IN THE COURT OF APPEALS OF IOWA

FILED
APR 27 1982
CLERK SUPREME COURT

SHIRLEY H. DECOSTER,

Plaintiff-Appellant,

vs.

CITY OF MUSCATINE and CHARLES W. COATES,

Defendants-Appellees.

Filed April 27, 1982 37

2-57
2-66625

Appeal from Muscatine District Court, Max R. Werling, Judge.

The plaintiff appeals from an adverse judgment in her action alleging that she was wrongfully discharged by the defendant city. AFFIRMED.

Patricia C. Kamath, Iowa City, for plaintiff-appellant.

John D. Stonebraker of McDonald, Stonebraker & Cepican; and Patrick M. Ryan of Hintermeister & Ryan, Davenport, for defendants-appellees.

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

PER CURIAM

The plaintiff appeals from an adverse judgment in her action alleging that she was wrongfully discharged by the defendant city. We affirm.

The plaintiff, Shirley DeCoster, was employed by the defendant City of Muscatine as assistant urban renewal director. She was terminated in a letter signed by the defendant Charles Coates on October 6, 1975.

On October 1, 1975, Ms. DeCoster, her husband, and her immediate supervisor, Rodney Parsons, drove to Omaha to attend a conference sponsored by HUD in a city-owned vehicle. Mr. Parsons drove to Omaha. During the conference, Ms. DeCoster decided not to attend one of the sessions and to take a drive with her husband. Mr. Parsons handed the car keys to Ms. DeCoster with the instruction, "You drive." Contrary to the instruction, Ms. DeCoster handed the car keys to her husband for him to bring the car around to the front of the motel. Mr. DeCoster had an accident in the parking lot, resulting in $643.71 damage to the car.

The following Monday, Ms. DeCoster received a termination letter, which informed her that she was fired for allowing her husband to drive and because of the accident. The letter stated that her unauthorized action had caused considerable embarrassment to the city and greatly reduced her effectiveness as assistant urban renewal director.

Ms. DeCoster spoke with the mayor concerning a possible appeal, and he suggested that she write a memo for him to present to the city council. She wrote a memo to the mayor and city council requesting a hearing regarding her dismissal. At the city council meeting on October 16, a councilman moved that an Executive Session be held with Ms. DeCoster on October 23, but the motion died for lack of a second. Ms. DeCoster never received a hearing regarding her dismissal.

She filed suit, alleging that she had been wrongfully discharged by the city and Mr. Coates. The trial court denied recovery and dismissed the petition. In her appeal, Ms. DeCoster argues that: (1) the trial court erred in its holding that she was fired without violation of her liberty interests; (2) an at-will public employee cannot be fired for a reason violative of public policy such as the exercise of her constitutional rights or for whistleblowing; and (3) she had a due process right to a termination hearing prior to her firing.

Since a violation of constitutional rights is alleged, we review the facts de novo in order to make an evaluation of the totality of the circumstances under which the trial court's judgment regarding those constitutional rights was made. Anderson v. Low Rent Housing Com'n, Etc., 304 N.W.2d 239 (Iowa 1981).

Ms. DeCoster argues that the trial court erred when it held she was fired without violation of her liberty interest. We do not believe that Ms. DeCoster had a constitutionally protected liberty interest which was violated by her discharge. An at-will public employee is not deprived of liberty when she is terminated by her employer without public disclosure of the reasons for the discharge. Bishop v. Wood, 426 U.S. 341, 348 (1976). Procedural due process is required only when "charges are brought against an employee which might seriously damage standing and association in the community or impose a stigma or other disability that forecloses the freedom of the employee to take advantage of other employment opportunities." Anderson v. Low Rent Housing Com'n, Etc., 304 N.W.2d 239, 243 (Iowa 1981).

Ms. DeCoster asserts that the City Council made such public disclosure by making several stigmatizing statements to a newspaper reporter after the city council meeting. She asserts that one councilman made a statement for the record, which was published in the newspaper, "that the accident had nothing to do with her being fired." She asserts that council members made allegations against

both Ms. DeCoster and her husband, that she drank too much and that he had mafia connections. These alleged statements were made after the council meeting in conversations with a newspaper reporter who was investigating the termination. Ms. DeCoster argues these statements were publication which stigmatized her.

The purpose of a due process hearing when a public employee is stigmatized by the employer when he is terminated is to have an opportunity to clear his name of the charges brought against him. Owen v. City of Independence, 589 F.2d 335 (8th Cir. 1978), rev'd on other grounds 445 U.S. 622, 63 L.Ed.2d 673, 100 S. Ct. 1398. It is the official conduct of the city or its lawmakers which must have caused the stigma. See Owen, supra.

In this case, the letter stating the reasons for the termination was given to Ms. DeCoster in private. Ms. DeCoster requested a hearing before the city council, which was in effect denied. No public statement was ever made regarding the reasons for the discharge. Therefore, there was no need to provide a name clearing hearing to Ms. DeCoster, since her employer had not stigmatized her. After the council refused to hear Ms. DeCoster, the reporter talked with individual council members after the council meeting ended. Any statements made by those individuals at that point in time cannot provide retroactive support for Ms. DeCoster's right to a due process hearing. See Bishop, supra at 348. Any statements made were made by individuals not in any official capacity or as part of any official action taken by the city. While Ms. DeCoster may be able to prove some cause of action against certain persons in their individual capacity, she has not proven that the city's action violated her liberty interest.

Ms. DeCoster next argues that she was fired for reasons violative of public policy. She argues that because she was cooperating with federal officials in

their investigation of the urban renewal project, the city and defendant Coates were "only waiting for the first opportunity" to fire her. She argues that further evidence of this is that the defendant Coates had lied to Mr. Parsons, stating that Ms. DeCoster drank, was tardy, and was disloyal to the city.

Ms. DeCoster has failed to prove that her discharge violated public policy. There was a legitimate reason for her discharge: that she let her husband, who was not a city employee, drive a city-owned vehicle when her supervisor told her to drive, and her husband had an accident while he was driving the car. Since the city had a legitimate reason to fire her, we cannot say the discharge violated public policy. See Abrisz v. Pulley Freight Lines, Inc., 270 N.W.2d 454, 456 (Iowa 1978).

Third, Ms. DeCoster argues she had a property interest in her employment which was violated when she was fired without a hearing. We disagree. Whether a property interest exists in employment is determined by state law. Bishop v. Wood, 426 U.S. 341, 344 (1976). The Iowa court has held that where there is no expectation of continued reemployment by a teacher, there is no property interest requiring due process. Keith v. Community Sch. Dist, 262 N.W.2d 249, 257 (Iowa 1978). "Generally a contract for permanent employment that is indefinite as to time of duration, and one wherein the employee merely promises to perform services, is terminable at will by either party, with or without cause." Moody v. Bogue, 310 N.W.2d 655, 658 (Iowa App. 1981). It is conceded that Ms. DeCoster was an at-will employee. Since she could be terminated at will, with or without cause, she had no expectation of continuing employment, and thus no property interest requiring a due process hearing when she was terminated.

AFFIRMED.