

IN THE COURT OF APPEALS OF IOWA

No. 1-188 / 90-1369

JAMES S. HUSTON and BEVERLY HUSTON,

Appellees,

vs.

CITY OF DES MOINES, IOWA, A Municipal Corporation,

Appellant.

FILED

AUG 27 1991

CLERK SUPREME COURT

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Appeal from the Iowa District Court for Polk County,
J.W. Jordan, Judge.

City appeals from the district court's ruling Huston was entitled to rescind his resignation and to apply for group health insurance at the rate currently available to retired employees. **AFFIRMED.**

Nelda Barrow Mickle, Des Moines City Solicitor, for appellant.

Harvey L. Harrison, Des Moines, for appellee.

Heard by Oxberger, C.J., and Sackett and Habhab, JJ.

PER CURIAM.

From 1956 to 1986 James Huston was a civil service employee of the City of Des Moines, working at the Des Moines Sewage Treatment Plant. In 1986 Huston became a suspect in the loss of certain City property from the sewage treatment plant. After an investigation, Huston and City representatives entered into negotiations about Huston's continued employment. These negotiations led to Huston's resignation without any formal disciplinary action. Huston also reimbursed the City \$144.50 for the missing property.

Huston later asserted his negotiated resignation included an agreement by the City that he would be permitted to continue his participation in City group health insurance, and he would be permitted to obtain the health insurance at a favorable "retiree's rate." The City denied any such agreement on health insurance and refused to allow Huston to continue to participate in City group health insurance.

Huston sued the City, alleging it had breached an agreement with him concerning the availability and cost of employee health insurance following his negotiated resignation. The district court initially granted the City a summary judgment on the ground the Civil Service Commission had exclusive jurisdiction to resolve this controversy under Iowa Code chapter 400. However, in a

March 1989, per curiam opinion, the Iowa supreme court reversed most portions of the summary judgment ruling and remanded the case for further proceedings. The supreme court held that most of Huston's claims arose under common law, and, therefore, were not governed by chapter 400. The supreme court also held Huston's claim for wrongful discharge was subject to the Civil Service Commission's exclusive jurisdiction and therefore could not survive the City's summary judgment motion. Additionally, the supreme court stated "Huston voluntarily resigned pursuant to a negotiated agreement with the City. For breach, if any, of that agreement, chapter 400 has no application." slip opinion at page 3.

Upon remand, the district court held that Huston was entitled to rescind his resignation and to apply for group health insurance at the rate currently available to retired City employees.

The City has appealed the district court's ruling.

The City asserts the remedy fashioned by the district court was unavailable because it was not requested in the pleadings.

The City also contends, in essence, that the evidence did not support the equitable relief granted by the district court. The City argues there was no evidence it had ever agreed to allow Huston to continue to participate in group health insurance at the "retiree's rate."

Additionally, the City argues the district court's equitable relief was unwarranted under its factual findings.

The City contends the equitable remedy fashioned by the district court was barred by Iowa Code chapter 400 because it had the effect of reinstating a worker to civil service employment in a manner other than the manner prescribed by chapter 400 (a proceeding before the Civil Service Commission).

Finally, the City asserts the supreme court's March 1989 opinion barred the equitable remedy fashioned by the district court. The City contends the March 1989 opinion is the "law of the case." The City asserts the March 1989 opinion held that Huston's claim for wrongful discharge could not be brought in a district court suit because of the Civil Service Commission's exclusive jurisdiction over discharge from civil service employment. The City then argues the equitable remedy fashioned by the district court essentially granted Huston relief for wrongful discharge.

We review this equity action de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

The district court found:

The retention of health insurance was not a special consideration for Huston's retirement, but it was a benefit to which Huston and [his attorney] believed Huston would get, and it was important to Huston. It appears clear to the

Court that it was only after the resignation was tendered and accepted that either Huston or [his attorney] understood there was no right to continue group health insurance on an employee's resignation. Whether Kozitza [the assistant to the Public Works director] knew or not, the Court is not sure, but it was Kozitza who created the pressure system of getting it all wrapped up that led Huston and [his attorney] to believe that insurance was included with "all benefits." Both Huston and the City wanted to avoid publicity if possible and the City's claim that the rush job was only for Huston is misplaced.

Reformation of an agreement does not mean changing the terms of the agreement but refers to a change in the agreement to reflect the real agreement of the parties. Kufer v. Carson, 230 N.W.2d 500, 503 (Iowa 1975) (authorities omitted). The right to reform an agreement is not absolute but lies within the discretion of the equity court and depends upon whether the remedy is essential to the ends of justice. Id. at 504. "Ultimately equity will grant relief if an instrument as written fails to express the true agreement between the parties without regard to the cause of the failure to express the agreement as actually made, whether it is due to fraud, mistake in the use of language, or anything else which prevented the instrument from expressing the true intention of the parties." Id. (authorities omitted).

Although the trial court stated it rescinded the agreement between the parties, we find the trial court reformed the agreement to effectuate the parties' intent. The trial court fashioned an equitable remedy in which it

attempted to place the parties in the same positions they believed they were in just prior to Huston's resignation, and which allowed Huston to have the benefits the parties thought he would have. Essentially, the trial court fashioned a remedy which effectuated the intent of the parties at the time they entered the agreement which settled the employment dispute between them. We find the trial court's remedy equitable and therefore affirm it.

We have considered the other issues raised by the City and find them to be without merit. We emphasize that chapter 400 is not applicable to the negotiated agreement between the City and Huston which is the matter before us on this appeal.

AFFIRMED.