandale, for appellant.

Stephen Kersten of Kersten Brownlee Hendricks, L.L.P., Fort Dodge, for appellee.

Heard by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

Mary Conrad appeals the district court's grant of a motion for directed verdict in favor of the defendants on her claims of interference with prospective business advantage and blacklisting. She also challenges an evidentiary ruling.

I. Background Facts and Proceedings

Conrad began teaching at Iowa Central Community College (ICCC) in 1970. In approximately 1993, Conrad also became an adjunct professor for Buena Vista University (BVU). BVU had an arrangement with ICCC to use ICCC's Fort Dodge campus for evening classes. Conrad taught at that site.

Conrad retired from ICCC in 2001. After she retired, BVU considered offering her a full-time position, but the president of ICCC, Robert Paxton, informed BVU's president that he did not want Conrad on the ICCC campus due to his concerns about her negativity. BVU decided not to offer Conrad the full-time position.

In March 2002, Conrad appeared at an ICCC board meeting that Paxton also attended. She made comments concerning the board's inaction in the face of an indictment filed against Paxton and others. The indictment was based on the claimed alteration of student athletes' grades. It was eventually dismissed.

Conrad continued as an adjunct professor for BVU on its ICCC campus. In the fall of 2003, Paxton saw Conrad on the ICCC grounds and again informed the BVU administration that he did not want her on campus. Her adjunct teaching position at that location came to an end.

Conrad sued ICCC and Paxton. She alleged that they intentionally interfered with a prospective business advantage and blacklisted her. Prior to

trial, the defendants filed a motion in limine asking that Conrad be prohibited from making "any and all references to criminal charges being brought and or filed against Robert Paxton in the year 2002 or any other college official." The court granted the motion.

The case was tried to a jury. At trial, Conrad made an offer of proof on the evidence that was excluded. At the close of Conrad's case, ICCC and Paxton moved for a directed verdict on her theories of liability. The court granted the defendants' motion, concluding (1) "Plaintiff has failed to offer any credible evidence that Robert Paxton prevented or deterred any potential employer from hiring Mary Conrad in any capacity," and (2) "no credible evidence has been offered to suggest that Iowa Central Community College or Robert Paxton performed any act or made any statement in an attempt to blacklist Mary Conrad." Conrad appealed.

II. Directed Verdict

Conrad argues she presented sufficient evidence to withstand the defendants' directed verdict motion. In assessing her argument, we must view the evidence in the light most favorable to her. *See Yates v. Iowa West Racing Ass'n*, 721 N.W.2d 762, 768 (Iowa 2006) (setting forth standards of review). "If there has been adduced substantial evidence in support of each element of plaintiff's cause of action, the motion should be overruled." *Beitz v. Horak*, 271 N.W.2d 755, 757 (Iowa 1978).

A. Intentional interference with a prospective business advantage

Conrad had to prove the following elements by a preponderance of the evidence:

1. The plaintiff had a prospective contractual relationship with a third person.
2. The defendant knew of the prospective relationship.
3. The defendant intentionally and improperly interfered with the relationship in one or more particulars.
4. The interference caused either the third party not to enter into or to continue the relationship or that the interference prevented the plaintiff from entering into or continuing the relationship.
5. The amount of damage.

Willey v. Riley, 541 N.W.2d 521, 526-27 (Iowa 1995). The first and second elements are undisputed. At issue are the last three elements.

On the third element, intentional and improper interference with Conrad's relationship with BVU, Conrad had to "prove the defendant acted with the sole or predominant purpose to injure or financially destroy the plaintiff." *Compiano v. Hawkeye Bank & Trust of Des Moines*, 588 N.W.2d 462, 464 (Iowa 1999).

Conrad testified she was not surprised that her adjunct teaching position in Fort Dodge was curtailed. She attributed the termination to Paxton's statement that he did not want her on campus. She attributed those statements, in turn, to her comments at the 2002 board meeting.

The director of BVU's satellite campuses confirmed Conrad's belief about the circumstances that led to Conrad's termination as an adjunct professor on the Fort Dodge campus. Shortly before Conrad was terminated, the director and others at BVU had a conversation with Paxton. Paxton asked why Conrad "was on campus." He then said "he did not want [Conrad] teaching on campus." The director testified that, because of BVU's relationship with Paxton, "we wanted to honor his request." When asked directly why BVU stopped employing Conrad as an adjunct professor, she stated, "Dr. Paxton asked . . . us no longer to employ her." Conrad was terminated despite the absence of complaints about her

teaching and despite the fact she "consistently received very positive evaluations."

After the meeting, the BVU director sent BVU's president an e-mail memorializing the conversation with Paxton. In the e-mail, she stated "I told him that my understanding has been that [Conrad] was not to be a full-time employee, but she could continue to adjunct."

This evidence alone amounted to substantial evidence of intentional and improper interference with Conrad's relationship with BVU. It contradicts Paxton's assertion that his statements had nothing to do with Conrad's employment with BVU but with her presence on ICCC's campus. When combined with evidence that we will later conclude was improperly excluded, we are convinced Conrad generated a fact issue for the jury. *See Tredrea v. Anesthesia & Analgesia, P.C.*, 584 N.W.2d 276, 284 (Iowa 1998) (finding substantial evidence for jury to find improper motive, retaliation against the plaintiffs, and to find that improper motive predominated).

We turn to the fourth element of this claim, causation. Conrad's position at the time of her termination was as an adjunct professor on BVU's Fort Dodge campus at ICCC. It is undisputed that BVU did not allow her to teach on the ICCC campus. While the defendants argue that she was still able to teach at other BVU sites or over the Iowa Communications Network, these were not the positions she held at the time of her termination. Therefore, for purposes of the causation element, the availability of these alternate positions was immaterial. We conclude Conrad generated substantial evidence of causation.

The fifth element was proof of damages. Conrad stated she earned approximately $7000-$8000 per year teaching at BVU's Fort Dodge campus. After her termination, she taught one ICN course and was offered no additional opportunities. While she found other daytime work as a counselor for the school district, the BVU position in Fort Dodge would have allowed her to also work in the evenings. Additionally, due to restrictions in her ICCC retirement plan, Conrad faced limitations on the amount of money she could earn from a public institution. Her adjunct position at BVU was not subject to those restrictions, as it was a private institution. We conclude Conrad generated a fact issue on the damages element.

Alternatively, defendants argue that if Conrad suffered damages, she failed to mitigate those damages. "Under Iowa law, the burden of proof in asserting that a party has failed to mitigate damages is on the party asserting that claim." *Tow v. Truck Country of Iowa, Inc.*, 695 N.W.2d 36, 40 (Iowa 2005). As mitigation was not an element of Conrad's claims, it could not serve as the basis for granting the directed verdict motion in favor of the defendants. In any event, assuming the defense applied and Conrad's response to the defense was at issue, Conrad presented substantial evidence of "reasonable diligence" in mitigating her damages. *See Whewell v. Dobson*, 227 N.W.2d 115, 120 (Iowa 1975). Specifically, after her termination from the Fort Dodge campus of BVU, Conrad sought similar positions in Fort Dodge. She said she would have taught evening classes, but none were available.

As Conrad presented substantial evidence on each element of this claim, the claim should have been submitted to the jury.

II. Blacklisting

Conrad next challenges the district court's directed verdict ruling on her blacklisting claim. This claim arises from Iowa Code chapter 730 (2005), which contains the following provisions:

> **730.1. Punishment**
>
> If any person, agent, company, or corporation, after having discharged any employee from service, shall prevent or attempt to prevent, by word or writing of any kind, such discharged employee from obtaining employment with any other person, company, or corporation, except by furnishing in writing on request a truthful statement as to the cause of the person's discharge, such person, agent, company, or corporation shall be guilty of a serious misdemeanor and shall be liable for all damages sustained by any such person.
>
> **730.2. Blacklisting employees—treble damages**
>
> If any railway company or other company, partnership, or corporation shall authorize or allow any of its or their agents to blacklist any discharged employee, or attempt by word or writing or any other means whatever to prevent such discharged employee, or any employee who may have voluntarily left said company's service, from obtaining employment with any other person or company, except as provided for in section 730.1, such company or copartnership[1] shall be liable in treble damages to such employee so prevented from obtaining employment.

Conrad concedes that section 730.1 does not apply because it is a criminal statute, but argues section 730.2 affords her a civil remedy. That provision has not been construed by our appellate courts; the only Iowa opinion addressing it comes from the federal district court for the Southern District of Iowa. *See Glenn v. Diabetes Treatment Ctrs. of Am., Inc.*, 166 F. Supp. 2d 1098, 1103-04 (S.D. Iowa 2000).

---

[1] This section has since been amended to strike the term "copartnership" and insert the word "partnership" in its place. S.F. 2320, 82nd Gen. Assem., 2nd Reg. Sess. (Iowa 2008).

Like this case, *Glenn* was a civil action for tortious interference with a prospective contractual relationship and blacklisting.[2] On the blacklisting claim, the court read sections 730.1 and 730.2 together and framed the elements of a civil action as follows:

> (1) The defendant discharged plaintiff; (2) thereafter, by word, writing or other means the defendant prevented or attempted to prevent the plaintiff from obtaining other employment; (3) defendant acted with the predominant purpose of preventing plaintiff from obtaining future employment; and (4) defendant's conduct was a proximate cause of damage to plaintiff.

Glenn, 166 F. Supp. 2d at 1103-04. With respect to the first element, it was undisputed that the plaintiff in *Glenn* did not voluntarily sever her relationship with the defendant. Accordingly, the court was not faced with facts triggering the question at issue here, which is whether section 730.2 applies to a plaintiff who voluntarily severed her relationship with the defendant. Section 730.2 plainly and unambiguously answers that question. It applies to "any discharged employee" and also to "any employee who may have voluntarily left said company's service." Therefore, the statute affords Conrad a civil remedy notwithstanding the fact that she voluntarily retired. *Cf. Bridgestone/Firestone, Inc. v. Lockhart*, 5 F. Supp. 2d 667 (S.D. Ind. 1998) (holding virtually identical statute applied to employee who had resigned from position but recognizing old Indiana precedent was inconsistent with opinion); *Burk v. Heritage Food Serv. Equip., Inc.*, 737 N.E.2d 803, 818 (Ind. Ct. App. 2000) (following old Indiana precedent holding statute did not apply to employees who voluntarily left employers but expressing reservations about continued viability of that precedent). As this is the only

[2] Several other claims were also raised.

element Conrad raises on appeal, it is the only element we address in connection with her argument.

We turn to the defendants' response that section 730.2 "has no application to this case because it does not apply to individuals and there is no evidence that ICCC 'authorized' or allowed any of its agents to blacklist a discharged employee or one who voluntarily left."

Section 730.2 applies to "any railway company or other company, partnership, or corporation." Individuals are not included in this list. Therefore, Conrad has no blacklisting claim against Paxton individually.

As for Conrad's claim against ICCC, the defendants appear to concede that ICCC is a "corporation" within the meaning of the statute. *See* Iowa Code § 260C.16 ("A merged area formed under the provisions of this chapter shall be a body politic as a school corporation . . . ."); *Graves v. Iowa Lakes Cmty. Coll.*, 639 N.W.2d 22, 27 (Iowa 2002), *overruled on other grounds by Kiesau v. Bantz*, 686 N.W.2d 164, 173 (Iowa 2004); *Stanley v. Southwestern Cmty. Coll. Merged Area*, 184 N.W.2d 29, 33-34 (Iowa 1971). They argue that "there was never any evidence of board action or board approval or board comment or evidence of any board involvement with any comments that Paxton made to" BVU administrators.

We are not convinced board action was necessary to trigger liability. *Cf. Godar v. Edwards*, 588 N.W.2d 701, 706 (Iowa 1999) (addressing school district's potential liability for acts of employee under respondeat superior theory). Paxton was the president of ICCC. He testified he had the authority to decide whether a person should be excluded from campus if he believed the person would be "disruptive in any way" or "a possible issue." When he told BVU

employees that he did not want Conrad on campus, he was acting in his capacity as president. Based on this record, we have no trouble finding substantial evidence that Paxton acted with the authority of ICCC.

This claim should have been submitted to the jury as to ICCC.

III. Evidentiary Ruling

As noted, the district court did not allow Conrad to testify about the criminal indictment filed against Paxton and others in 2002. The court stated:

> [A]llowing the Plaintiff to broach the subject of criminal charges filed against Defendant, Robert Paxton, would be irrelevant and any probative value would be outweighed by the prejudicial effect. The interjection of this material will lead to numerous witnesses required to explain the incidents leading up to a criminal charge and ultimately, the jury would be informed by the Plaintiff and Defendant that the charges against the Defendant, Robert Paxton, were dismissed.

Conrad takes issue with this ruling, contending the evidence was probative of defendants' motive.

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Iowa R. Evid. 5.401. Relevant evidence is generally admissible. Iowa R. Evid. 5.402. While evidence of prior bad acts is not admissible to prove the character of a person to show that the person acted "in conformity therewith," the evidence may be admissible for other purposes, such as proof of motive or intent. Iowa R. Evid. 5.404(3)(*b*).

The excluded evidence was highly relevant to Conrad's claims, both of which required a showing of an intentional act and an improper purpose. Without it, the record contained only a general reference to Conrad's "critical" comments

at the board meeting. There was no context to or explanation of these critical comments. There was also no indication of the severity of the claimed acts that triggered the comments and triggered Conrad's request to have Paxton placed on administrative leave. Additionally, as Conrad pointed out at trial, the evidence was relevant to the defense that Conrad was a negative person.

The probative value of this evidence was not "substantially outweighed by the danger of unfair prejudice." Iowa Rule of Evid. 5.403. Conrad's offer of proof was brief and to the point. She explained why she spoke out at the board meeting, citing the message a possible crime by the president would send to the student population and the effect of the possible crime on the integrity of the grading system. She made reference to her notes which were admitted as part of the offer of proof and were equally concise. No additional evidence was offered, allaying concerns that the trial might take a circuitous detour. Finally, Conrad agreed to stipulate that all charges were dismissed. She also expressed a willingness to have the court instruct the jury that the evidence was not being offered to prove the fact of an indictment but to establish Paxton's "motive of why he was so angry and so upset with [her]." As this was the lynchpin of Conrad's claims, we conclude the balance tipped in favor of admission. The abuse of discretion standard for review of evidentiary rulings was satisfied and we reverse the exclusion of this evidence.

IV. Disposition

We affirm the district court's grant of a directed verdict in favor of Paxton on Conrad's blacklisting claim. We reverse the district court's grant of a directed verdict in favor of Paxton and ICCC on the intentional interference with

prospective business advantage claim. We reverse the district court's grant of a directed verdict in favor of ICCC on the blacklisting claim. We reverse the district court's ruling on the defendant's motion in limine. We remand for a new trial.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR NEW TRIAL.