

IN THE COURT OF APPEALS OF IOWA

No. 8-319 / 07-0940
Filed October 1, 2008

RICHARD ORI,
Plaintiff-Appellant,

vs.

**IOWA DEPARTMENT OF PUBLIC
SAFETY and IOWA DIVISION OF
CRIMINAL INVESTIGATION,**
Defendant-Appellees.

Appeal from the Iowa District Court for Polk County, Robert J. Blink,
Judge.

Plaintiff appeals from a district court ruling denying his motion for
summary judgment and granting in part defendant's motion for summary
judgment regarding the dissemination of his criminal history data. **AFFIRMED.**

Patricia Hulting, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Jeffrey C. Peterzalek, Deputy
Attorney General, and Mark Hunacek, Assistant Attorney General, for appellee.

Heard by Mahan, P.J., and Vaitheswaran and Doyle, JJ.

DOYLE, J.

Richard Ori appeals from a district court ruling denying his motion for summary judgment and granting in part the Iowa Department of Public Safety, Division of Criminal Investigation's (DCI) motion for summary judgment regarding the dissemination of his criminal history data. Upon our review, we affirm.

I. Background Facts and Proceedings.

On January 15, 1992, Ori was found guilty of assault with intent to commit sexual abuse in violation of Iowa Code section 709.11 (1991). On February 28, 1992, the district court deferred judgment in the case pursuant to section 907.3 and granted Ori probation. After Ori successfully completed probation, the district court entered an order on December 16, 1993, discharging Ori from probation and ordering that the "Court's criminal record with reference to the Deferred Judgment . . . be expunged." Despite this order, the Polk County Clerk's office failed to inform the DCI of Ori's successful completion of probation.

In 2004, Ori was hired by the Palmer Group. Subsequently, the Palmer Group requested Ori's criminal history from the DCI. In response, the DCI provided its record of Ori's criminal history to the Palmer Group. The DCI's record specifically reported that Ori had been arrested and charged with sexual abuse in the third degree, and that the court's disposition of that case had resulted in Ori pleading guilty¹ to one count of assault with intent to commit sexual abuse, along with deferred judgment and probation being granted on February 28, 1992. Ori had not signed a release authorizing the DCI to release

¹ Ori did not plead guilty; he was found guilty by the trial court following a trial on the minutes of testimony.

his criminal history to his employer. Ori's employment was subsequently terminated.

On June 8, 2005, Ori filed his petition at law, amended October 28, 2005, asserting two counts against the DCI. Ori's first count alleged that the DCI breached his privacy in violation of Iowa Code chapter 692.² Count two alleged that the DCI improperly released Ori's criminal record, which contained erroneous information in violation of chapter 692.

Thereafter, both parties filed motions for summary judgment. The DCI argued, among other things not relevant here, that Ori's claims were precluded as a matter of law because it followed the statutory provisions of chapter 692. Specifically, the DCI maintained that the Polk County Clerk failed to notify it that Ori had completed the terms of his deferred judgment, and that absent such notification, it had no statutory authority to remove Ori's criminal history from that data which would normally be available to the public. Additionally, the DCI contended that Ori's second count was duplicative and should therefore be dismissed.

Conversely, Ori asserted that his deferred judgment constituted "criminal history data that does not contain any disposition data" and therefore a signed release from Ori authorizing the DCI to disseminate the information to his employer was required pursuant to Iowa Code section 692.2(1)(b)(3). Because the DCI failed to obtain a signed release from him, Ori maintained the DCI was in

² The parties' briefs refer to chapter 692 and its relevant sections as stated in the 2007 Iowa Code. Accordingly, all citations in this opinion are to the 2007 Iowa Code unless otherwise indicated. We note that the subsections of section 692.1 were redesignated and renumbered by the code editor in the 2007 Iowa Code, due to nonsubstantive changes made by the legislature in 2006.

violation of section 692.2(1)(b)(3), entitling him to summary judgment as a matter of law.

On April 29, 2007, the day of trial, the district court entered its ruling on the motions for summary judgment. In ruling on the DCI's motion, the court found that Ori's count two was merely repetitious of count one and dismissed the count. Additionally, the court granted in part and denied in part the remainder of the DCI's motion, for reasons not relevant here. In ruling on Ori's motion, the court found as a matter of law that Ori's deferred judgment was within the criteria of Iowa Code section 692.2(1)(b)(4) but not 692.2(1)(b)(3). The court held that section 692.2(1)(b)(3) was not applicable to Ori's claims because the statutory definition of "disposition data" included deferred judgments. Additionally, the court found that a question of fact existed as to whether the DCI received official notification of Ori's completion of probation, precluding the entry of summary judgment as a matter of law under section 692.2(1)(b)(4) and therefore denied Ori's motion.

Trial was subsequently held, and the only issue submitted to the jury was whether the DCI was liable under section 692.2(1)(b)(4). The jury instructions in the case specifically required the jury to find, as a condition of imposing liability on the DCI, that the DCI knew or should have known from the Polk County Clerk's office that Ori had successfully completed his deferred judgment. Ori did not object to this jury instruction. The jury subsequently returned a verdict in favor of the DCI and against Ori.

Ori appeals. Ori ultimately asserts that the district court erred in holding that deferred judgments are not included in the statutory definition of "disposition

data.”³ Consequently, Ori asserts that the matter should be remanded to the district court for trial under section 692.2(1)(b)(3).

II. Scope and Standards of Review.

We review the district court’s summary judgment rulings for the correction of errors at law. Iowa R. App. P. 6.4; *Alliant Energy-Interstate Power & Light Co. v. Duckett*, 732 N.W.2d 869, 873 (Iowa 2007). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Walderbach v. Archdiocese of Dubuque, Inc.*, 730 N.W.2d 198, 199 (Iowa 2007). A fact question arises if reasonable minds can differ on how the issue should be resolved. *Walderbach*, 730 N.W.2d at 199. No fact question arises if, as here, the only conflict concerns legal consequences flowing from undisputed facts. *McNertney v. Kahler*, 710 N.W.2d 209, 210 (Iowa 2006).

III. Discussion.

A. Error Preservation.

Preliminarily, we note that the DCI contends Ori failed to preserve error in this case because he did not object to the jury instruction submitted that provided that the DCI was liable for violating chapter 692 only if the DCI know or should have known from the Polk County Clerk’s office that Ori had successfully completed his deferred judgment. The DCI argues this waives any claim that chapter 692 could be violated even without notice from the clerk of a discharge of

³ Although Ori asserts that the district court erred in granting the DCI’s motion, the court only granted the motion in part, and the court addressed the section 692.2(1)(b)(3) issue in its response to Ori’s motion, not the DCI’s motion.

probation under section 692.2(1)(b)(3). Additionally, the DCI asserts that Ori failed to preserve error because he did not raise the section 692.2(1)(b)(3) issue again after the district court entered its ruling on the motions for summary judgment. We disagree. Given that the ruling on the motions for summary judgment was issued the day of trial and the court expressly ruled that, as a matter of law, section 692.2(1)(b)(3) was not applicable to Ori's claims, we conclude error was preserved.

B. Release of Criminal History Data.

Ori contends the definition of "disposition data" stated in Iowa Code section 692.1(10) does not include deferred judgments based upon the statute's failure to expressly include deferred judgments in section 692.1(10), as well as the alleged confidentiality of deferred judgments. Consequently, Ori argues that the DCI was required to obtain a signed release from him before disseminating information concerning his deferred judgment pursuant to section 692.2(1)(b)(3). We disagree.

The controlling rule of statutory construction is: "When a statute is plain and its meaning clear, courts are not permitted to search for meaning beyond its express terms." *State v. Knowles*, 602 N.W.2d 800, 801 (Iowa 1999) (citation omitted). Moreover, our supreme court has frequently stated that we do not resort to the rules of construction when the terms of the statute are unambiguous. See *Teamsters Local Union No. 421 v. City of Dubuque*, 706 N.W.2d 709, 714 n.2 (Iowa 2005). In determining what the legislature intended in adopting a statute, the court is constrained to follow the express terms of the statute. *State v. Byers*, 456 N.W.2d 917, 919 (Iowa 1990). We do not speculate

as to the probable legislative intent apart from the words used in the statute, *State v. Adams*, 554 N.W.2d 686, 689 (Iowa 1996), and we resort to rules of statutory construction only when a statute is ambiguous. *State v. Gilmour*, 522 N.W.2d 595, 597 (Iowa 1994). “Words and phrases shall be construed according to the context and the approved usage of the language” Iowa Code § 4.1(38).

Iowa Code chapter 692 provides regulations on the compilation and dissemination of criminal history data. *State v. Bessenecker*, 404 N.W.2d 134, 135 (Iowa 1987). “Criminal history data” is defined as:

[A]ny or all of the following information maintained by the department [of public safety] or division in a manual or automated data storage system and individually identified:

- a. Arrest data.
- b. Conviction data.
- c. Disposition data.
- d. Correctional data.
- e. Adjudication data.
- f. Custody data.

Iowa Code § 692.1(5). Relevant here, “[d]isposition data” is defined as “information pertaining to a recorded court proceeding subsequent and incidental to a public offense arrest and *includes* dismissal of the charge, suspension or *deferral of sentence*.” *Id.* § 692.1(10) (emphasis added).

“Criminal history data” is a public record. *Id.* § 22.7(9). Subject to certain restrictions stated in section 692.2, the DCI “may provide copies or communicate information from criminal history data to [a] person . . . upon written application” *Id.* § 692.2(1)(b). One restriction imposed provides:

Criminal history data *that does not contain any disposition data* after eighteen months from the date of arrest *may only be disseminated* by the department to . . . a person requesting the

criminal history data with a signed release from the person who is the subject of the criminal history data authorizing the requesting person access to criminal history data.

Id. § 692.2(1)(b)(3) (emphasis added). Another restriction states:

Upon receipt of official notification of the successful completion of probation following a deferred judgment, criminal history data regarding the person who successfully completed the probation shall only be disseminated by the department to . . . another person with a signed release from the person who is the subject of the criminal history data authorizing the requesting person access to the criminal history data.

Id. § 692.2(1)(b)(4) (emphasis added).

Ori argues that the legislature's failure to expressly include "deferrals of judgments" in list of terms included in section 692.1(10) evidences that the legislature intended to exclude deferred judgments from the "disposition data" category. We disagree.

A deferred judgment is "a sentencing option whereby both the adjudication of guilt and the imposition of a sentence are deferred by the court" *Id.* § 907.1(1). As a sentencing option, deferrals of judgment occur as a result of a recorded court proceeding subsequent and incidental to a public offense arrest. As such, a deferred judgment fits within the definition of "disposition data."

The statutory definition of "disposition data" states that it "includes dismissal of the charge, suspension or deferral of sentence." *Id.* § 692.1(10) (emphasis added). "When 'include' is utilized, it is generally improper to conclude that entities not specifically enumerated are excluded." 2A Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutory Construction* § 47:23, at 417 (7th ed. 2007). Therefore, the legislature's use of the word "includes" indicates its intent that the list of terms that follows were not the only terms that met its

definition of “disposition data.” As the DCI points out, the inclusion of “dismissal of the charge, suspension or deferral of sentence” merely emphasizes that the legislature did not want to limit the definition of “disposition data” only to information resulting from a defendant being sentenced, not that it intended the list to be exclusive. Consequently, the plain language of section 692.1(10) establishes that the legislature did not intend to make the list exclusive. As such, we conclude the district court did not err in determining deferred judgments constituted “disposition data” as a matter of law.⁴

IV. Conclusion.

Because a deferred judgment fits into the stated definition of “disposition data” and the list of terms included in section 692.1(10) is not exclusive, we conclude the district court correctly determined “deferred judgments” are within the statutory definition of “disposition data.”

AFFIRMED.

⁴ Because we find the meaning of section 692.1(10) is clear, we are not permitted to search for meaning beyond its express terms. We therefore need not and do not address Ori’s argument regarding alleged confidentiality of deferred judgments. Similarly, we need not and do not address the remaining grounds urged by the DCI for affirming the district court’s ruling.