IN THE COURT OF APPEALS OF IOWA

FILED
JUL 30 1997
CLERK SUPREME COURT

No. 7-230 / 96-1001

EMMANUEL P. PAPADAKIS,
Appellant,

vs.

000355

IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY, IOWA STATE BOARD OF REGENTS, and **DONALD O. THOMPSON,**
Appellees.

Appeal from the Iowa District Court for Story County, Dale E. Ruigh, Judge.

Plaintiff appeals the district court's ruling dismissing his action asserting declaratory judgment, contract, and tort claims regarding his terminated employment with Iowa State University. **AFFIRMED.**

James L. Sayre of James L. Sayre, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, and Cecelia C. Ibson, Assistant Attorney General, for appellees.

Heard by Sackett, P.J., Vogel, J., and Schlegel, S.J.*

*Senior judge from the Iowa Court of Appeals serving by order of the Iowa Supreme Court.

VOGEL, J.

Emmanuel Papadakis appeals the district court's ruling dismissing his declaratory judgment, contract, and tort claims regarding his terminated employment with Iowa State University (ISU).

Scope of review. We review an appeal involving a challenge to a trial court's subject matter jurisdiction at law. *Shirley v. Pothast*, 508 N.W.2d 712, 713 (Iowa 1993). We review the trial court's ruling, granting a motion to dismiss, for legal error. *Smith v. Smith*, 513 N.W.2d 728, 730 (Iowa 1994).

I. Motion to dismiss. The petition contained various claims against defendants, ISU, the Board of Regents, and Donald O. Thompson (Professor at ISU), for wrongful termination, breach of contract, tortious interference with contract, negligent misrepresentation, and fraudulent misrepresentation. The merits of this case were not litigated as the first hurdle of jurisdiction was challenged in ISU's motion to dismiss based primarily on Papadakis's failure to exhaust his administrative remedies. Papadakis contends the trial court erred in sustaining the motion to dismiss based on facts outside the challenged pleading.

It is elementary that the court must initially determine whether it has jurisdiction over the parties and subject matter before it can proceed to decide the merits of a case. *See Anderson v. W. Hodgeman & Sons, Inc.*, 524 N.W.2d 418, 420-21, 421 n.2 (Iowa 1994). Even though a court may have subject matter jurisdiction, it may not have authority to act because of a premature filing. *Holding v. Franklin*

County Zoning Bd. of Adjustment, ____ N.W.2d ____ (Iowa June 19, 1997). In this case, the district court had subject matter jurisdiction pursuant to Iowa Code section 17A.19 (1995), but it did not have authority to act because of Papadakis's failure to exhaust his administrative remedies. *City of Des Moines v. Des Moines Police Bargaining Unit Ass'n*, 360 N.W.2d 729, 730-31 (Iowa 1985).

For Papadakis to claim that matters beyond the petition should not have been, but were, considered would be to put blinders on the court which is not contemplated in our rules of procedure, especially when jurisdiction is challenged. The court may, on its own motion, examine grounds of its jurisdiction before proceeding further. *Troester v. Sisters of Mercy Health Corp.*, 328 N.W.2d 308, 311 (Iowa 1982). "It makes no difference how the question comes to . . . [the court's] attention. Once raised, the question must be disposed of, no matter in what manner of form or stage presented." *Tigges*, 356 N.W.2d at 510 (quoting *Carmichael v. Iowa State Highway Comm'n*, 156 N.W.2d 332, 340 (Iowa 1968)). Additionally, it is feasible for a court to take judicial notice of a jurisdictional matter without regard to the pleadings pursuant to Rule 94, Iowa Rules of Civil Procedure.

Notwithstanding the allowance of outside facts, the trial court, prior to making its findings stated: "In this case, reference to facts outside the Plaintiff's petition has been unnecessary. The rulings discussed below are based solely upon the Court's review of the facts set forth in Mr. Papadakis' petition."

Even if Papadakis was correct that the district court's ruling necessarily implicated facts outside of the pleadings, some limited consideration is allowed under the rules and, thus, we find no error. We affirm the district court in this respect. We now turn to decide whether the court was correct in dismissing the petition for failure to exhaust administrative remedies.

II. Facts. Papadakis was employed with the defendant, ISU, as a senior scientist and adjunct professor pursuant to a series of three employment contracts (faculty letters of intent) from July 1, 1987 until May 31, 1995. Papadakis was notified in a letter from Donald Thompson dated May 8, 1992, that he would be terminated May 31, 1995, although the final contract covered a period ending on June 30, 1996. However, the final contract was "subject to the continuing availability of funds," as well as other contingencies. The May 8, 1992, letter stated, "your current appointment with the three year rolling tenure will be terminated effective May 31, 1995. Subject to continuing funding levels, your position will be maintained at its current level until that date." Thompson also wrote to Papadakis on April 10, 1995:

> You were informed that continuing your appointment was contingent upon your securing additional outside funding. On May 11, 1994, Jerry Jenison wrote to you to indicate the importance of your securing outside funding. This letter also was attached to your Petition for Declaratory Judgment. Since you have not been successful in securing additional outside funding, no action has been taken to reappoint you beyond May 31, 1995. Consequently, I must remind you that your appointment terminates on that date.

Papadakis believed these contracts created a three-year tender requiring a three-year notice of termination or termination with cause pursuant to the faculty personnel handbook. Papadakis had filed two grievances against Thompson. ISU claims that the second grievance involved Papadakis's claim that he had continuous employment as a research scientist.

ISU also claims Papadakis filed a grievance with the university faculty senate regarding his pending termination. ISU contends a senate subcommittee rejected Papadakis's claim that he had continuing employment as a research scientist with the university. ISU ultimately rejected Papadakis's grievance.

In October 1995, Papadakis filed a petition for declaratory judgment and petition at law against ISU, Iowa State Board of Regents, and Thompson seeking a determination of his employment rights under the third letter of intent and the university personnel policies which would allegedly make his appointment continuous subject to termination only for cause. Papadakis further alleged a breach of contract action against ISU based on his declaratory judgment claims. He also asserted three tort claims against ISU and Thompson regarding the termination of his employment.

The defendants filed a motion to dismiss asserting the district court did not have subject matter jurisdiction of his declaratory judgment and contract claims. ISU asserted the claims regarding the termination of his employment with the university involved agency action subject to judicial review exclusively through Iowa Code chapter 17A. ISU further claims that Papadakis's tort claims were still governed by

sovereign immunity under Iowa Code chapter 669 and such tort claims were barred because Papadakis failed to file a claim with the state appeal board. Papadakis claims the motion to dismiss rested on alleged facts regarding termination of his employment which were not raised in his petition.

After a hearing, the district court entered an order on May 9, 1996, dismissing Papadakis's petition. The court concluded that his declaratory judgment and contract claims involved agency action exclusively subject to judicial review pursuant to Iowa Code chapter 17A. The court determined it did not have original jurisdiction to consider these claims.

III. Declaratory judgment; exhaustion of administrative remedies. The exhaustion requirement is "a bedrock of administrative law; under Iowa Code section 17A.9 (1995), courts undertake review of administrative action only after full completion of any challenge at the administrative level . . . courts cannot be asked to review an administrative matter until the point has been fully pursued and lost before the agency." *Portz v. Iowa Bd. of Medical Examiners*, ____ N.W.2d _____ (Iowa May 21, 1997). This requirement "seeks to insure an inter-agency review so that the agency will have a chance to correct its own errors." *Squealer Feeds v. Pickering*, 530 N.W.2d 678, 681 (Iowa 1995). We do, however, recognize an exception if a plaintiff claims no adequate administrative remedy exists and, because of the denial of access to district court, will suffer "'irreparable injury of substantial dimension.'" *IES Util., Inc. v. Iowa Dep't of Revenue & Finance.*, 545 N.W.2d 536, 539 (Iowa

1996) (quoting *Salsbury Lab v. Iowa Dep't of Envtl. Quality*, 276 N.W.2d 830, 837 (Iowa 1979)).

The Supreme Court noted in *Genetzky v. Iowa State Univ.*, 480 N.W.2d 858 (Iowa 1992), that an alleged breach of an employment contract (by analogy here, the allegedly wrongful termination of an employment relationship) is "agency action" and that the aggrieved professor could not proceed on his civil claims, but rather had an exclusive remedy of judicial review under the Iowa Administrative Procedure Act (Chapter 17A). The operative language instrumental to that court's decision relates to whether the nature of claim rests "within the statutory mandate of the agency . . . and are peculiarly within its discretion and area of expertise . . . . Clearly then, such matters constitute agency action." *Id.* at 861 (citing *Allegre v. Iowa State Bd. of Regents*, 319 N.W.2d 206 (Iowa 1982)).

The *Genetzky* court recognized that had the breach "involved a matter bearing 'scant relation to the agency's statutory mandate or supposed area of expertise,'" it might have come to a different decision. *Id.* (quoting *Jew v. University of Iowa*, 398 N.W.2d 861, 864 (Iowa 1987)). The *Jew* case involved a sexual harassment claim and was not restricted to administrative agency review as the action had little connection with the mandate of the university or its area of expertise. *Jew*, 398 N.W.2d at 861.

We find, as did the district court, the facts in this case are "indistinguishable from those in *Genetzky*." ISU acted under its statutory duty in terminating Papadakis

based on its evaluation of personnel and inherent function to make employment decisions. ISU took into consideration the available funding upon which Papadakis's employment clearly hinged, and determined, through agency action, his employment could no longer continue. We thus find ISU and the Board of Regents acted within their statutory mandate and considered this matter which was within their exclusive authority. While we recognize the final letter of intent and termination letter cumulatively could have generated confusion, we nevertheless recognize the manner in which ISU employed Papadakis was explained to him and should have prompted him to take administrative action to resolve his claims.

Having carefully considered all arguments on appeal, we affirm the district court in dismissing Papadakis's petition.

AFFIRMED.