FILED
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IN THE SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

LINDA SHEERAN,

Plaintiff-Appellee,

vs.

LEWIS CENTRAL COMMUNITY SCHOOL DISTRICT,

Defendant-Appellant.

Filed March 24, 1981

0-307
64594

Appeal from Pottawattamie District Court - Harold L. Martin, Judge.

Defendant school board appeals from judgment for plaintiff teacher in her action for compensation due under an employment contract previously declared to be valid and enforceable. AFFIRMED IN PART AND REMANDED.

Jack W. Peters of Stuart, Tinley, Peters, Thorn, Smits & Sens, Council Bluffs, for defendant-appellant.

James L. Sayre of Dreher, Wilson, Adams, Jensen, Sayre & Gribble, Des Moines, for plaintiff-appellee.

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

DONIELSON, J.

Defendant, Lewis Central Community School District, appeals from a judgment for plaintiff Linda Sheeran in her action for compensation due under an employment contract previously declared to be valid and enforceable. Defendant contends 1) that part of plaintiff's claim is barred by the statute of limitations on claims for back wages; 2) that plaintiff should not receive compensation for the portion of her salary attributable to duties from which she asked to be relieved; 3) that pursuant to section 260.20, The Code 1975, plaintiff should not be compensated for the period of time during which her teaching certificate was not registered with the area education agency; 4) that plaintiff should not be compensated for the period of time she spent studying for a nursing degree; and 5) that plaintiff should not be compensated for the portion of the 1978-79 school year that followed her failure to report for work at the defendant's request. We affirm the judgment for the plaintiff except for that portion representing the period following her failure to respond to defendant's offer of reinstatement.

I.

In October of 1975, after plaintiff had been dismissed from her position as a teacher with the defendant school district, she filed a petition in equity for a declaratory judgment as to the enforceability of her teaching contract. The contract was ultimately held valid and enforceable by this court in January of 1979 and defendant's application for further review was denied by the Iowa Supreme Court. On July 10, 1979, the trial court entered a declaratory judgment for the plaintiff consistent with the court of appeals opinion as to the validity of the contract. On July 18, 1979, plaintiff filed an application for compensation due under contracts for the school years from 1975-76 through 1978-79. After rejecting each of the school district's defenses, the trial court then entered a judgment for plaintiff in the amount of $53,813.33.

After her dismissal by the school district, plaintiff spent most of two years looking for regular full-time or part-time teaching in her area. During this period, however, she was able only to find work as a substitute teacher and earned a total of $2065 for those two years. She then began to despair of finding an acceptable teaching position in the area and in the fall of 1977 she began studies to obtain a degree in nursing. She obtained this degree in June of 1979 and passed the licensing exams to become a registered nurse. In the meantime, on April 27, 1979, in compliance with this court's holding that plaintiff's teaching contract was valid and enforceable, the

defendant school district made a written request that the plaintiff return to work. Plaintiff failed to report for work at that time and resigned in a letter written to the school district on May 15, 1979, thus terminating her teaching contract with the defendant.

II.

Defendant raises several contentions that we find to be without merit. We discuss each one briefly.

Citing section 614.1(8), The Code 1979, which provides a two-year statute of limitations for claims for back wages, the defendant school district alleges that since plaintiff did not file for wages under the contract until July 18, 1979, all claims for wages prior to July 17, 1977 are barred. Defendant's argument ignores the fact that plaintiff's claim for wages was filed in the form of an application for supplementary relief subsequent to a declaratory judgment in her favor declaring the contract to be valid and enforceable. In other words, the 1979 claim for wages was merely a continuation of the original 1975 action, which was plaintiff's request for declaratory judgment regarding the enforceability of the employment contract. Since the time she filed her petition for declaratory judgment in 1975, the plaintiff has been involved in an on-going attempt to establish a valid contract and to enforce it. We therefore agree with the trial court that plaintiff's petition for declaratory relief tolled any applicable statute of limitations and that the plaintiff's claim for wages due prior to July 17, 1977, is not barred.

Defendant next contends that the plaintiff should not be compensated for the part of her salary attributable to coaching duties from which she asked to be excused. The coaching duties were contained in the 1975-76 contract with the school district. She asked to be excused from these duties and was told that her request would be granted if and when it became reasonably possible. The record clearly shows, however, that she was never actually excused from the contractual obligation to perform the coaching duties. Therefore, we hold that the defendant school district was never excused from the contractual obligation to compensate the plaintiff for the performance of such duties.

We also reject defendant's argument that the plaintiff should not be compensated for the period of time during which her teaching certificate, although current, was not registered with the area education agency. The new certificate was issued to the

plaintiff on July 1, 1975, but she failed to register it with the agency until September 17, 1976. Defendant argues that pursuant to section 260.20, The Code 1975, her failure to register her certificate with the area education agency made her unqualified to teach in any public school within the area. We acknowledge that section 260.20 provides that "no person shall teach in any public school whose certificate has not been registered with the administrator of the area education agency in which the school is located . . .," but we note several factors relevant to the plaintiff's circumstances. First, area education agencies did not exist prior to July 1, 1975, which was the date plaintiff's new certificate was issued. § 273.2, The Code 1975. Moreover, section 260.20 itself has since been repealed, 68 G.A., ch. 58, § 12, and no similar registration requirement has been enacted. Finally, it seems that the registration requirement was, in actual practice, purely ministerial; it obviously did not prevent the plaintiff from obtaining employment as a substitute teacher during the period of time that her certificate was unregistered. For these reasons, we hold that failure to register with the area education agency did not render the plaintiff unqualified to teach during that period and the trial court correctly ruled that she should be compensated therefor.

Finally, we address defendant's contention that the plaintiff should not receive compensation for the nearly two years she spent studying for a nursing degree. Essentially, defendant argues that the plaintiff's decision to abandon her teaching career and become a nurse demonstrates that she did not make a reasonable effort to mitigate foreseeable damages and that therefore the plaintiff should not be allowed to recover damages for the two years she was in nursing school. We are not persuaded by this argument. Since this court has upheld the validity of the contracts between plaintiff and the school district, plaintiff is entitled to damages measured by the salary specified in the contracts. Soules v. Independent School District No. 518, 258 N.W.2d 103, 106 (Minn. 1977); 11 Williston on Contracts §§ 1358 & 1360 (3rd ed. 1968). However, it was the plaintiff's obligation to make a reasonable effort to mitigate those damages. Holladay v. Chicago, Burlington & Quincy Railroad, 255 F. Supp. 879, 886 (S.D. Iowa 1966); 11 Williston on Contracts § 1353 (3rd ed. 1968); see Iowa Power & Light Co. v. Board of Waterworks Trustees of the City of Des Moines, 281 N.W.2d 827, 833 (Iowa Ct. App. 1979); DeWaay v. Muhr, 160 N.W.2d 454, 456-57 (Iowa 1968); Nizzi v. Laverty Sprayers, Inc., 259 Iowa 112, 122, 143 N.W.2d 312, 317-18 (1966). The defendant has the burden to prove plaintiff's failure to mitigate damages. Iowa Power & Light, 281 N.W.2d

at 833; Nizzi, 259 Iowa at 122, 143 N.W.2d at 318. Failure to mitigate is an affirmative defense which, if pleaded and proved, will operate to bar recovery of those damages that could have been avoided by reasonable efforts of the plaintiff. Shewry v. Heuer, 255 Iowa 147, 154-55, 121 N.W.2d 529, 533-34 (1963); see 11 Williston on Contracts § 1358 (3rd ed. 1968). We think the defendant school board has failed to sustain its burden to show that the plaintiff failed to make reasonable efforts to mitigate her damages. Plaintiff spent almost two years looking for a regular full-time or part-time teaching position in her area. During that time, she found only substitute teaching and earned a total of $2065. It became obvious to her that she could expect nothing better and rather than continue what was obviously an unsatisfactory search for a teaching position, plaintiff decided to train for a new career. We think that the amount of time and effort she put into her search was reasonable; defendant has provided us with no reason to believe otherwise. Defendant has not shown, for example, that a teaching position suitable to the plaintiff's qualifications was available at any time from 1975 to 1979 or that reasonable efforts on the part of the plaintiff could have produced such a position. Nor has it been shown that the plaintiff ever refused an offer of such a position. We emphasize that the plaintiff's duty to mitigate damages did not obligate her to accept a position that was not of the same general character as the one she had contracted for or that was located in a distant place, although it may have been of the same general character as the employment contracted for. 11 Williston on Contracts § 1359 (3rd ed. 1968). We conclude that the plaintiff made a reasonable effort to mitigate her damages, that the defendant failed to meet its burden to prove otherwise, and that as a consequence the doctrine of failure to mitigate does not operate here to bar recovery of damages suffered by the plaintiff during the two years she spent in nursing school.

Although we find little merit in the first four contentions raised by the defendant, we agree with the defendant that the plaintiff should not be compensated for that portion of the 1978-79 school year that followed her failure to report for work at the defendant's request. On April 27, 1979, two months before plaintiff's anticipated graduation from nursing school, the defendant offered plaintiff a teaching contract for the 1979-80 school year; plaintiff did not respond to the offer until the following month, at which time she submitted a letter of resignation to the school district. The general rule is that the period for damages for wrongful termination of employment ends once reinstatement to the former position is offered. Zoll v. Eastern Allamakee Community

School District, 588 F.2d 246, 251 (8th Cir. 1978); United States v. Cotton Plant School District, 479 F.2d 671, 674 (8th Cir. 1973). We therefore conclude that the plaintiff should not be compensated for damages past April 27, 1979, and we therefore remand this case for redetermination of damages for a period up to April 27, 1979.

AFFIRMED IN PART AND REMANDED.