FILED
NOV 30 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

RICHARD W. BURNES,)
Petitioner-Appellant,) Filed November 30, 1983
vs.)
CITY OF TAMA, IOWA,) 3-355 / 83-239
Respondent-Appellee.)

Appeal from Tama District Court - William L. Thomas, Judge.

Petitioner, an honorably discharged veteran, appeals from an adverse summary judgment on his petition for writ of mandamus in which he sought to compel respondent city to reinstate him to his position as public works director. AFFIRMED.

Mark D. Havlik of Morris, Anderson & Havlik, Tama, for petitioner-appellant.

Daniel Rathjen of Willett & Rathjen, Tama, for respondent-appellee.

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

PER CURIAM

On July 31, 1981, petitioner Richard W. Burnes was laid off indefinitely from his job as public works director for respondent City of Tama. Burnes subsequently filed a petition for writ of mandamus seeking reinstatement to his job and back pay. Burnes alleged that his indefinite layoff violated the provisions of the Iowa Veterans Preference Law, Iowa Code chapter 70.

Following the city's answer and some discovery, the city filed a motion for summary judgment, alleging nine separate grounds, including allegations: that Burnes improperly sought relief by way of mandamus under Iowa Code section 70.4, even though Burnes did not allege that he was denied preference in favor of a nonveteran; that Burnes' position placed him in a strictly confidential relation to the appointing officer which therefore excluded him from the protections of the Veterans Preference Law, Iowa Code section 70.8, and that Burnes was not entitled to a preference under Iowa Code chapter 70 because his former position had been abolished. Attached to the city's motion was a job description of the public works director. Burnes filed a resistance to the motion for summary judgment, asserting that there were disputed issues of material fact regarding the city's claims, particularly those claims regarding the alleged confidential relationship and abolishment of Burnes' former position. In an affidavit attached to the resistance, Burnes stated that he felt his position was abolished only after the city decided to lay him off and that his relationship with the city was not a strictly confidential relationship. Burnes did not state any specific facts in support of his conclusions.

The trial court sustained the city's motion for summary judgment and dismissed Burnes' petition. The court first stated that the determination of whether a confidential relation exists is a question of law rather than fact. The court then concluded that Burnes' position as public works director placed him in a confidential relationship with the city, and that the provisions of the Veterans

Preference Law therefore did not apply to Burnes pursuant to Iowa Code section 70.8. The court indicated that its decision on the confidential relation issue was based on Burnes' job description. The court also noted that Burnes' answers to the interrogatories indicated that the reason for Burnes' layoff was the financial situation of the city. The court concluded that the city's financial problems provided sufficient justification for terminating Burnes' position, and that termination on such grounds was not prohibited by the Veterans Preference Law. Because the motion for summary judgment was sustained on the confidential relationship issue, the court did not rule on the other divisions of the motion.

Burnes now appeals from the adverse summary judgment, asserting that: (1) there was a disputed issue of material fact regarding whether Burnes' position placed him in a strictly confidential relationship with the city and thereby, pursuant to Iowa Code section 70.8, made the protections afforded by the Iowa Veterans Preference Law inapplicable; and (2) there was a disputed issue of material fact regarding whether Burnes' position was abolished because of the city's financial situation.

Our review of the case is on assigned error. Summary judgment is properly granted only when there is no issue as to a material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); Froning & Deppe, Inc. v. South Story Bank & Trust Co., 327 N.W.2d 214, 215 (Iowa 1982); Barnhill v. Davis, 300 N.W.2d 104, 105 (Iowa 1981). On appeal from summary judgment, we view the circumstances in the light most favorable to the party against whom the motion for summary judgment was made. Haack v. Burlington Northern, Inc., 309 N.W.2d 147, 150 (Iowa Ct. App. 1981). We may determine only whether a genuine issue of material fact existed and whether law was correctly applied. Froning & Deppe, Inc., at 215.

In support of his claim that there was a disputed issue of material fact regarding the confidential nature of his relationship with the city, Burnes directs

us to look at the affidavit which accompanies his resistance to motion for summary judgment. In the affidavit, signed by Burnes, he states:

> I am familiar with those attributes of a confidential relationship .... I do not feel that my relationship with the City of Tama constituted, in any way, a strictly confidential relationship within the meaning of Iowa law, and I dispute the factual conclusion offered by the Tama City Clerk in her Affidavit, that my position was in fact a strictly confidential relationship within the meaning of the law.

We agree that, by this statement, Burnes takes issue with the city's claim that his position was one of a confidential relationship with the city. However, he offers no factual support for his argument. The city presented a job description which included duties that would indicate a confidential relationship, within the meaning of the statute, existed. Burnes offers no facts to dispute this, although he does dispute it. Upon the record, therefore, we find no issue of material fact.

Burnes argues that the city's motion for summary judgment does not raise the issue of city finances as the reason for the abolition of Burnes' position. He claims that the trial court's reliance on a ground not raised by the moving party as a justification for its ruling is misplaced. However, the court did not place its ruling on this ground, nor do we.

The purpose of summary judgment is to enable a party with a just cause of action to obtain judgment without unnecessary delay and expense of trial in cases where there is no substantial or relevant factual issue to try. Davis v. Travelers Ins. Co., 196 N.W.2d 526, 529 (Iowa 1972); Northwestern Nat. Bank of Sioux City v. Steinbeck, 179 N.W.2d 471, 475 (Iowa 1970). No factual issue existed in this case; Burnes' arguments are without merit. The trial court properly granted summary judgment in this case.

AFFIRMED.