IN THE COURT OF APPEALS OF IOWA

No. 1999-479 (9-736) / 98-2230
Filed January 12, 2000

FILED
JAN 1 2 2000
CLERK SUPREME COURT

PATRICIA BLECHER,
Petitioner-Appellant,

vs.

IOWA BOARD OF EDUCATIONAL EXAMINERS,
Respondent-Appellee,
and Also Concerning
ROBIN MOON,
Appellee.

Appeal from the Iowa District Court for Polk County, Larry J. Eisenhauer, Judge.

The petitioner appeals from the district court's ruling dismissing her judicial review action. **AFFIRMED.**

James H. Gilliam and Danielle K. Dixon of Brown, Winick, Graves, Gross, Baskerville and Schoenebaum, P.L.C., Des Moines, and James A. Smith, Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Heather Adams, Assistant Attorney General, for appellee board.

Erik A. Luthens, West Des Moines, for appellee Moon.

Heard by Huitink, P.J., and Mahan and Hecht, JJ.

HUITINK, P.J.

I. Background Facts and Proceedings.

Patricia Blecher is a Des Moines schoolteacher. On March 26, 1997, Blecher was named in a complaint filed with the Iowa Board of Educational Examiners accusing her of professional misconduct. After the complaint was filed attempts were made to negotiate its resolution without resorting to contested case proceedings. In a June 30, 1997, letter to Blecher, the Board's executive director proposed resolution of the complaint by a written reprimand placed in Blecher's file based on the impropriety of Blecher's conduct. For reasons not readily ascertainable from this record, the director's proposal was not dispositive.

A September 5, 1997, hearing notice issued by the Board provided:

> After reviewing the fact of the Complaint and the investigator's report, the Board of Educational Examiners, on September 4, 1997, has determined there is probable cause to set the matter for evidentiary hearing. A Hearing on the complaint is scheduled for October 17, 1997, at 9:00 A.M., in Conference Room A, Second Floor, Lucas State Office Building, E. 12th and Grand Avenue, Des Moines, Iowa, before an Administrative Law Judge, representing the Board of Educational Examiners.
>
> The Board has also determined that there is good cause to set this matter for hearing beyond the 180 days, as provided by Chapter 272.2(15), The Code.

The October 17, 1997, hearing date was continued to December 19, 1997, by the Board on its own motion.

On November 19, 1997, Blecher moved to dismiss the complaint on the following grounds: (a) the Board's June 30, 1997, decision that Blecher had acted

"inappropriately" was in violation of her statutory and constitutional rights to have notice and be properly heard; (b) the Board's June 30, 1997, decision that Blecher had acted "inappropriately" constituted evidence the Board had prejudged the complaint, depriving her of a full and fair hearing on the complaint; (c) the Board's ex parte communication with Blecher and the complainant's counsel regarding its June 30, 1997, decision constituted evidence the Board had prejudged the complaint, depriving her of a full and fair hearing on the complaint; (d) the Board's June 5, 1997, decision, without notice to Blecher or an opportunity to be heard, in which the Board concluded probable cause existed to support the complaint, deprived her of her statutory and constitutional rights and constituted evidence the Board had prejudged the complaint, further depriving her of a full and fair hearing on the complaint; (e) the Board's June 5, 1997, decision, without notice to Blecher or an opportunity to be heard, that good cause existed to set the hearing beyond the 180-day period contemplated by section 272.2(15) deprived her of her statutory and constitutional rights, and constituted evidence the Board had prejudged the complaint, depriving her of a fair hearing on the complaint; (f) the Board lacked jurisdiction for failure to conduct its hearing within the 180 days of the complaint without good cause; (g) the complaint was without factual support as contemplated by the Board rule and by statute; and (h) the Board lacked jurisdiction under its own Board rule because the complaint had been resolved between Blecher and her employer, the Des Moines Independent School District.

In a June 24, 1998, ruling the Board denied Blecher's motion to dismiss. Blecher's bias claims were rejected because the Board determined the director's proposed resolution of the complaint included in his June 30, 1997, letter to Blecher would not taint future contested case proceedings. The Board also rejected Blecher's claim that failure to resolve the complaint within 180 days deprived the Board of jurisdiction to act on the complaint. The remainder of Blecher's claims were rejected pending an evidentiary hearing on the merits of the complaint. The Board took no action on Blecher's application for rehearing, and it was accordingly denied by operation of law.

Blecher filed a petition for judicial review of the Board's decision denying her motion to dismiss. The district court dismissed Blecher's petition, stating:

> Until the matter is heard on its merits and the agency acts, this court lacks jurisdiction to review the agency action. (citation omitted). Cases allowing an interlocutory type of appeal from agency actions are distinguishable from this case. (citation omitted). Here the court cannot presume the ultimate action of the agency will be detrimental to the Petitioner.

On appeal, Blecher contends she is entitled to intermediate judicial review of the Board's disposition of her motion to dismiss and the district court erred by concluding otherwise.

II. Standard of Review.

Our review is governed by Iowa Code chapter 17A, Iowa's Administrative Procedure Act. *Murillo v. Blackhawk Foundry*, 571 N.W.2d 16, 17 (Iowa 1997). Our

review, like that of the district court, is on error. *Honeywell v. Allen Drilling Co.*, 506 N.W.2d 434, 435 (Iowa 1993).

III. The Merits.

Iowa Code section 17A.19(1) provides:

> 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.

A party seeking judicial review of intermediate agency action must accordingly show (1) adequate administrative remedies have been exhausted and (2) judicial review of the final agency action would not provide an adequate remedy. *Squealer Seeds v. Pickering*, 530 N.W.2d 678, 681 (Iowa 1995). Since both requirements must be satisfied before intermediate judicial review is permitted, the failure to meet one requirement is dispositive. *Richards v. Iowa State Commerce Comm'n*, 270 N.W.2d 616, 619-20 (Iowa 1978).

The exhaustion of remedies doctrine will not preclude judicial review of intermediate agency action if (1) available administrative remedies are inadequate to prevent irreparable injury or (2) there is a clear and unambiguous statutory or constitutional violation. *Christensen v. Iowa Civil Rights Comm'n*, 292 N.W.2d 429, 431 (Iowa 1980) (citing *First Jersey Sec. v. Bergen*, 605 F.2d 690-700 (3d Cir. 1979)). A claim of agency bias is insufficient to avoid application of the exhaustion of remedies requirement. *Id.*

Blecher seeks to avoid application of the exhaustion requirement citing the Board's failure to reconsider its ruling on her motion to dismiss. She also cites irreparable harm caused by forcing her to await final agency action prior to judicial review of the Board's disposition of her motion to dismiss.

Even if we were to conclude Blecher's motion to reconsider sufficiently exhausted her administrative remedies, she has, nevertheless, failed to support her claim of irreparable harm. Blecher's theory of irreparable harm is premised on the Board's effective denial of the fundamental protections she enjoys under the Board's enabling statute[1] and need for immediate judicial intervention to afford her those protections.

The particulars of the Board's noncompliance with section 272.2(15) were raised in Blecher's unsuccessful motion to dismiss. In similar circumstances involving claimed agency noncompliance with relevant statutory directives, our supreme court has held:

---

[1] Iowa Code section 272.2(15) provides:

> The board of educational examiners is created to exercise the exclusive authority to:
>
> 15. Adopt rules that require specificity in written complaints that are filed by individuals who have personal knowledge of an alleged violation and which are accepted by the board, provide that the jurisdictional requirements as set by the board in administrative rule are met on the fact of the complaint before initiating an investigation of allegations . . . permit parties to a complaint to mutually agree to a resolution of the complaint filed with the board . . . and require complaints to be resolved within one hundred eighty days unless good cause can be shown for an extension of this limitation.

> All of the issues raised in the lower court were preserved before the agency and could be heard on review of the final agency action. Appellees moved to dismiss on the basis of these [statute-based] objections. The motions were overruled, but appellees had their record for later judicial review. That each issue raised in the intermediate proceeding could be heard in the final review is telling proof that final review is an adequate remedy.

Richards, 270 N.W.2d at 621 (citations omitted).

We, for the same reasons cited in *Richards*, conclude intermediate judicial review of the issues raised in Blecher's motion to dismiss is premature. Judicial review following final Board action on the merits of the complaint against Blecher will afford her an adequate remedy for the errors claimed. Moreover, Blecher will not suffer irreparable harm by proceeding to final administrative hearing on the merits of the complaint filed against her. *See Salsbury Labs. v. Iowa Dep't of Envtl. Quality*, 276 N.W.2d 830, 837 (Iowa 1979) (inconvenience and expenses resulting from holding of prescribed administrative hearing are insufficient to establish irreparable harm). We also note that all of the issues attending Blecher's motion to dismiss may be mooted by an adjudication of fact or law favorable to Blecher in future proceedings.

The judgment of the district court is therefore affirmed.

AFFIRMED.