IN THE COURT OF APPEALS OF IOWA

No. 1-575 / 91-821

FILED
JAN 29 1992
CLERK SUPREME COURT

651

DONALD W. WISE,

Plaintiff-Appellant,

vs.

CRESLINE PLASTIC PIPE CO., INC., A Foreign Corporation, and **BILL BURRIS,**

Defendants-Appellees.

Appeal from the Iowa District Court for Pottawattamie County, J.C. Irvin, Judge.

Wise appeals from a district court judgment following a jury verdict denying his claim of retaliatory discharge because of his filing a workers' compensation claim. **AFFIRMED.**

John A. Rodenburg of Lyle A. Rodenburg, P.C., Council Bluffs, for appellant.

Philip Willson of Smith, Peterson, Beckman & Willson, Council Bluffs, for appellees.

Heard by Donielson, P.J., and Hayden and Sackett, JJ.

SACKETT, J.

Plaintiff-appellant Donald W. Wise appeals following a jury trial resulting in denial of his claim for retaliatory discharge. Plaintiff claimed he was discharged from his employment with defendant-appellee Cresline Plastic Pipe Co., Inc., because he filed a workers' compensation claim.

Plaintiff contends (1) the trial court erred in not allowing him to inquire of defendants' knowledge of discrimination based on disability, and (2) the trial court erred in refusing to instruct on the issue of reasonable accommodation. We affirm.

Plaintiff was employed by defendant as an at-will employee. He claimed he was injured while employed, and as a result of the injury he was limited by a weight restriction. He contends he was discharged from employment in retaliation for filing a workers' compensation claim.

I.

Plaintiff contends the trial court erred in not allowing him to question defendant Bill Burris, defendant Cresline's plant manager, about his knowledge of Iowa law concerning the discharge from employment of disabled employees.

Defendants claim, and we agree, the plaintiff did not preserve error on this issue. In order to preserve error when an objection to a question is sustained, it is necessary to make an offer of proof showing how the witness

would have responded. Graen's Mens Wear, Inc. v. Stille-Pierce Agency, 329 N.W.2d 295, 298 (Iowa 1983); Hayes v. Chicago, Rock Island & Pacific Railway Co., 239 Iowa 149, 151-52, 30 N.W.2d 743, 745 (1948). No offer of proof was made. Plaintiff contends defendant Burris's answer would have shown the reason for Wise's termination. Plaintiff claims Burris's ignorance or awareness of laws prohibiting discrimination in employment on the basis of disability, and the employer's obligation to make reasonable accommodations would have proved defendants might also be ignorant or aware of laws prohibiting termination of an employee because he or she files a workers' compensation claim. Where, as here, the record does not show how a witness would have answered had he or she been allowed to answer, we cannot assume an answer. See In re Estate of Heller, 233 Iowa 1356, 1362, 11 N.W. 586, 590 (1943); Reynolds & Heitsman v. Henry, 193 Iowa 164, 169, 185 N.W. 67, 69 (1922). Plaintiff has shown no prejudice. See Grosjean v. Spencer, 258 Iowa 685, 695, 140 N.W.2d 139, 145 (1966).

II.

Plaintiff's second contention is the trial court erred in not giving an instruction on the duty an employer has to make reasonable accommodations for a disabled person under section 601A of the Iowa Code. The plaintiff contends there was sufficient evidence of defendant's duty of

reasonable accommodation, and the trial court erred in failing to give an instruction on reasonable accommodation.

The trial court ruled section 601A did not apply because administrative remedies had not been exhausted and no civil rights claim was made in the pleadings.

Plaintiff's petition did not claim a civil rights violation. The petition is in a single division headed "**RETALIATORY DISCHARGE**."

The petition specifically alleged plaintiff's discharge was retaliatory and motivated by ill-will arising from plaintiff filing and settling a workers' compensation claim.

Plaintiff contends the employer's basis for his termination was a restriction on the weight he could lift. The duty of reasonable accommodation imposed upon employers is relevant. The duty is imposed by Iowa Code section 601A.6(1)(a) (1987), which provides: "the nature of the occupation cannot form the basis of any exception to the prohibition if the disabled person is qualified to perform a particular occupation by reason of training or experience." Id. Subsection (c). The term "disability" as amended by an act of the 72nd General Assembly (H.F. 2344), means "the physical or mental condition of a person which constitutes a substantial handicap. . . ." Id. Section 601A.2(11) (1988). See also Iowa Legislature Service Vol. 4, pg. 506 (June 1988). A claim for failure

to provide reasonable accommodations is a claim under the civil rights act. See Iowa Code § 601A.13. It is clear from a reading of section 601A.16(1) that the procedure under the civil rights act is exclusive, and a claimant asserting a discriminatory practice must pursue the remedy provided by the act. Northrup v. Farmland Indus., Inc., 372 N.W.2d 193, 197 (Iowa 1985). Furthermore, plaintiff did not introduce the issue of reasonable accommodations until the requested instruction. We affirm the trial court on this issue.

AFFIRMED.