

**IN THE COURT OF APPEALS OF IOWA**

No. 9-693 / 08-1899  
Filed November 25, 2009

**CHARLOTTE STEVENS, f/k/a  
CHARLOTTE JOHNSON,**  
Plaintiff-Appellant,

**vs.**

**RACING ASSOCIATION OF CENTRAL IOWA,  
d/b/a PRAIRIE MEADOWS,**  
Defendant-Appellee.

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

Plaintiff appeals the district court's grant of summary judgment to  
defendant on her claim of wrongful discharge. **AFFIRMED.**

Thomas A. Newkirk and Katie Ervin Carlson of Newkirk Law Firm, P.L.C.,  
Des Moines, for appellant.

Mark McCormick, James R. Swanger, Michael R. Reck, William B.  
Ortman, and Kelsie Knowles of Belin Lamson McCormick Zumbach Flynn, P.C.,  
Des Moines, for appellee.

Heard by Vaitheswaran, P.J., Potterfield, J., and Mahan, S.J.\*

\*Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**MAHAN, S.J.****I. Background Facts & Proceedings**

Charlotte Stevens was employed at Prairie Meadows Racetrack and Casino as a surveillance agent. On June 15, 2005, she sent the following e-mail to the Internal Audit Director for Prairie Meadows, Rick Gilson:

I think you should check out some things that are going on from the Surveillance Department.

The Surv. SOPs [Standard Operating Procedures] were copied from Lakeside Casino, Lakeside said it was theft. John Titus was given a dual rate position, and a few of us didn't even see it posted on the board. I think it was a Bribe.

Gilson responded by asking Stevens for additional details about the alleged bribe. Stevens e-mailed back:

Rick, I do know some, but that is why I contacted you to find out all the details. I was hoping that you or DCI [Division of Criminal Investigation] would look into the whole incident. I relies [sic] that everyone can take it in a different way. In my opinion it was Ray Maurer, Director of Surveillance, that made the offer, and John excepted [sic] it. He wanted John to KEEP QUIT [sic] about the incident, and he is trying to cover it up. Our HR [Human Resources] department will not help any of us. I wanted to give you one last chance to investigate this, because I thought you wanted to keep the integrity of Prairie Meadows clear of Corruption, because it was part of your job, and this is just one of many.

Gilson contacted Lakeside Casino, subsequently known as Terrible's Casino. He was informed Terrible's was aware Prairie Meadows had their SOPs and was not concerned about it. Gilson was unable to determine how Prairie Meadows obtained the SOPs, but pointed out they may very well have been given voluntarily. He found no evidence of theft.

Gilson determined Titus had been promoted to a dual rate employee in March 2005. This meant that when all other supervisors were absent, Titus

would act as a supervisor and receive a pay increase for that time. When Gilson checked in June 2005, Titus had never actually acted as a supervisor. Titus had previously been in a disagreement with a supervisor about the grammar in a report. He stated his promotion to a dual rate position was completely separate from the grammar dispute, and he had not received a bribe.

The Director of Human Resources, Dan Byers, asked Stevens to his office to discuss her accusation of bribery. Stevens refused to answer any questions. Byers told her she needed to cooperate with the investigation or she would be terminated, and gave her until the next day to comply. According to Stevens's notes taken at the time, she replied as follows:

I heard about John's promotion from other Agents in the Surveillance room. Todd & Dell were discussing the fact that John T. had been promoted to Dual Rate Leads on day. And then I said that Ray & George were talking about it in the smoke side of the Break room, and that several other employees from different departments were in there. I said they talk alot in the smoke room. Dan asked if I had asked Nora or Ray or George or Todd why John had been promoted. I said NO. I hadn't seen much of Nora and that Ray never talked to me, and Todd and swing shift had asked each other why? Did John get this promotion. But I never came right out and asked him. Dan, why not? Todd told every body that he didn't understand and he didn't know why. Dan asked why I would use the word Bribe. I said maybe that wasn't the right word to use but I couldn't think of any other word. Me to Dan, what word would you have used? He didn't answer me. But why would I just assume that it was a bribe? I said I listened to every body talk about it and I just thought it sounded like a bribe to me.

Byers was convinced there was no evidence of a bribe.

Stevens was discharged from her employment with Prairie Meadows for violating the mutual respect policy and the conduct policy by these actions: (1) making false statements; (2) spreading false, embarrassing, or harmful

information about another employee; (3) careless or negligent behavior that could cause harm to another employee; and (4) conduct contrary to accepted standards of morality or decency.

Stevens filed a claim of wrongful discharge in violation of public policy. She asserts that under gaming regulations she was required to immediately report to the Iowa Racing and Gaming Commission any known irregularities involving racing and gaming. She claimed she was engaged in protected activity that furthered an important public policy—maintaining the integrity of the gaming industry.

Prairie Meadows filed a motion for summary judgment. The district court determined the National Labor Relations Act did not apply, and the action could be heard in Iowa.<sup>1</sup> The court also found Stevens “failed to show a well recognized and clearly defined public policy exists for the reporting of wrongdoing, irregularities, and other violations in the racing and gaming industry.” The court concluded Stevens could not show her termination violated public policy. The court granted Prairie Meadows’ motion for summary judgment. Stevens appeals.

## **II. Standard of Review**

We review the district court’s ruling on a motion for summary judgment for the correction of errors at law. See Iowa R. App. P. 6.4. Summary judgment is appropriate only when there are no genuine issues of material fact and the

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<sup>1</sup> On appeal, Prairie Meadow argues the district court and this court lack jurisdiction because Stevens’s state-law claim is preempted by the National Labor Relations Act, and should have been filed before the National Labor Relations Board. Based on our resolution of the issues in this case, we do not need to address this issue.

moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Kistler v. City of Perry*, 719 N.W.2d 804, 805 (Iowa 2006). A court should view the record in the light most favorable to the non-moving party. *Kern v. Palmer College of Chiropractic*, 757 N.W.2d 651, 657 (Iowa 2008). In determining whether there is a genuine issue of material fact, the court affords the non-moving party every legitimate inference the record will bear. *Id.*

### **III. Merits**

Generally, an at-will employee may be discharged for any lawful reason, or for no reason at all. *Lloyd v. Drake Univ.*, 686 N.W.2d 225, 228 (Iowa 2004). An at-will employee, however, may not be discharged for reasons contrary to public policy. *Teachout v. Forest City Cmty. Sch. Dist.*, 584 N.W.2d 296, 299 (Iowa 1998).

An action for the tort of wrongful discharge exists when a protected activity has been recognized through the implementation of an underlying public policy that would be undermined if an employee were discharged from employment for engaging in that activity.

*Davis v. Horton*, 661 N.W.2d 533, 535 (Iowa 2003).

A party bringing an action for wrongful discharge based on public policy must establish the following factors:

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 a lack of other justification for the termination.

*Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751, 761 (Iowa 2009).

The issue of the existence of a clearly defined public policy is a question of law for the court to resolve. *Lloyd*, 686 N.W.2d at 229. This issue is generally capable of being resolved through a motion for summary judgment. *Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d 275, 282 (Iowa 2000). The district court granted summary judgment to Prairie Meadows, finding Stevens had failed to establish the first factor, “a clearly defined public policy that protects an activity.”

A plaintiff must show he or she was discharged for engaging in a well-recognized and defined public policy of the state. *Teachout*, 584 N.W.2d at 300. “The concept of public policy generally captures the communal conscience and common sense of our state in matters of public health, safety, morals, and general welfare.” *Jasper*, 764 N.W.2d at 761. Public policies that are too generalized will not support an exception to the at-will doctrine. *Lloyd*, 686 N.W.2d 230.

The court proceeds cautiously in recognizing public policies that provide such an exception. *Davis*, 661 N.W.2d at 536. The public policy must be “weighty enough ‘to overcome the employer’s interest in operating its business in the manner it sees fit,’ which we have long and vigorously protected.” *Lloyd*, 686 N.W.2d at 229 (citation omitted). We must carefully balance the competing interests of the employee, employer, and society. *Fitzgerald*, 613 N.W.2d at 283.

A statute or administrative regulation may provide the source of public policy. *Jasper*, 764 N.W.2d at 764. “The administrative regulation must not only relate to public health, safety, or welfare, but the regulation must also express a substantial public policy in a way that furthers a specific legislative expression of

the policy.” *Id.* Protected activities include: (1) exercising a statutory right or privilege, (2) refusing to commit an unlawful act, (3) performing a statutory obligation, or (4) reporting a statutory obligation. *Id.* at 762.

Iowa Code sections 99D.7 and 99F.4 (2007) authorize the Iowa Racing and Gaming Commission to adopt administrative rules. Stevens’s public policy claims are based on these administrative rules. All employees of a racing and gaming facility are required to be licensed by the Iowa Racing and Gaming Commission. Iowa Admin. Code r. 491-6.2. A licensee must “report immediately to the commission representative any known irregularities or wrongdoing involving racing or gaming and to cooperate in subsequent investigations.” Iowa Admin. Code r. 491-6.4(2). An employee’s license may be subject to revocation if the employee has been involved in any fraudulent or corrupt practices. Iowa Admin. Code r. 491-6.5(3).

Stevens asserts she was required under these administrative rules to report all fraudulent or corrupt practices, and should not have been terminated for reporting alleged incidents of bribery and theft. The district court found, “There is no express language in any of the authority offered by Plaintiff that shows a clear public policy in favor of reporting wrongdoing, irregularities, and other violations in the racing and gaming industry.” The court pointed out that there were no sanctions in the administrative rules for failure to make a report. The court concluded the administrative rules did not provide a clear and distinct public policy.

We find no error in the district court's assessment. In *Teachout*, 584 N.W.2d at 300, an employee claimed she was terminated in violation of public policy for reporting child abuse. The Iowa Supreme Court noted that section 232.73 provided immunity to a person making a child abuse report in good faith, and that failure to report suspected child abuse is a simple misdemeanor under section 232.75. *Teachout*, 584 N.W.2d at 300. The court concluded, "the forceful language of the statute articulates a well-recognized and defined public policy of Iowa from which such protection can be implied." *Id.* at 301.

Similarly, in *George*, 762 N.W.2d at 866, an employee claimed his discharge violated public policy because he had been discharged for reporting the employer's failure to follow the Iowa Occupation Safety and Health Act, chapter 88. The court found a clear and defined public policy, noting, "[t]he first factor is satisfied by the public policy set forth in Iowa Code section 88.9(3), which states, '[a] person shall not discharge . . . an employee because the employee has filed a complaint . . . under . . . this chapter.'" *George*, 762 N.W.2d at 871-72.

Also, in a wrongful discharge action involving the refusal to violate administrative regulations setting staff-to-child ratios in day-care facilities, the Iowa Supreme Court noted the statute authorizing regulations on this subject provided the regulations were necessary "to assure the health, safety, and welfare of children" in day-care facilities. *Jasper*, 764 N.W.2d at 766. The court then determined "the staff-to-child ratios demonstrate an important public policy in Iowa." *Id.*



This case is different. Stevens can point to no similar language in the applicable statutes regulating gambling, chapters 99D and 99F, giving immunity to a person who makes a report, or providing a penalty for failure to make a report, or prohibiting the discharge of a person making a report. Furthermore, the statute authorizing the adoption of rules contains no language giving a specific legislative expression for a substantial public policy. See *id.* at 764 (noting a “regulation must also express a substantial public policy in a way that furthers a specific legislative expression of the policy”). Stevens has not provided a basis for finding a public policy exception to the at-will doctrine in either statutes or administrative rules.

We conclude the district court did not err in finding Stevens had not shown a well-recognized and clearly defined public policy. See *Lloyd*, 686 N.W.2d at 231 (finding no public policy exception “[i]n the absence of any statutory, constitutional, or other expression”); *Fitzgerald*, 613 N.W.2d at 283 (stating the public policy exception does not extend to generalized concepts of fairness and justice).

Although it is not needed for our resolution of this appeal, there is another reason Stevens’s claim must fail. Her claim relies heavily on administrative rule 491-6.4(2). She claims above that her actions were protected under this rule. However, this rule requires a licensee to “cooperate in subsequent investigations.” Iowa Admin. Code r. 491-6.4(2). It is clear from the record that Stevens refused to cooperate with the internal investigation that resulted from her complaints. Indeed, she even admitted such a refusal:

Q. You refused to answer the question, didn't you? A. Yes.

Q. And this is the second time you have done that with Mr. Byers, isn't it? A. Yes.

This is a situation where Stevens made a vague and general reports alleging bribery and theft, and then refused to cooperate in the investigation of her reports. She cannot be now heard to claim she was "advanc[ing] a well-recognized and clearly defined public policy of the state." See *Teachout*, 584 N.W.2d at 300.

We affirm the decision of the district court granting summary judgment to Prairie Meadows.

**AFFIRMED.**