FILED
MAR 24 1981
CLERK SUPREME COURT



IN THE COURT OF APPEALS OF IOWA

ROBERT R. JONES,

Claimant-Appellee,

vs.

IOWA DEPARTMENT OF JOB SERVICE,

Defendant-Appellant.

GEORGIA PACIFIC CORPORATION, Gypsum Division,

Defendant.

Filed March 24, 1981

0-457
2-64932

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Appeal from Webster District Court - R. K. Richardson, Judge.

Defendant agency appeals with permission from an interlocutory trial court order overruling defendant's special appearance in claimant's action seeking judicial review of the agency's denial of unemployment benefits. Defendant contends on appeal that the trial court lacked subject matter jurisdiction. AFFIRMED.

Walter F. Maley, Blair H. Dewey, and Thomas J. McSweeney, Des Moines, for defendant-appellant.

Blake Parker, Fort Dodge, for claimant-appellee.

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

DONIELSON, J.

Defendant agency appeals, with permission, from an interlocutory trial court order overruling defendant's special appearance in claimant's action to seek judicial review of agency's denial of unemployment benefits. Defendant asserts that the trial court lacked subject matter jurisdiction due to the pendency of a separate action in which claimant and others sought declaratory and injunctive relief from the retroactive application of a legislative change in the method of determining eligibility for unemployment benefits. We affirm.

I.

Claimant Robert R. Jones was terminated from his job on June 4, 1979. On June 5, 1979, he filed a claim for unemployment benefits, which was protested by defendant Georgia Pacific Corporation. On June 21, 1979, after an initial fact-finding interview, the Job Service claims deputy found that the claimant had been discharged for misconduct and disqualified him for four weeks worth of benefits, amounting to a forfeiture of $532.00. The hearing officer affirmed the misconduct finding and denied the claimant all unemployment benefits, in accord with chapter 96, The Code 1979, as amended by 1979 Session, 68th G.A., ch. 33. Claimant then appealed the hearing officer's decision to the Job Service Appeal Board, which ultimately affirmed the decision and later denied claimant's application for rehearing. Thus having exhausted his administrative remedies, the claimant filed a petition in Webster District Court in December of 1979, requesting judicial review of the final agency action disqualifying him from receipt of unemployment benefits. The petition also sought injunctive relief from allegedly discriminatory acts of the employer and from retroactive application of a legislative change in the method of determining the appropriate period of disqualification.

This case is further complicated by the fact that on September 12, 1979, the claimant and nine other plaintiffs filed suit in Polk District Court, seeking, among other things, an injunction against retroactive application of the legislative amendment to their unemployment claims. However, the plaintiffs in the Polk County suit did not seek judicial review of the agency decisions in their individual cases. The defendants in that action filed a special appearance, which was sustained by the district court on the grounds that the challenged agency action was subject to judicial review only after exhaustion of all adequate administrative remedies. Plaintiffs then appealed and, in an

opinion written by this court, it was held that the Polk County action was a petition for judicial review and that the district court lacked subject matter jurisdiction with regard to the first division of the petition because plaintiffs had failed to exhaust adequate administrative remedies. The case was remanded for a hearing on the second division of the petition. Toomer v. Iowa Department of Job Service, No. 64204 (Iowa Ct. App., filed August 26, 1980).

II.

In the instant case, the defendant agency filed a special appearance and defendant employer filed a motion to dismiss. Both the special appearance and the motion to dismiss asserted that the Webster County district court lacked subject matter jurisdiction because the Toomer case, which allegedly involved identical issues, was at that time being appealed. The trial court overruled the special appearance and the motion to dismiss, stating that the alleged jurisdictional defect was actually a defense of res judicata and that such defense cannot be properly raised by special appearance. We agree.

Defendant contends that the Webster County district court lacked subject matter jurisdiction because of the claimant's status as plaintiff in a case allegedly involving identical issues. In raising this argument, defendant is actually alleging that the doctrine of res judicata should bar the plaintiff's claim. Res judicata is an affirmative defense that must be properly pled in the answer before evidence of a prior adjudication is admissible. Bertran v. Glen Falls Insurance Co., 232 N.W.2d 527, 531 (Iowa 1975); Bickford v. American Interinsurance Exchange, 224 N.W.2d 450, 453 (Iowa 1974). The exclusive purpose of a special appearance is to attack the jurisdiction of the court. Iowa R. Civ. P. 66; see DeCook v. Environmental Security Corp., 258 N.W.2d 721, 725 (Iowa 1977). A special appearance may not be used to raise defensive matters. Rothe v. City of Des Moines, 249 N.W.2d 849, 850 (Iowa 1977); Boye v. Mellerup, 229 N.W.2d 719, 721 (Iowa 1975). Therefore, a special appearance was an inappropriate vehicle for defendant's claim.

We affirm the trial court order overruling the defendant's special appearance and remand the case for further proceedings. On remand, the defendants should raise any and all defenses by answer. We leave it to the trial court to decide whether any parts of plaintiff's claim are precluded by the prior litigation and whether the Polk County district court obtained priority over the case.

AFFIRMED.