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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Filed September 21, 1982

GERALD E. BISBEY and ROBERT E. CURTIS,

Plaintiffs-Appellants,

vs.

CIVIL SERVICE COMMISSION OF THE CITY OF CEDAR FALLS, IOWA,

Defendant-Appellee.

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2-269

2-67485

Appeal from Black Hawk District Court, William G. Klotzbach, Judge.

Plaintiffs appeal from decision sustaining defendant's motion to dismiss in civil service proceedings, asserting that Iowa Code § 400.20 does not render notice of appeal untimely when the issue raised does not involve suspension, demotion, or discharge, and that a court of appeals decision involving the same parties does not mandate dismissal in this case. AFFIRMED.

Robert E. Conley and Neil A. Barrick, Des Moines, for plaintiffs-appellants.

Judd E. Truax, Cedar Falls City Attorney, for defendant-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, and Johnson, JJ.

OXBERGER, C.J.

Appellants contend that the position of assistant chief of police of the Cedar Falls Police Department became vacant in October 1980. After more than thirty days had elapsed, the city made no appointment to fill the vacancy. Plaintiffs-appellants appealed the city's failure to act to the Civil Service Commission of the City of Cedar Falls, Iowa, on April 10, 1981. On April 17, 1981, the vice-chairman of the Commission declared that there was no vacancy and contended that the appeal was untimely filed, citing Section 400.20 of the Iowa Code. Following a refusal by the Civil Service Commission to hear an appeal on the ground that there was no vacancy and that the petition on appeal was not timely filed, plaintiffs-appellants appealed further to the Black Hawk County district court. The court sustained a motion to dismiss, citing Bisbey v. City of Cedar Falls, No. 2-63152 (Ct. App. Iowa December 27, 1979), involving the same plaintiffs and defendants and essentially the same issues. The court ruled that under Iowa Code § 400.20, failure of the plaintiffs to file their appeal within twenty days after the city council adopted its plan of reorganization of the police department effectively terminated their right to appeal to the Commission and that the Commission thereafter had no jurisdiction over the matter.

In Antrim v. Civil Service Commission, 261 Iowa 396, 154 N.W.2d 711, (1967), the supreme court determined that § 400.20 (then codified as section 365.20) was the only procedure available for appeal to the Civil Service Commission, and that to sustain their right to an appeal, the plaintiffs had to show that it was timely under the provisions of that statute.

Appellants refer to § 400.27 as the only authority other than § 400.20 granting them the right to appeal. They contend that § 400.27 is open-ended, with

no time limitation upon the appeal to which they feel they are entitled. The predecessor of § 400.27 existed at the time the court decided Antrim, supra, as § 365.27. Since the court at that time was confronted with precisely the same situation as we have now, and concluded that § 400.20 and its time limitation were controlling, we are bound to follow that decision.

Inasmuch as appellants' appeal did not fall within the statutory time limit, we conclude that the Civil Service Commission had no jurisdiction to hear their appeal and that the district court correctly dismissed the appellants' petition on appeal.

AFFIRMED.