IN THE COURT OF APPEALS OF IOWA

No. 6-171 / 95-0736

ROMANUS NGENE-IGWE,

Appellant,

vs.

IOWA STATE UNIVERSITY and IOWA BOARD OF REGENTS,

Appellees.

FILED
JUN 27 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, George W. Bergeson, Judge.

Appeal from judicial review of agency action dismissing petitioner from doctoral program in economics. **AFFIRMED.**

Robert A. Wright, Jr., of Wright & Wright, Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Mark Hunacek, Assistant Attorney General, for appellees.

Considered by Sackett, C.J., and Cady and Streit, JJ.

STREIT, J.

The petitioner, Romanus Ngene-Igwe, appeals the district court's denial of his petition for judicial review. He argues he was denied his right to due process and there were genuine issues of material fact precluding summary judgment. We affirm.

The petitioner was dismissed from Iowa State University's doctoral program in economics in 1984. The petitioner filed four lawsuits related to his dismissal, the fourth being a petition for judicial review which is the subject of this appeal. In response to the petition for judicial review, the university and the Board of Regents (hereafter referred to collectively as "ISU") filed a motion for summary judgment. The petitioner resisted and both sides filed extensive affidavits which were accompanied by copies of pleadings and rulings filed in the petitioner's prior cases against ISU, as well as documentary evidence in support of the petitioner's position.

A hearing was held on ISU's motion and the petitioner's resistance. The district court filed a ruling which carefully analyzed the nature of the petitioner's action and ISU's motion. It concluded petitioner had sought judicial review of "other agency action," rather than review of rulemaking or a contested case. The district court noted summary judgment is not proper in the context of judicial review of a contested case, *Dillehay v. Iowa Dept. of Job Serv.*, 280 N.W.2d 422, 424 (Iowa 1979), and it similarly concluded summary judgment would generally be inappropriate for a petition for judicial review of other agency action.

The district court recognized that despite the denomination of ISU's motion as a motion for summary judgment, it could be regarded as a request for review on the merits. *See id.* (court properly considered cross-motions for summary judgment as requests for review on the merits). The district court proceeded to address the merits of the petition and affirmed ISU's decision to remove petitioner from its doctoral program. On appeal the petitioner claims the district court denied his right to due process and erred in granting summary judgment because there were genuine issues of material fact.

It is critical at the outset we determine what type of action was subject to judicial review. Chapter 17A divides administrative action into three categories: rulemaking, contested case adjudication, and "other agency action." *Allegre v. Iowa State Bd. of Regents*, 349 N.W.2d 112, 114 (Iowa 1984). "'Other agency action' is a residual category--if administrative action does not fall within the definition of 'rulemaking' or 'contested case,' then it must be 'other agency action.'" *Id.* The district court and ISU regarded this case as a petition for judicial review of other agency action. At no point in his brief does the petitioner contest this characterization of his action, and given the background of this case, we find it was correct.

Judicial review of other agency action does not involve a determination of whether the agency's final order is supported by substantial evidence. *Sindlinger v. Iowa State Bd. of Regents*, 503 N.W.2d 387, 390 (Iowa 1993). It turns on errors of law or the presence of unreasonable, arbitrary, or capricious action. *Id.; see also Sheet*

Metal Contractors of Iowa v. Commissioner of Ins. of State of Iowa, 427 N.W.2d 859, 867 (Iowa 1988) (judicial review challenges to other agency action limited to subsections 17A.19(8)(a- e) and (g)).

"In proceedings for judicial review of agency action a court may hear and consider *such evidence as it deems appropriate."* Iowa Code § 17A.19(7) (1995) (emphasis added). In construing this language, the supreme court has held the taking of evidence must be for the "limited purpose of highlighting what actually occurred in the agency so as to facilitate the court's search for errors of law or unreasonable, arbitrary, or capricious action. Such evidence is not to be utilized to demonstrate the agency's action is unsupported by substantial evidence in the record made before the agency." *Sheet Metal Contractors of Iowa,* 427 N.W.2d at 867 n.3 (citation omitted). Unless specifically provided by statute, no particular evidentiary record is required for judicial review of other agency action. *Id.* at 867.

The petitioner argues he was entitled to an evidentiary hearing and he was denied due process when none was held. Petitioner cites no authority for his contention that due process requires an evidentiary hearing for judicial review of other agency action. It was within the discretion of the district court to determine what, if any, additional evidence it would consider. Iowa Code § 17A.19(7) (1995). The court had before it the parties' comprehensive affidavits as well as the numerous pleadings, rulings, and evidentiary documents attached to the affidavits. The court deemed this

appropriate evidence from which to review the agency action, and we find no error in this decision.

Petitioner's second argument is the district court erred in granting the motion for summary judgment. This argument mischaracterizes the district court's ruling. While it was presented with a denominated motion for summary judgment, the court acted within its authority in deciding to treat the motion as a request for a ruling on the merits. *See Dillehay*, 280 N.W.2d at 424. This was especially appropriate given it was within the court's discretion to determine whether an evidentiary hearing would be necessary. The district court's ruling was a disposition of the petition on the merits and not a grant of summary judgment.

To the extent the petitioner argues the district court erroneously ruled on the merits, we also affirm. As noted above, the scope of judicial review of other agency action is strictly circumscribed. A court does not review the action to see if it was supported by substantial evidence. *Sindlinger*, 503 N.W.2d at 390. Judicial review of other agency action is limited to whether the action was "in violation of constitutional or statutory authority, in violation of agency rules, made by unlawful procedure, or unreasonable, arbitrary, or capricious." *Iowans for WOI-TV, Inc., v. Iowa State Board of Regents, 508 N.W.2d* 679, 684-85 (Iowa 1993). We find no such violations in this case and affirm.

AFFIRMED.