IN THE COURT OF APPEALS OF IOWA

No. 9-694 / 08-1900
Filed November 25, 2009

BRETT CARTER,
Plaintiff-Appellant,

vs.

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

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal, Judge.

Plaintiff appeals the district court order granting summary judgment to defendant on his claims of wrongful discharge on public policy grounds. **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 Kelsey 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

Brett Carter was employed as a surveillance agent by Prairie Meadows Racetrack and Casino. Carter signed a Surveillance Policy Agreement that provided, "Cameras and surveillance equipment are only to be used for company purposes. Not to be used for any personal use. Any violation of this agreement will result in termination." Also, Prairie Meadows' policy stated, "Participation in horseplay is not condoned and will be subject to disciplinary action up to and including discharge."

On February 15, 2005, Carter purposely fell on the floor in an elevator and feigned injury, knowing his actions were being taped by surveillance cameras.[1] Carter then went into the surveillance room and watched his performance with co-workers. Later that day he was suspended from his employment while the incident was investigated. Carter was discharged from his employment on February 25, 2005, for engaging in horseplay.

Carter filed suit seeking relief on the basis of wrongful discharge in violation of public policy. He alleged he had been discharged for previous reports he had made. On a performance evaluation in June 2004, under the heading "Employee Comments," he had written, "Hopefully one day the management here will be overhauled to get rid of all the corruption." On a performance evaluation in October 2004, he wrote:

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[1] Carter was reenacting the injury of one of his co-workers. He told his supervisors he did this as a joke.

> If this was a for profit casino the management here would have been terminated years ago. Clint is the worst director here and everybody knows it. Not one person here has any respect for him. Rick Gilson says there's just mismanagement here, but he's wrong everybody knows this place is full of corruption.
>
> I could run this place better than Bob.

Carter's allegations of corruption were reported by Prairie Meadows to the Iowa Racing and Gaming Commission (IRGC) and the Division of Criminal Investigation (DCI). Carter was interviewed, but would not provide any further details to support his claims of corruption. Clint Pursley, the director of surveillance, came to the conclusion Carter was not credible.

At his deposition in this action, Carter testified his charges of corruption were mainly based on a management plan to combine the security and surveillance departments, which he believed was a violation of administrative regulations. He admitted, however, that the IRGC ended that practice before he brought it to management's attention. Additionally, Carter and several other employees had reported that the surveillance cameras for table games did not provide enough coverage. He admitted that steps were being taken to improve this situation.

Prairie Meadows filed a motion for summary judgment. The district court granted the motion for summary judgment, finding Carter had not shown his discharge violated a clearly defined and well-recognized public policy. The court also found Carter was claiming he was discharged for an activity he was required to perform as one of his job duties, and in order to come within the public policy exception to the at-will employment doctrine, the employee would need to show he was engaged in some affirmative act above and beyond his employment

duties. Furthermore, the court found Carter was fired for engaging in horseplay, not for making reports of suspected wrongdoing and irregularities. Carter appeals the decision of the district court granting summary judgment to Prairie Meadows.

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 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). On the other hand,

> [a]n 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). Thus, an at-will employee 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).

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).

Public policies that are too generalized will not support an exception to the at-will doctrine. *Lloyd*, 686 N.W.2d 230. 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.

The court proceeds cautiously in recognizing public policies that provide such an exception to the at-will doctrine. *Davis*, 661 N.W.2d at 536. We must carefully balance the competing interests of the employee, employer, and society. *Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d 275, 283 (Iowa 2000). 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).

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*, 613 N.W.2d at 282.

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 IRGC to adopt administrative rules. All employees of a racing and gaming facility are required to be licensed by the IRGC. Iowa Admin. Code r. 491-6.2. Carter's claims are based on an administrative rule that provides 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).

The district court stated:

> The court does not believe this rule establishes a "clearly defined and well recognized public policy" prohibiting termination of an at-will employee for reporting "irregularities or wrongdoing involving racing or gaming." There is no explicit statement in the rule expressing such a policy. Nowhere else in the voluminous regulatory scheme governing the racing and gaming industry is such a policy defined, and there is no specific bar, or language from which such a bar could reasonably be implied, against terminating

> employees who report suspected wrongdoing in the racing and gaming industry.

We find no error in the district court's conclusions. In a case finding a public policy exception where an employee had filed complaints about the failure to follow the Iowa Occupational Safety and Health Act, a statute specifically provided an employee could not be discharged for filing a complaint under that act. Iowa Code § 88.9(3); *George*, 762 N.W.2d at 871-72. Also, where a public policy exception was found for a teacher's assistant who had reported child abuse, a statute specifically provided immunity for a person making a child abuse report. Iowa Code § 232.73; *Teachout*, 584 N.W.2d at 301. Additionally, a well-recognized and clearly defined public policy has been found in a statutory pronouncement that certain administrative rules were needed "to assure the health, safety, and welfare of children" in day-care facilities. *See Jasper*, 764 N.W.2d at 766.

There is no statutory provision or administrative rule in this case expressing a "clearly defined and well recognized public policy that would be undermined by [the employee's] dismissal." *See Lloyd*, 686 N.W.2d at 229. Because Carter has not satisfied the first element of a wrongful discharge action, "[t]he existence of a clearly defined public policy that protects an activity," he is unable to prove his claims of wrongful discharge. *See George*, 762 N.W.2d at 871 (setting forth the elements of a wrongful discharge claim based on public policy).

We furthermore find no error in the district court's conclusion, "the fact record establishes that Carter was fired for engaging in horseplay." Carter

admitted he had fallen on the floor and feigned injury for the surveillance cameras as a joke. This violated Prairie Meadows' policy against horseplay, and also violated an agreement signed by Carter that the surveillance cameras could only be used for business purposes. We agree with this conclusion and the district court's broader conclusion that Carter cannot, as a matter of law, establish any of the elements of his claim.

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

AFFIRMED.