IN THE COURT OF APPEALS OF IOWA

No. 8-578 / 97-2337

ELIZABETH McAVOY,

Plaintiff-Appellant,

vs.

COUNTY OF DUBUQUE,

Defendant-Appellee.

FILED
JAN 27 1999
CLERK SUPREME COURT

Appeal from the Iowa District Court for Dubuque County, Robert J. Curnan, Judge.

On appeal from the dismissal of her sexual harassment action, the plaintiff claims the district court erred in: 1) limiting her theory of recovery to a claim of negligent supervision; and 2) holding she had failed to met her burden of proof to show negligent supervision. **AFFIRMED.**

James M. Heckmann of James M. Heckmann Law Office, P.C., Dubuque, for appellant.

Les V. Reddick of Kane, Norby & Reddick, P.C., Dubuque, for appellee.

Heard by Sackett, C.J., Huitink, J., and McCartney, S.J.* Zimmer, J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

McCARTNEY, S.J.

Plaintiff-appellant Elizabeth McAvoy appeals the dismissal of her sexual harassment action. We affirm.

Walter Davis was an employee of Dubuque County employed as the executive director of the Dubuque County Commission of Veterans' Affairs. Elizabeth McAvoy received benefits from the commission on behalf of her son. On an occasion in October, 1994, Davis attempted to kiss McAvoy. She rejected this attempt and thereafter filed her complaint against Davis was with the Commission and the County of Dubuque. While the complaint was pending, McAvoy and Davis entered into an agreement in which she released any claims she had against him in exchange for his payment of $1500, his agreement to perform fifty hours of community service, and his participation in sexual harassment training.

McAvoy filed suit against Dubuque County alleging that the county, through the conduct of Davis, had engaged in sexually discriminatory conduct against McAvoy in the provision of public accommodations and services. The county moved for summary judgment. The court found McAvoy's settlement with Davis served as a settlement and release of Dubuque County from any liability claims that were based upon Davis's conduct. The court concluded any independent claims founded upon the county's conduct were unaffected by the settlement and could be tried.

After trial of such independent claims the district court in its judgment and decree cited the partial summary judgment ruling as the law of the case and held that any claims by the plaintiff had to be based upon the action or inaction of the county

which led to, encouraged, allowed, or enabled Davis's conduct. The court found the county had a written policy prohibiting sexual discrimination and the Veterans' Commission had no knowledge that Davis sexually harassed clients prior to the October incident. The court further found McAvoy had failed to sustain her burden to show inadequate or improper supervision, training, or direction by either the commission or the county, and dismissed her action.

McAvoy has appealed arguing the district court erred in limiting her theory of recovery against the county to a claim of negligent supervision. She asserts the county had an independent duty to refrain from discrimination and the court should have applied a strict standard of liability. McAvoy argues Davis's conduct constituted a de facto policy of discrimination by the county. She disputes that her settlement with Davis relieved the county from liability for his conduct. Finally, she claims the court erred in holding she had failed to meet her burden of proof to prove negligent supervision.

We review the issues raised in this appeal for errors at law. Iowa R. App. P. 4. Findings of fact in a law action are binding upon the appellate court if supported by substantial evidence. Iowa R. App. P. 14(f)(1). Evidence is substantial if a reasonable person would find it as adequate to reach a given conclusion, even if the reviewing court would reach a different conclusion. *See Sellers v. Employment Appeal Bd.*, 531 N.W.2d 645, 647 (Iowa App. 1995). We will view the evidence in a light most favorable to upholding the district court's judgment. *See Estate of Vazquez v. Hepner*, 564 N.W.2d 426, 429 (Iowa 1998).

I. Limitation of Theory of Recovery. McAvoy argues the settlement agreement was limited to the release of Davis for his individual actions and does not prevent her from bringing vicarious liability claims against Dubuque County. In *Biddle v. Sartori Memorial Hospital*, the Iowa Supreme Court ruled a release and discharge of an employee also releases the employer for any further claim against the employer when the theory of recovery is based on the employee's actions. *See Biddle v. Sartori Memorial Hospital*, 518 N.W.2d 795, 799 (Iowa 1994) (physician's settlement of medical malpractice claim extinguished any further claim patient's husband had against hospital on theory of vicarious liability). McAvoy's petition against the County of Dubuque clearly raises a claim of vicarious liability.[1] The district court properly found Dubuque County could not be vicariously liable for actions of Davis released by McAvoy. Furthermore, the district court did not prevent McAvoy from pursuing any claims independent of those relating to Davis' conduct. *See id.* (settlement wiped out any fault derived from physician's conduct separate and apart from hospital's negligence, but such negligence by the hospital remained actionable at trial).

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[1] McAvoy's petition against the County of Dubuque states:

> 7. The conduct of Defendant Dubuque County, *by and through the person of Walter E. Davis* as Executive Director of the Defendant's Commission of Veterans Affairs was sexually discriminatory toward Plaintiff Elizabeth McAvoy in the provision of a public accommodation and service, all in violation of Iowa Code § 216.7 and City of Dubuque Ordinance 27-61.
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> (Emphasis added.)

McAvoy attempts to argue her petition also raises a claim of strict liability under Iowa Code section 216.7 and therefore she be allowed to bring claims against Dubuque County for Davis' actions.[2] The parties dispute whether the Municipal Tort Claims Act permits claims based on strict liability theory. We need not resolve this matter today.

As we have already noted, McAvoy's petition did not raise a strict liability claim. Even if such a claim had been raised, it would have been without merit. The record simply does not support a finding McAvoy was denied accommodations, services or facilities. She was not entitled to any benefits; only her son was entitled to receive assistance. Neither McAvoy nor her son were ever denied any benefits or access to the Veterans' Affairs Office as a result of any action by Davis or Dubuque County. At no time were McAvoy's son's benefits ever conditioned upon McAvoy granting sexual favors to Davis. McAvoy has failed to present facts demonstrating a violation of section 216.7.

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[2] Iowa Code section 216.7 provides in relevant part:

> 1. It shall be an unfair or discriminatory practice for any owner, lessee, sublessee, proprietor, manager, or superintendent of any public accommodation or any agent or employee thereof:
>
> a. To refuse or deny to any person because of race, creed, color, sex, national origin, religion or disability the accommodations, advantages, facilities, services, or privileges thereof, or otherwise to discriminate against any person because of race, creed, color, sex, national origin, religion or disability in the furnishing of such accommodations, advantages, facilities, services, or privileges.

In addition, there is little indication Davis' actions towards McAvoy occurred within the scope of his employment. Nor did Davis' actions establish a de facto policy of discrimination. Dubuque county had in place a written, established, and acknowledged policy prohibiting sexual harassment and there is no indication Davis had the power to unilaterally modify or eliminate this policy with respect to the Veteran's Affairs Office.

II. Negligent Supervision. The district court required McAvoy to prove, by a preponderance of the evidence, Dubuque County's action or inaction led to, encouraged, allowed, or enabled Davis' conduct towards McAvoy. McAvoy argues 1.) the organizational structure of the Dubuque County government was flawed, leading to non-supervision by the county of Davis; and 2.) Dubuque County knew, or should have known, because of the relationship between Davis as executive director of the Veterans' Affairs Commission and potential recipients of benefits provided by that office, that Davis would act inappropriately towards McAvoy.

The district court found Davis reported to the Commission on a monthly basis, and conferred with Commissioners in regard to office matters and benefits. Written financial reports were also provided on a monthly basis. Despite McAvoy's arguments to the contrary, a system was in place for beneficiaries to bring complaints against the Commission or its employees. In fact, McAvoy utilized this very system when she complained to the Commission about Davis' behavior. We also determine as mere speculation unsupported by the record McAvoy's contention that periodic evaluations of Commission employees would have revealed problems with Davis.

Additionally, we find no support for McAvoy's alternate negligent supervision claim. The Commission and the County satisfied statutory and common sense supervisory obligations. Neither knew of nor had reason to know of Davis' actions towards McAvoy until McAvoy complained to the Commission.

We find no reason to reverse the ruling of the district court. Plaintiff has failed to sustain her burden to show inadequate or improper supervision or direction by either the Veterans' Commission or Dubuque County.

AFFIRMED.