FILED
NOV 27 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-433 / 88-1264

MARGARET BISHOP,

Plaintiff-Appellant,

41

vs.

JAMES BURNS; MILLER, PEARSON, GLOE, BURNS, BEATTY & COWIE, P.C., f/k/a MILLER, PEARSON, GLOE, BURNS & BEATTY, P.C.; and MILLER, PEARSON, GLOE, BURNS & BEATTY, P.C.,

Defendants-Appellees.

Appeal from the Iowa District Court for Winneshiek County, Timothy J. Finn, Judge.

Plaintiff appeals a directed verdict in a malpractice action. **AFFIRMED.**

Hugh G. Albrecht, of the Tom Riley Law Firm, P.C., Cedar Rapids, for the appellant.

David F. McGuire, Cedar Rapids, for the appellees.

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

SACKETT, J. 42

Plaintiff-appellant Margaret Bishop was terminated as a teacher by the school board of the Eastern Allamakee Community School District. The termination was upheld by an adjudicator. In this action, plaintiff seeks to recover on a malpractice action against defendant attorney James Burns, contending defendant's failure to notify caused her to lose her right to appeal to the district court the adjudicator's decision affirming the board's decision terminating her teaching contract.

Plaintiff's suit against defendant came to trial and after she presented her evidence, the district court granted defendant's motion for directed verdict, holding that plaintiff had failed to prove she would have been successful in her appeal. Plaintiff now appeals to this court, contending it was error for the trial court to direct a verdict. We affirm the trial court.

It was established defendant was plaintiff's attorney and did not timely file the documents necessary to perfect her appeal to the district court. Additionally, to recover against defendant, plaintiff must show proof she would have prevailed in the underlying action. Blackhawk Bldg. Sys. v. Law Firm, 428 N.W.2d 288, 290 (Iowa 1988); Burke v. Roberson, 417 N.W.2d 209, 211 (Iowa 1987); Pickens, Barnes & Abernathy v. Heasley, 328 N.W.2d 524, 526 (Iowa 1983); Baker v. Beal, 225 N.W.2d 106, 109 (Iowa 1975); Koeller v. Reynolds, 344 N.W.2d 556, 561 (Iowa App. 1983).

Plaintiff had to establish she would be successful in her appeal to the district court. Plaintiff presented no evidence she would have been successful in her appeal. She chose instead to introduce a transcript of her hearings, contending the success of her appeal could be decided by the district court or the jury. While admitting she must show she would have prevailed in the underlying action, plaintiff contends the merit of the appeal was a matter the trial court should have decided and no expert testimony was necessary. Plaintiff makes this argument without explaining to us, or to the district court, why the appeal would have been successful

We agree with the trial court plaintiff has failed to meet her burden of proof that she would be successful in the underlying action. See Burke, 417 N.W.2d at 211. She introduced no expert evidence to show she would have won on appeal. We have also reviewed the transcripts of her hearing that were introduced at the trial. In oral argument plaintiff contended the board's decision was not supported by a preponderance of evidence as required by law. See Board of Directors v. Sexton, 334 N.W.2d 341, 344 (Iowa 1983); Board of Educ. v. Youel, 282 N.W.2d 677, 682 (Iowa 1979); Larsen v. Oakland Community School Dist., 416 N.W.2d 89, 92 (Iowa App. 1987); Wilson v. Des Moines Indep. Community School Dist., 389 N.W.2d 681, 683 (Iowa App. 1986). The preponderance of evidence does not have to be

sufficient to support any one ground, but the whole record on the grounds before the board is considered, and even though there is not sufficient preponderance on any one particular ground, if there is on the whole record, it is sufficient. Everett v. Board of Educ., 334 N.W.2d 320, 321 (Iowa App. 1983); Fay v. Board of Directors, 298 N.W.2d 345, 349 (Iowa App. 1980).

On our review of the transcript we find the board's decision was supported by a preponderance of the evidence. We agree with the decision of the adjudicator, who found:

> [T]he evidence is overwhelming that the appellant was repeatedly and consistently uncooperative with a large range of faculty. . . . This behavior significantly adversely affected the accomplishment of the District's educational goals, and although repeatedly warned she did not correct her behavior nor did she appear capable of correcting that behavior. There was nothing to suggest that she would change or accept the fact that she has acted in any improper fashion.

The fact that we have reviewed the transcript should not be construed as a holding either the district court or this court had an obligation to do so.

We affirm.

AFFIRMED.