

FILED

DEC 27 1979

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

**IN RE THE MATTER OF THE APPEALS OF
GERALD E. BISBEY and ROBERT L. CURTIS**

**GERALD E. BISBEY and
ROBERT L. CURTIS,**

Plaintiffs-Appellees,

vs.

CITY OF CEDAR FALLS, IOWA,

Defendant-Appellant.

Filed December 27, 1979

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2-63152

Appeal from Black Hawk District Court - C. W. Antes, Judge.

Defendant city appeals from district court judgment rendered in an appeal from a final ruling of the civil service commission. REVERSED.

William F. Sueppel of Meardon, Sueppel, Downer & Hayes, Iowa City, for defendant-appellant.

W. D. Sindlinger of McCrindle, Bergstrom & Sindlinger, Cedar Falls, for plaintiffs-appellees.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

CARTER, J.

Defendant city appeals from district court judgment rendered in an appeal from a final ruling of the civil service commission.¹ The civil service commission had denied, on the merits, the claim of plaintiff's police officers that they had been improperly demoted. The district court reversed this determination on the merits. We do not reach the merits of the controversy because of our resolution of a jurisdictional challenge lodged by the defendant city.

I. At the outset, the defendant city asserts that the civil service commission lacked jurisdiction to review the action which plaintiffs challenge and therefore the district court lacked jurisdiction to reach the merits of the controversy. This claim is based on the premise that plaintiffs failed to appeal to the civil service commission within the time required by law.

Defendant's assertion that plaintiffs' appeal to the commission was untimely is based upon section 400.20, The Code 1977, which provides:

If there is an affirmance of the suspension, demotion, or discharge of any person holding civil service rights, he may, within twenty days thereafter, appeal therefrom to the civil service commission. If the suspension, demotion, or discharge is not affirmed within five days the person who suspended, demoted, or discharged such officer or employee may in like manner appeal.

Plaintiffs assert that this statute is inapplicable to their situation or, in the alternative, that their appeal to the commission was timely for reasons which we will presently discuss.

Admittedly, the language of section 400.20 does not seem to fit the type of action by the defendant city which is being challenged in the present case. Plaintiffs' claim that they were demoted arises from their reassignment pursuant to a plan of reorganization of the Cedar Falls Police Department. Such plan had been duly adopted by resolution of the city council. The right of a police officer to appeal a demotion to the civil service commission is, under the language of chapter 400, The Code, related to the actions of the chief of police, affirmed by the appropriate city officer under section 400.19, The Code. The language of the civil service appeal procedure does not purport to cover challenges to the validity of an ordinance or resolution of the city council.

The issue presented in the present case is very similar to that before the court in Antrim v. Civil Service Commission, 261 Iowa 396, 154 N.W.2d 711 (1967). There the claim was made by plaintiffs that section 400.20 [then codified as section 365.20] was

¹ Such an appeal is authorized by section 400.27, The Code (1977).

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inapplicable to job reclassification pursuant to formal action of the city council. A majority of the supreme court determined that there was no other procedure provided for appeal to the civil service commission and that to sustain their right to such appeal, plaintiffs must show it was timely under the provisions of this statute. We are bound to apply Antrim to the present case.

The plaintiffs urge that, in any event, their appeals were timely under section 400.20 because taken within twenty days of the time the police department put the challenged reorganization plan into effect.² We disagree. This argument would be good, if at all, only if plaintiffs were challenging their reclassification on some basis not inhering in the official action of the city council. As stated in Antrim, 261 Iowa at 400; 154 N.W.2d at 714:

The argument advanced by plaintiffs that the effective date of the ordinance is not controlling overlooks the fact their attempted appeal to the commission is unavoidably based upon a claim the ordinance served in effect to demote them. In a legal sense any pay variance is merely incidental to the ordinance-created wrong. [emphasis supplied]

We conclude that this is precisely the same situation presented in the instant case. Under section 380.6(1), The Code, the official resolution of the city council on September 26, 1977, adopting the plan of reorganization, was effective immediately. The plaintiffs' appeal to the civil service commission was not perfected within twenty days of that date. The trial court and the civil service commission improperly assumed jurisdiction to hear plaintiffs' claims on the merits.

II. Three justices, specially concurring in Antrim, would have held that, in any event, the civil service commission has no statutory jurisdiction to pass upon the validity of city ordinances. Such contention finds much support in the language of chapter 400 and we do not find the holding of the majority in Antrim to be a rejection of the interpretation as found by the specially concurring justices. The majority of the court simply failed to reach the issue posed in the specially concurring opinion. We do not deem it necessary to decide this issue in the present case.

For the reasons stated, the judgment of the trial court is reversed and the cause remanded for judgment dismissing the appeal for want of jurisdiction.

REVERSED.

² For purposes of this argument, plaintiffs' reassignments pursuant to the council's plan of reorganization did not take effect until November 14, 1977. Their appeals to the civil service commission were perfected on November 30, 1977.