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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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STEVEN DELAGARDELLE and LYNETTE DELAGARDELLE,	)	
Plaintiffs-Appellants,	)	Filed June 25, 1986
vs.	)	
	)	5-726 85-1056
WATERLOO COMMUNITY SCHOOL DISTRICT,	)	
Defendant-Appellee.	)	

Appeal from the Iowa District Court for Black Hawk County (No. 65858) James C. Bauch, Judge.

Plaintiffs appeal the trial court's limitation of their damages in a transportation dispute with the school board based on wrongful denial of school bus service for their child. **REVERSED.**

Jon Fister of Beecher, Beecher, Holmes & Rathert, Waterloo, for plaintiffs-appellants.

Jeffrey J. Greenwood of Swisher & Cohrt, Waterloo, for defendant-appellee.

Considered en banc.

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SNELL, J.

Plaintiffs appeal the trial court's limitation of their damages in a transportation dispute with the school board based on wrongful denial of school bus service for their child. They contend the trial court erred: 1) in ruling the damages recoverable were limited by Iowa Code section 285.1(3); 2) in denying them damages under a theory of breach of an implied contract; 3) in denying them damages under a tort theory pursuant to Iowa Code chapter 613A; and 4) in denying them all direct consequential and foreseeable damages they actually sustained.

Plaintiffs, Steven and Lynette Delagardelle, and their son, Adam, reside in a rural area of the Waterloo Community School District. In the summer of 1983, before Adam began kindergarten, the Waterloo Community School Board voted pursuant to Iowa Code section 285.1(3) that due to road construction conditions in his area, it would be impractical to supply him with bus transportation. Instead, the parents would be reimbursed for his transportation under chapter 285.

The parents appealed to the Board of Area Education Agency 7 pursuant to Iowa Code section 285.12. AEA7 upheld the school board's decision. The Delagardelles then appealed to the State Board of Education. The district submitted evidence that it would have cost $4,698 additional per year to pick up Adam. The parents claimed out-of-pocket expenses to be at least $1,080 and possibly greater than $2,000 to transport their son. The state board overruled the Area and school boards. It held it is more equitable for the district to provide school bus transportation than to provide reimbursement. The school appealed, but the district court affirmed the state board's decision in July 1984.

In November of 1984, the parents brought suit in the district court to recover additional damages. They claimed compensation for costs associated

with transporting the child, and restitution under a quasi-contract theory of recovery. They also claimed damages under a tort theory of recovery.

On July 9, 1985, the district court held any reimbursement for transportation expenses was governed by the schedule set out in Iowa Code section 285.1(3). The court held the Delagardelles were entitled to $195.50. The court held the board decision not to provide transportation for the child was a discretionary function exempted from municipal tort liability by Iowa Code section 613.4(b). Our review of the district court's decision is on assigned errors of law. See Iowa R. App. P. 4.

In this appeal, the Delagardelles claim that section 285.1(3) is not applicable because the school board failed to show school bus service is impractical or not available. The school district counters that section 285.1(3) is applicable and in fact constitutes the exclusive remedy for the Delagardelles in these circumstances.

The relevant statutory authority, Iowa Code section 285.1(3) (1983), provides:

> In a district where transportation by school bus is impracticable or where school bus service is not available, the board may require parents or guardians to furnish transportation for their children to the schools designated for attendance. The parent or guardian shall be reimbursed for such transportation service for public and nonpublic school pupils by the board of the resident district in an amount equal to eighty dollars plus the following percent of the difference between eighty dollars and the previous school year's statewide average per pupil transportation cost, as determined by the department of public instruction:
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> * * * *
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> c. For the school year commencing July 1, 1982 and each school year thereafter, seventy-five percent.

In essence, then, section 285.1(3) provides that if school bus transportation is unavailable or impracticable, the parents may be required to provide trans-

portation and be compensated according to a reimbursement schedule. This statutory provision has no application where school bus transportation is available and practicable and the school district merely opts not to provide it.

There is no question that the Delagardelles were wrongfully denied school bus transportation for their son, Adam, during the 1983-1984 school year. This was the decision of the Iowa State Board of Public Instruction affirmed by the district court on appeal. The State Board and the district court grounded their decisions on the fact that school bus transportation is available in the Delagardelles' district and service for Adam is not impracticable. Therefore, by its express terms, section 285.1(3) does not control the determination of damages recoverable by the Delagardelles.

The statutory provision which establishes the school district's duty regarding public school transportation is Iowa Code section 285.1(1) (1985). It states that "[t]he board of directors in every school district shall provide transportation, either directly or by reimbursement for transportation, for all resident pupils attending public school, kindergarten through twelfth grade. . . ." (emphasis added). In other words, school districts in Iowa have a mandatory statutory duty to supply transportation for students or reimbursement therefor where no express exception under section 285.1 applies. Harwood v. Dysart Consol. School Dist., 237 Iowa 133, 136, 21 N.W.2d 334, 335 (1946) ("As noted in every case in which this court has passed upon the question of transportation of school children it has held that the obligation of the district is mandatory, and not discretionary.") To "reimburse" means "to pay back, to make restoration, to repay that expended; to indemnify, or make whole." Black's Law Dictionary 1452 (Rev. 4th ed. 1968). "Reimburse" is also defined "to pay back to someone," "to make restoration or payment of an equivalent to." Webster's New Collegiate Dictionary 967 (1979).

In the case at bar, the school district's failure to perform its statutory obligation compelled the Delagardelles to perform the service of transporting their child to school. To deny the Delagardelles recovery for this transportation expense violates the mandate of section 285.1 and the public policy of the State of Iowa. In a similar case involving an action for the recovery of transportation expenses, the Iowa Supreme Court said:

> It might be said at this point, after reading the various statutes involved in this controversy, that they carry on their face the public policy of the state, which is to furnish to all children opportunity for an education at the public school; and also that in the statutes governing these matters as to consolidated school districts, it was the intention of the legislature that all children who live more than a mile from the school were to be transported at the expense of the district, and the duty of so transporting the said children was placed upon the district.
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> It is contended here that no written contract for said transportation was entered into with the plaintiff as required by section 4182 of the Code. We think this point is wholly beside the issue. As stated, the duty was placed upon the consolidated district to transport these children to the school; and it failed and refused so to do. If it were the rule that a written contract was necessary, then neither this plaintiff nor any other plaintiff could recover under similar circumstances. This conclusion is in strict accord with the fundamentals laid down in the case of Tow v. Dunbar Consolidated School District, 200 Iowa 1254, 206 N.W. 94. The real gist of this action is not a suit on a contract, but is a suit to recover by reason of the refusal of the school district to perform the duties placed upon it by statute.

Dermit v. Sergeant Bluff C.I. School District, 220 Iowa 344, 346-47, 261 N.W. 636, 637 (1935).

Therefore, we find that the Delagardelles are entitled to recover all actual damages suffered as a result of the school district's wrongful denial of transportation. Judgment is hereby rendered against the Waterloo Community School District in the amount of $2,162.54 (3713 miles @ .24/mile--$891.12, driving time--$1,271.42). We decline to award the Delagardelles' claims for lost wages,

child care expenses, and attorney fees. The lost wages claimed were not an actual expense caused by the wrongful decision of the school board. The child care expense is duplicative of the claim of actual expenses incurred by driving time. We find no authority supporting the Delagardelles' request for attorney fees.

REVERSED.

All judges concur except Sackett, J., who specially concurs, and Donielson, J., who dissents.

SACKETT, J. (specially concurring)

I concur with the majority's opinion but would limit plaintiff's recovery to 24 cents a mile for 3,713 miles.

I respectfully dissent. The operative opinion in this litany of appeals is the State Board of Education's decision. The State Board held, in relevant part:

> Since the parties do not dispute that transportation is available in the District, the issue focuses around the word "impracticable." The Delagardelles argue that the word "impracticable" is usually defined as bordering on the impossible. A quick review of several dictionaries verifies this position. The issue does not end here, however. The District has argued that the word "impracticable" has been defined in some court decisions as being something much different than, and less than, impossible. The cases cited seem to indicate that excessive and unreasonable cost facts may be taken into account when making determinations of whether something is "impracticable."
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> While those cited decisions and others may give guidance as to the statutory construction of the word "impracticable" in other contexts, they are not definitive help to us here. We have been shown no Iowa case law defining the term as used in the context before us, and we have not found any through independent research.
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> We have, however, located several code references in Chapter 285 which do indicate rather clearly that the District's argument should prevail. The strongest of those statutory provisions is found in Section 285.11. See also Section 285.10(2) and (8). That Section reads in relevant part as follows:
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> > 285.11 Bus routes--basis of operation. The establishment and operation of bus routes and the contracting for transportation shall be based upon the following considerations;
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> > * * *
> >
> > 2. Each bus route shall serve only those pupils living in those areas where transportation by bus is the most economical method for providing adequate transportation facilities. [emphasis added]
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> The requirement of Section 285.11, subsection 2, is in harmony with District policy on the transportation of students and in direct conflict with the interpretation of the word "impracticable" as defined by the Delagardelles. The only appropriate way to avert a conflict between the two statutory provisions is to provide a different meaning to the word "impracticable" than

that offered by the Delagardelles. We find that we agree with the District's interpretation that "impracticable" is something less than impossible and that cost factors may be taken into account when determining impracticability.

We must note, however, that school districts do not have complete and arbitrary discretion under Section 285.1, subsection 3, to decide whether it will provide transportation directly or by reimbursement. We find that the legislature intended that one of two standards must first be met. Those standards are impracticability and unavailability of direct transportation. When direct transportation is available, as it is in the District, before the District may reimburse parents for transportation, it must be able to establish that transportation is impracticable.

A conclusion that the District Board acted within its legal authority does not totally resolve the issue, however. The scope of review of the State Superintendent and the State Board is de novo. Arbore v. Cedar Rapids Community School District, 1 D.P.I. App. Dec. 74. On de novo review we find the position of the Appellants in their request for transportation for their son to be the more persuasive.

* * *

We also note that several other residences are located in the immediate area of the Appellants residence. Should other children of school age reside in those homes, the relative financial burden on the District would be lessened. But if all the parents in the area had to transport their children, the burden to the families would be multiplied. We conclude that it is more equitable for the District to provide school bus transportation in this situation than it is for the parents to be provided reimbursement for transportation.

The decision of the State Board of Education operated prospectively by ordering the school district to provide bus service, in effect, for the 1984-85 school year and thereafter. The State Board's decision did not address the time period of 1983-84 when the Delagardelles drove their son to school. The State Board was very careful by not stating that bus service was practicable; in fact, a fair reading of its opinion indicated bus service was impracticable but the case was decided on broader equity grounds.

The question arises that if the State Board felt bus service was not impracticable, why did it not just say so? Instead, the State Board invoked equity principles to provide that even if bus service was impracticable it would not be fair to deny such service. Given the manner in which the State Board's opinion was drafted, its holding that bus service should be provided does not necessarily mean that it would have been practicable for the school district to provide bus service during 1983-84.

Because the State Board did not say it was practicable to provide bus service during the 1983-84 school year, the district court's reliance upon § 285.1(3) was justified. Nothing in the State Board's decision, nor the district court's affirmance, indicates that bus service was practicable during the 1983-84 time period.

The trial court has already determined section 285.1(3) applies to this action and I find no error in this determination. The damages of $195.50 using the statutory formula [($230 average cost/pupil - $80) x 75% + $80] is correct.

The Delagardelles further maintain that the reimbursement provided in section 285.1, is not the exclusive remedy because the State Board of Education held this school district should provide bus service to the child. I cannot concur with this position either. Section 285.1(3) provides a reimbursement schedule and I cannot find any authority to indicate that the provided schedule is not to be considered the sole remedy. See Harwood v. Dysart Consolidated School District, 237 Iowa 133, 135, 21 N.W.2d 334, 335 (1946) (In ruling on a claim involving the predecessor statute to chapter 285, the court stated, "any right of recovery which the plaintiff may have must be based upon and limited by statutory provision"). Section 285.1(3) provides the sole monetary remedy for reimbursement of such expenses. Thus, I believe the trial court correctly denied

recovery pursuant to the quasi-contract theory, and denied consequential and foreseeable damages.

No damages could have been awarded pursuant to the tort liability of governmental subdivisions in Iowa Code Chapter section 613A (1983) because the school board's decision not to provide transportation was discretionary so that the board is exempt from liability under section 613A 4(3). This is so even if the decision the board arrived at was merely implementing an existing policy. See Butler v. State, 336 N.W.2d 416, 419 (Iowa 1983).

Because the first decision by the district court in this matter held the Delagardelle's child was entitled to bus transportation, such a determination does not necessarily mean the aggrieved party can go outside the statutory framework and seek damages in addition to those provided by statute. The state board concluded that although the Waterloo School Board acted within its authority in opting to reimburse the transportation costs, the interests of equity necessitated a ruling that the school district provide bus transportation for the child. Nonetheless, any expenses incurred during the time when the school board decided not to provide such service could only be remedies under the statutory scheme.

Thus, I would affirm the trial court's ruling.