

FILED

APR 27 1982

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

42

DOWS COMMUNITY SCHOOL DISTRICT,)

Petitioner-Appellant,)

Filed April 27, 1982

vs.)

2-40

2-65258

IOWA CIVIL RIGHTS COMMISSION,)

Respondent-Appellee.)

Appeal from Wright District Court, Newt Draheim, Judge.

Petitioner appeals from the district court order on judicial review sustaining respondent agency's special appearance, asserting: (1) the district court had jurisdiction to hear an appeal from an agency hearing officer's order, which overruled a special appearance before the agency and (2) the district court should not have considered the merits of the special appearance before the agency since the petition for judicial review had been dismissed for lack of jurisdiction.

AFFIRMED IN PART AND VACATED IN PART.

Michael J. Cross of Coonley & Coonley, Hampton, for petitioner-appellant.

Thomas J. Miller, Attorney General, and Victoria L. Herring, Assistant Attorney General, for respondent-appellee.

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

PER CURIAM

Petitioner appeals from the district court order on judicial review sustaining respondent agency's special appearance, asserting: (1) the district court had jurisdiction to hear an appeal from an agency hearing officer's order which overruled a special appearance before the agency and (2) the district court should not have considered the merits of the special appearance before the agency since the petition for judicial review had been dismissed for lack of jurisdiction. We affirm the district court's order sustaining appellee's special appearance and vacate its decision on the special appearance pending before the agency.

Appellant, Dows Community School District, was involved in an employment discrimination case pending before appellee, the Iowa Civil Rights Commission. Appellant claimed, however, the Commission lacked personal jurisdiction over appellant due to defective service of process. Appellant contested the Commission's jurisdiction by filing a special appearance with the commission's hearing officer. The hearing officer denied appellant's special appearance. Appellant then sought judicial review of the hearing officer's decision in the district court. Agency action had been stayed by the district court during the pendency of judicial review. Appellee responded by filing a special appearance in the district court. Appellee claimed appellant failed to exhaust available administrative remedies, which is a jurisdictional defect. The trial court sustained the special appearance and lifted the stay. The trial court also determined the merits of the special appearance pending before the agency. Appellant appeals the trial court's order.

Failure to exhaust administrative remedies is a jurisdictional defect in the district court. Richards v. Iowa State Commerce Commission, 270 N.W.2d 616, 619 (Iowa 1978); Elk Run Telephone Co. v. General Telephone Co., 160 N.W. 2d 311, 315

(Iowa 1968). The district court below dismissed appellant's claim, apparently finding the court lacked subject matter jurisdiction due to plaintiff's failure to exhaust the available administrative remedies. Cf. Myers v. Cople, 258 N.W.2d 301, 303 (Iowa 1977)(which indicates a failure to exhaust administrative remedies goes to the question of subject matter jurisdiction.) Our review of a dismissal for lack of subject matter jurisdiction is on errors assigned. Kalo Brick and Tile Co. v. Chicago and Northwestern Transportation Co., 295 N.W.2d 467, 468 (Iowa App. 1979); Moraveck v. Davenport Community School District, 262 N.W.2d 797, 800 (Iowa 1978); cf. Berkley International Co., Ltd. v. Devine, 289 N.W.2d 600, 602 (Iowa 1980)(a case concerning appellate review of the denial of a special appearance contesting the trial court's jurisdiction). Consequently, the findings of the trial court have the force and effect of a jury verdict. Id. We are not, however, bound by the trial court's application of legal principles or its conclusions of law. Id.

Section 17A.19(1), The Code 1979, limits judicial review to a

person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof under this chapter.... A preliminary procedural or intermediate agency action is immediately reviewable if all adequate administrative remedies have been exhausted and review of the final agency action would not provide an adequate remedy.

This case involves an interlocutory agency decision. Section 17A.15(3), The Code 1979, indicates the decision of a hearing officer, as the presiding officer, is only a proposed decision. Section 17A.5(3), The Code 1979, automatically makes the proposed decision final unless a timely appeal of the proposed decision to the agency is effected. In this case, further agency action after the decision of the hearing officer was rendered was precluded by the district court's order staying agency action during the pendency of appellant's petition for judicial review. The

hearing officer's decision, therefore, had not become final. As an intermediate agency action, the hearing officer's decision was not ripe for immediate judicial review until all administrative remedies had been exhausted and appellant establishes review of the final agency action would not provide an adequate remedy. § 17A.19(1), The Code 1979.

We conclude there is an available administrative remedy, which appellant failed to pursue. Appellant should have appealed the hearing officer's decision to the Commission. Appellant's failure to do so was a jurisdictional defect which requires dismissal of its petition for judicial review. The district court properly sustained appellee's special appearance.

The trial court should not have, however, determined the substantive merits of the special appearance pending before the agency's hearing officer. The trial court lacked jurisdiction over that issue. The portion of the trial court's order relating to the sufficiency of the service of process, therefore, is vacated.

We affirm the district court's order on the jurisdictional question, vacate its ruling on the sufficiency of process, and return the case to the agency for further proceedings.

AFFIRMED IN PART, VACATED IN PART.