

IN THE COURT OF APPEALS OF IOWA

No. 6-691 / 95-1284

000103

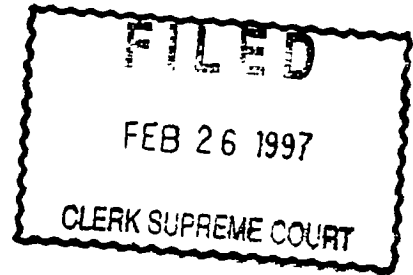
FIROUZ A. FARIDI,

Plaintiff-Appellant,

vs.

**WILLIAM N. CONWAY, ROBERT SEGREST,
AND IOWA STATE UNIVERSITY,**

Defendants-Appellees.



Appeal from the Iowa District Court for Story County, Carl D. Baker, Judge.

Plaintiff appeals from the district court's ruling dismissing his action seeking damages against defendants for improperly interfering with his education as a student at Iowa State University. **AFFIRMED.**

F.A. Faridi, Ames, pro se, appellant.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, and Cecelia C. Ibson, Assistant Attorney General, for appellees.

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

PER CURIAM

Firouz Faridi appeals from the district court's ruling dismissing this action on the ground Faridi failed to exhaust administrative remedies. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

In January 1995 Faridi filed a petition in the district court alleging, in essence, that William Conway interfered with his attempt to obtain an architectural design degree at Iowa State University and was thus "responsible for damages" to Faridi. Faridi also named as defendants Robert Segrest, Conway's supervisor, and Iowa State University, as employer of the two individual defendants. On June 1, 1995 the defendants filed a motion to dismiss the action for failure to exhaust administrative remedies. That same day Faridi filed a resistance to the motion to dismiss and a request for entry of default. After a hearing the district court entered a ruling dismissing Faridi's petition. The court determined Faridi had failed to exhaust his remedies concerning (1) student grievances and (2) the Iowa State Tort Claims Act. The court thus concluded it was without subject matter jurisdiction to consider the allegations in Faridi's petition. The court ordered the petition dismissed and denied Faridi's request for entry of default judgment. Faridi appeals.

Faridi attempts to argue about the merits of his petition, however, the only two issues properly before this court are whether the district court erred in: (1) granting the defendants' motion to dismiss; and (2) denying Faridi's request for entry of

default judgment. We can boil down Faridi's arguments as follows. The district court was required to enter default judgment because the defendants failed to answer within the time period of Iowa Rule of Civil Procedure 53 and, consequently, the court erred in reaching the defendants' motion to dismiss. Additionally, the court erred because Faridi has notified everyone he could think of about his complaint.

I. The question of allowing default is largely within the discretion of the trial court and we will not interfere absent an abuse of that discretion. *Avery v. Peterson*, 243 N.W.2d 630, 631-32 (Iowa 1976). The record before us is not clear as to when defendants were served with the petition. Moreover, the petition contains the following paragraph:

The PLAINTIFF is not a lawyer and files this petition merely to preserve his rights in a timely manner, while he awaits arrival of a final institutional ruling and a notice of d[i]sciplinary action against the wrong doers. A revised version of this petition will be filed by the PLAINTIFF's attorney, naming additional parties and enumerating damages.

Under the circumstances presented, we conclude the district court did not abuse its discretion in denying Faridi's request for entry of default filed in response to the defendants' motion to dismiss.

II. A motion to dismiss is sustainable only when it appears to a certainty the pleader has failed to state a claim upon which any relief may be granted under any state of facts provable under the allegations. *Lindaman v. Bode*, 478 N.W.2d 312,

314 (Iowa App. 1991). The district court dismissed Faridi's claims against the defendants finding the petition failed to allege exhaustion of administrative remedies available through the university student grievance procedures and under the Iowa State Tort Claims Act. Faridi's petition as quoted above admits that there has yet been no final ruling from the university. The district court did not err in concluding the petition must be dismissed for failure to exhaust administrative remedies. We therefore affirm.

AFFIRMED.