

IN THE COURT OF APPEALS OF IOWA

No. 6-477 / 95-1841

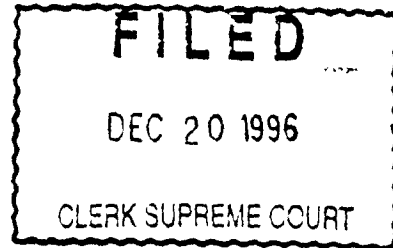
KAREN HAHN,

Plaintiff-Appellant,

vs.

**LARRY STOCK d/b/a
CLARION PHARMACY,**

Defendant-Appellee.



Appeal from the Iowa District Court for Wright County, Kurt Wilke, Judge.

Karen Hahn appeals from the district court judgment granting Larry Stock, d/b/a Clarion Pharmacy, summary judgment in this wrongful termination and infliction of emotional distress case. **AFFIRMED.**

Jerry C. Estes of Estes Law Offices, Fort Dodge, for appellant.

Dennis W. Johnson of Dorsey & Whitney, P.L.L.P., Des Moines, for appellee.

Heard by Sackett, C.J., Streit and Vogel, JJ.

STREIT, J.

Karen Hahn appeals from the district court judgment granting Larry Stock, d/b/a Clarion Pharmacy, summary judgment on wrongful termination and infliction of emotional distress. Hahn contends the district court erred in concluding her claims were in fact those of sexual harassment and as such were preempted by the Iowa Civil Rights Act.

Plaintiff, Karen Hahn, began employment with defendant, Larry Stock d/b/a Clarion Pharmacy, in the mid 1970's. The parties began an intimate relationship in 1976 that continued until 1989 when Hahn broke off the affair.

In 1993 the parties entered into a "settlement agreement" whereby Stock would pay Hahn \$100 per month for five years and in return Hahn would make no claim against Stock or the pharmacy based on the employment or her termination except for unemployment benefits.

In February 1994, Hahn's employment was terminated. Stock continued to make the monthly payments under the agreement. Hahn accepted these payments until December 1994. In July 1995, Hahn filed a petition at law against Stock alleging wrongful termination and emotional distress. The petition, as amended, stated the parties had an intimate relationship that was ended by Hahn. Hahn urged that since then Hahn had rejected Stock's sexual overtures and Stock terminated Hahn in retaliation for her ending their relationship.

Stock filed a motion for summary judgment. The district court granted the motion concluding that despite the label Hahn had given her claim it was actually a quid pro quo sexual harassment claim which was preempted in every respect by the Iowa Civil Rights Act, Iowa Code chapter 216 (1995). As Hahn had not exhausted her administrative remedies under this chapter, the court held it did not have jurisdiction to hear Hahn's case.

Hahn appeals contending retaliation for ending the past affair led to her termination and not the recent rejection of sexual advances from Stock.

Our scope of review is for errors at law. Iowa R. App. P.4. Summary judgment is appropriate only if there exists no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 237(c); *See Farm Bureau Mut. Ins. Co. v. Milne*, 424 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of a material fact, *Milne*, 424 N.W.2d at 423, and the evidence must be viewed in the light most favorable to the resisting party. *Thorp Credit, Inc. v. Gott*, 387 N.W.2d 342, 343 (Iowa 1986). The procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the resisting party. *Id.*; *Sherwood v. Nissen*, 179 N.W.2d 336, 339 (Iowa 1970). A fact issue is generated if reasonable minds can differ on how the issue should be resolved, but if the conflict in the record consists only of the legal consequences flowing from undisputed facts, entry of summary judgment is proper. *Milne*, 424 N.W.2d at 423; *Gott*, 387 N.W.2d

at 343. If the motion is properly supported, however, the resisting party "must set forth specific facts showing that there is a genuine issue for trial." Iowa R. Civ. P. 237(e).

Hahn claims her allegations are those of improper and wrongful termination, not sexual harassment. She asserts her claim does not require proof of discrimination or harassment, but retaliation, a claim which raises a genuine issue of fact for a jury.

We find the district court did not err in assessing Hahn's claim as sexual harassment and therefore must exhaust her administrative remedies under the Iowa Civil Rights Act before the district court has jurisdiction to hear the case.

Hahn was an employee at-will. Even if Stock's actions were characterized as a wrongful termination, this case does not fall within the two exceptions recognized by the Iowa Supreme Court to the common law doctrine that an employer may discharge an at-will employee at any time for any reason or no reason. *See French v. Foods, Inc.*, 495 N.W.2d 768, 769-70 (Iowa 1993) (1) when the discharge is in clear violation of a "well recognized and defined public policy of the State," and (2) when a contract created by an employer's handbook or policy manual guarantees an employee that discharge will occur only for cause or under certain conditions). At oral argument, Hahn claimed the wrongful termination that occurred was in violation of the public policy to preserve the sanctity of marriage. Hahn and Stock were both married to other people during the time they were having their affair. Hahn claims she called off the affair and rejected Stock's advances toward her to protect her

marriage. She argues a public policy was violated when Stock fired her in retaliation for ending their relationship.

Under the public policy exception, the Iowa Supreme Court has recognized causes of action for tortious discharge where an employer's retaliatory discharge would conflict with certain legislatively declared goals. In *Lara v. Thomas*, 512 N.W.2d 777 (Iowa 1994), the Supreme Court held the discharge of employee who filed a claim for unemployment compensation violated public policy and constituted an action for retaliatory discharge. *Id.* at 782; *see also Springer v. Weeks & Leo Co.*, 429 N.W.2d 558, 560-61 (Iowa 1988) (retaliatory discharge of an employee who sought worker's compensation benefits violated public policy as set forth in the statutory scheme); *Smith v. Smithway Motor Xpress, Inc.*, 464 N.W.2d 682, 686 (Iowa 1990) (retaliatory discharge violates public policy even if employer does not interfere with employee's receipt of workers' compensation benefits); *Wilcox v. Hy-Vee Food Stores, Inc.*, 458 N.W.2d 870, 872 (Iowa App. 1990) (retaliatory discharge of employee who refused to take a polygraph test violates public policy). We fail to see where Hahn's argument falls into one of these recognized causes of action for tortious discharge.

We affirm the district court in granting summary judgment on Hahn's claims. We need not address the issue whether these claims are also barred by the terms of the parties' settlement agreement because the Court is without subject matter

jurisdiction to hear this case. Hahn has failed to exhaust her administrative remedies under the Iowa Civil Rights Act concerning her claim of sexual harassment.

AFFIRMED.