IN THE COURT OF APPEALS OF IOWA

No. 1-529 / 91-364

FILED
APR 28 1992
CLERK SUPREME COURT

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BERNARD MILLER,

Plaintiff-Appellant,

vs.

JASPER COUNTY, IOWA; JASPER COUNTY BOARD OF SUPERVISORS, ROBERT BUTLER, JEANNE BRIDENSTINE, RAGAN BROCK, CHARLES CABALKA, JR., RAY WILSON, Individually,

Defendants-Appellees.

Appeal from the Iowa District Court for Warren County, Darrell Goodhue, Judge.

Plaintiff appeals the district court granting his former employer a pretrial summary judgment. **AFFIRMED.**

Joseph M. Bauer, Des Moines, for appellant.

John E. Billingsley of Walker, Knopf & Billingsley, Newton, for appellee.

Considered by Oxberger, C.J., and Sackett and Habhab, JJ.

SACKETT, J.

Plaintiff-appellant Bernard Miller was terminated as an employee of Jasper County. Plaintiff brought this action alleging the termination was in retaliation for his pursuing a workers' compensation claim against the County. The County filed a motion for summary judgment contending there was no evidence supporting plaintiff's claim. The trial court sustained the motion and plaintiff appealed, contending the district court erred (1) in granting the motion for summary judgment and (2) in finding plaintiff's sole remedies were under the Civil Rights Act and Workers' Compensation Act. We affirm.

Summary judgment is proper when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); Northrup v. Farmland Indus., Inc., 372 N.W.2d 193, 195 (Iowa 1985). The burden of showing the nonexistence of a material fact is upon the moving party. Knapp v. Simmons, 345 N.W.2d 118, 121 (Iowa 1984). Every legitimate inference that reasonably can be deduced from the evidence must be afforded the resisting party, and a fact question is generated if reasonable minds can differ on how the issue should be resolved. See Henkel v. R and S Bottling Co., 323 N.W.2d 185, 187-88 (Iowa 1982).

The facts are substantially undisputed. In 1980, plaintiff began working for the Jasper County Road Department. On August 17, 1987, while working, plaintiff

injured his back. Plaintiff received medical treatment and was not able to work. Plaintiff made claim for and was paid workers' compensation.

From about April of 1988 through June of 1989, plaintiff received workers' compensation. The County had a policy plaintiff utilized that enabled him to receive his regular wages by endorsing his workers' compensation checks to the County and using sick leave to make up the difference. On August 28, 1989, plaintiff sought to have his remaining benefits commutated. He was determined to have a disability equal to 28% of the body as a whole.

In January of 1989, plaintiff, his attorney, his doctor, and a physical therapist met with the Jasper County Board of Supervisors to discuss plaintiff's future with the County. Plaintiff and his doctor were of the opinion that plaintiff could do light duty work. The County officials had no light duty jobs available in the County road department. Plaintiff was released by his doctor to return to light duty work in April of 1988. He returned to work for short periods.

Plaintiff's employment with the County was terminated in February of 1989.

Plaintiff's injury occurred on August 17, 1987, and his job was held open until October 1, 1988. Plaintiff contends the County's failure to give him a light duty job is factual support for his claim. There is no evidence

there were any light duty jobs available within the road department.

The Iowa Supreme Court has recognized that discharging an employee merely for pursuing the statutory right to compensation for work-related injuries will support a claim for tortious interference with the contractual relationship. See Smith v. Smithway Motor Xpress, Inc., 464 N.W.2d 682, 687 (Iowa 1990); Springer v. Weeks and Leo Co., 429 N.W.2d 558, 559 (Iowa 1988).

The question is has plaintiff shown facts to support a finding of retaliatory discharge. In Smith, the insurance director, not the personnel director, made the decision to fire, and the insurance director conceded that the cost of paying workers' compensation benefits entered in his decision to fire plaintiff. Smith, 464 N.W.2d at 684.

In Springer, 429 N.W.2d at 599, plaintiff was told she could not come back to work unless she signed a document stating her condition was not work related.

Plaintiff's job was held upon for an extended period after he started getting workers' compensation. Plaintiff was not physically able to perform his old job. The employer did not have a light duty job.

The trial court correctly entered judgment.

We have considered plaintiff's other assigned errors and find them to be without merit.

AFFIRMED.