IN THE COURT OF APPEALS OF IOWA

No. 8-216 / 07-0211
Filed June 25, 2008

STEPHANIE DOHMEN,
Plaintiff-Appellant,

vs.

IOWA DEPARTMENT FOR THE BLIND,
Defendant-Appellee.

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

Dohmen appeals from the district court's grant of summary judgment in favor of the Department for the Blind on her discrimination claims. **REVERSED AND REMANDED.**

Roy M. Irish of Patterson Law Firm, L.L.P., Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Scott M. Galenbeck, Assistant Attorney General, for appellee.

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

EISENHAUER, J.

Stephanie Dohmen appeals from the district court ruling granting the Iowa Department for the Blind's (Department) motion for summary judgment on all of her claims. She contends the court erred in summarily dismissing her federal and state claims of disability discrimination. We reverse and remand.

I. Background Facts and Proceedings. Dohmen, who is legally blind, attended several months of training in cane travel, Braille, and computer training at the Orientation and Adjustment Center provided by the Iowa Department for the Blind. She withdrew before completing the training for health reasons. However, the cane training qualified her to become the owner of a certified service dog. When her health allowed, she was again accepted into the same program to complete two remaining classes; Braille and Assistive Technology.

When Dohmen arrived at the training center on June 5, 2002, she was told that her guide dog was not allowed into the center due to an administrative rule, which states, "Student use of dog guides will not be allowed during program activities of the Adult Orientation and Adjustment Center." Dohmen was informed that she would have to use a white cane as her mode of travel while completing her educational program at the center. The Department also offered alternative training at a center where service dogs are allowed.

In August of 2002, Dohmen filed a complaint with the Iowa Civil Rights Commission, alleging she had been discriminated against on the basis of her disability. The following year, Dohmen requested and received a right-to-sue letter from the commission.

On August 29, 2003, Dohmen filed a complaint in the federal district court alleging violations of the Rehabilitation Act of 1973 (29 U.S.C. §§ 794, 794a), the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12150, and the Iowa Civil Rights Act, Iowa Code sections 216.9, 216C.11. On December 5, 2003, she filed her petition in the Iowa district court making the same allegations and dismissed her federal complaint six days later.

The Department's motion to dismiss was overruled and it filed an answer. After extensive discovery, on January 5, 2006, the Department filed a motion for summary judgment, on all of Dohmen's claims, which Dohmen resisted. In its April 18, 2006 order, the district court found the Department was entitled to judgment as a matter of law on Dohmen's federal claims because her exclusion from the program was not based on her disability, but rather on her desired method of "traveling." The court denied summary judgment on Dohmen's Iowa Civil Rights Act claim, finding section 216C.11(2) allowed her to use her service dog in public facilities.

Both Dohmen and the Department filed motions to reconsider. A hearing was held on May 10, 2006. In its October 11, 2006 ruling on the motions, the district court set aside its earlier ruling and granted summary judgment to the Department on all three claims. It found that Dohmen failed to exhaust her administrative remedies prior to filing her civil action, and therefore the court did not have subject matter jurisdiction of any of Dohmen's claims.

Dohmen filed subsequent motions to amend or reconsider, which the court denied on January 30, 2007. On February 7, 2007, Dohmen filed her notice of appeal.

II. Scope and Standard of Review. We review rulings on motions for summary judgment for errors at law. *Sain v. Cedar Rapids Cmty. Sch. Dist.,* 626 N.W.2d 115, 121 (Iowa 2001). The record before the district court is reviewed to determine whether a genuine issue of material fact existed and whether the district court correctly applied the law. *Id.* We review the facts in the light most favorable to the party resisting the motion. *McIlravy v. N. River Ins. Co.,* 653 N.W.2d 323, 328 (Iowa 2002). The resisting party has the burden of showing a material issue of fact is in dispute. *Id.*

III. Analysis. The district court granted summary judgment on all three of Dohmen's claims on the basis that she failed to exhaust her administrative remedies. It found this exhaustion of administrative remedies was required before challenging a Department administrative rule through civil action in district court. Dohmen contends the district court erred in granting summary judgment on this basis because the Department waived any challenge to jurisdiction.

> When a party claims a jurisdictional challenge has been waived, it is often necessary to determine whether the specific challenge to jurisdiction targets subject matter jurisdiction or jurisdiction of a particular case. Subject matter jurisdiction refers to the authority of the court to hear and determine the general class of cases to which the proceeding belongs. It cannot be conferred by consent, waiver, or estoppel. This is because parties to a lawsuit cannot establish jurisdiction where it has not been first conferred by the constitution or legislation. On the other hand, the failure to properly invoke the authority of the court in a particular case can be obviated by consent, waiver, or estoppel.

Keokuk County v. H.B., 593 N.W.2d 118, 122 (Iowa 1999).

We must first determine whether the issue before us is one of subject matter jurisdiction or the court's authority to hear a particular case. In regard to the issue before us, our supreme court has said:

> It is well-established that a party must exhaust any available administrative remedies before seeking relief in the courts. The district court is deprived of jurisdiction of the case if administrative remedies are not exhausted.
>
> . . . .
>
> Generally, the exhaustion-of-remedies requirement does not implicate subject matter jurisdiction. This is because the exhaustion-of-remedy doctrine does not preclude judicial review, but merely defers it until the administrative agency has made a final decision. Our legislature has given the district court subject matter jurisdiction to act in response to challenges to decisions made by administrative agencies, but requires this authority to be withheld until any available administrative remedies have been exhausted. Thus when a litigant requests judicial review before exhausting administrative remedies, the district court merely lacks authority to entertain a particular case. This is the type of challenge that can be waived.

Alliant Energy-Interstate Power & Light Co. v. Duckett, 732 N.W.2d 869, 875 (Iowa 2007) (quoting *Keokuk County*, 593 N.W.2d at 122).

The district court found that Dohman's failure to exhaust administrative remedies precluded its subject matter jurisdiction. It read *Keokuk County* in conjunction with *Baumeister v. New Mexico Comm'n for the Blind*, 425 F. Supp. 2d 1250 (D.N.M. 2006), in reaching its determination. However, our supreme court is clear on this matter; where the court is vested with the power to hear a certain class of cases, the court has subject matter jurisdiction. *See Holding v. Franklin County Zoning Bd. of Adjustment*, 565 N.W.2d 318, 319 (Iowa 1997) ("Subject matter jurisdiction is not lacking in the present case because the legislature has clearly given Iowa courts the power to act in challenges to decisions of county zoning commissions."). Here, the legislature has vested the

court with the power to hear challenges to the Department's administrative rules. Therefore, it has subject matter jurisdiction. Therefore, the problem is one of authority.

Because the exhaustion-of-remedies issue impedes the court's authority to hear the case, not its subject matter jurisdiction, we must then determine whether the Department has waived its challenge. Challenges to authority must be made at the first opportunity or they are deemed waived. 21 C.J.S. Courts § 85, at 114 (2006).

We conclude the Department has waived its challenge to the court's authority to hear the case. Paragraph twenty-one of Dohmen's petition sets forth the administrative rule complained of. Paragraph twenty-nine asks that the Department be enjoined from enforcing the rule. The request for enjoinder is repeated in the prayer. However, the Department waited until it filed its motion to reconsider the court's first ruling on its motion for summary judgment to raise this issue. Because the challenge was not made at the first opportunity, we find it has been waived. We reverse the district court's ruling on the issue of exhaustion of administrative remedies and remand.

Because the only order appealed from set aside the earlier ruling on the Department's motion for summary judgment and concluded the trial court lacked subject matter jurisdiction, the only matter for consideration on this appeal is the exhaustion of administrative remedies. Accordingly, we do not rule on the remaining claims before us.

REVERSED AND REMANDED.