

FILED

AUG 27 1986

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

TIMOTHY THOMPSON,

)

464

Petitioner-Appellee,

)

Filed August 27, 1986

vs.

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STATE OF IOWA,

)

6-279
86-101

Respondent-Appellant.

)

Appeal from the Iowa District Court for Lee County (Fort Madison) (CL 1143(N)0385) - David B. Hendrickson, Judge.

The State appeals a trial court decision granting a prisoner's application for postconviction relief. **REVERSED.**

Thomas J. Miller, Attorney General of Iowa, and Inga Bumbarly-Langston, Assistant Attorney General, for respondent-appellant.

David U. Sallen, Public Defender, Fort Madison, Iowa, for petitioner-appellee.

Considered by Donielson, P.J., Schlegel, and Hayden, JJ.

SCHLEGEL, J.

The State of Iowa appeals a trial court decision granting a prisoner's application for postconviction relief. The prisoner had challenged a prior disciplinary proceeding claiming that it was a violation of prison rules to permit the hearing officer to act as a one-person disciplinary committee at a hearing. We reverse.

On January 28, 1985, prisoner Timothy Thompson, an inmate of the Iowa State Penitentiary, was involved in a fight with another inmate. On that same day Thompson received a disciplinary notice for this fight. A hearing on this disciplinary report was held on January 31, 1985, before a three-member disciplinary committee. Thompson was found guilty. Thompson appealed the disciplinary committee's decision to the warden. The case was remanded for a second hearing to determine who started the fight and if Thompson acted in self-defense. On February 22, 1985, the second hearing was held. Charles Harper, a hearings officer, constituted the entire disciplinary committee. Harper also sat on the original committee which held the first of Thompson's hearings. Harper again found Thompson guilty and affirmed the earlier sanctions.

On March 27, 1985, Thompson filed an application for postconviction relief. The postconviction hearing was held on November 21, 1985. Thompson argued that it was a violation of section III-D-3 of the Rules, Regulations, and Disciplinary Procedure for the Government of the Iowa State Penitentiary Inmates to permit the hearing officer to act as a one-person disciplinary committee at Thompson's second hearing.

The trial court interpreted section III-D-3 to mean that a disciplinary committee must be composed of at least two persons and it may consist of more than two persons. The trial court concluded, therefore, that the second hearing violated the penitentiary rule since the second hearing committee consisted of only one person, the hearing officer. The court accordingly reversed

the disciplinary committee's decision, dismissed the disciplinary notice, restored Thompson's good and honor time, and expunged the incident from his record.

The State asserts that Thompson's argument was first raised during the district court hearing and therefore could not provide the basis for the district court's reversal of the disciplinary committee's decision. The State further argues that section III-D-3 provides that a sole hearing officer can constitute a disciplinary committee.

Postconviction relief actions are treated as special proceedings at law and our review is on assigned errors only. Kelly v. Nix, 329 N.W.2d 287, 291 (Iowa 1983).

We agree with Thompson that the district court properly used its discretion in amending his complaint at the time of the hearing. A district court has wide discretion in determining whether to allow amendments to pleadings. Kellar v. Peoples Natural Gas Co., 352 N.W.2d 688, 692 (Iowa Ct. App. 1984). The State has made no clear showing that the issues were substantially changed. First, it appears that State's counsel had somewhat anticipated the issue when it responded in reply to the court's question regarding the sole hearing officer, "The record indicates that Mr. Harper was the sole hearing officer. However, Your Honor, we refer--we will rely on Section III-D-3 of the Blue Book which states . . . page 62" Second, the record indicates that Thompson had claimed that "The disciplinary committee should have had at least two members seated, see the blue rule book, page II-G," on March 14, 1985, as part of his appeal. This was eight months before the district court trial. State's counsel knew or should have been aware of this assignment of error by Thompson to the second hearing. The district court acted well within its discretion in allowing the amendment to the petition.

However, we cannot agree that the rule in question can possibly be read as the district court interprets it. Employees' Manual II-G-62 dated April 12, 1985, reads in relevant part:

III. DISCIPLINARY PROCEDURES FOR CLASS I RULES

Policy

D. The Disciplinary Hearing

* * *

3. A disciplinary committee for an inmate sentenced for an offense committed prior to July 1, 1983, may be composed of at least two (2) persons from the staff of treatment and/or security or of a hearing officer whose sole responsibility is the adjudication of such matters, except that:

a. Nothing in these rules precludes the use of Department of Corrections staff, including Central Office and Institutions, to conduct disciplinary hearings at an institution other than that staff member's place of assignment, if circumstances warrant.

b. No individual may serve as a member of the disciplinary committee if directly involved in the matter as a witness, investigator, or reporting staff member.

4. For inmates sentenced for an offense committed on or after July 1, 1983, a disciplinary committee will consist of one or more independent hearing officers, not directly involved in the matter as a witness, investigator, or reporting staff member.

The ruling by the district court only reproduces rule III-D-3 through the words "at least (2) persons" An examination of the rest of the rule does not support the district court's interpretation of the rule. We agree with the proposition that words in a statute should be given their ordinary meaning unless defined differently by the legislature or possessed of a peculiar and appropriate meaning in law. City of Des Moines v. Elliott, 267 N.W.2d 44, 44 (Iowa 1978). In construing a statute, the statute must be read as a whole and given its plain and obvious

meaning, a sensible and logical construction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862, 866 (Iowa Ct. App. 1985). There must be persuasive reasons to the contrary not to give statutes their ordinary meaning. State v. Collier, 372 N.W.2d 303, 306 (Iowa Ct. App. 1985). The word "or" demonstrates that the section is written in the disjunctive. A disjunctive proposition suggests a contrast or alternative to another proposition. The words "or of a hearing officer whose sole responsibility is the adjudication of such matters . . ." can only mean that a sole hearing officer is the alternative to the two or more staff of treatment and/or security personnel who may also compose the committee. If not interpreted in this way "or of a hearing officer" is rendered meaningless. Furthermore, the word "may" only confers a power. In contrast to "may," the word "shall" imposes a duty and the word "must" states a requirement. See Iowa Code § 4.1(36) (1985). The word "may" does not require that the committee have more than one member to hear a case.

As a matter of law we find that the district court misconstrued the clear meaning of rule III-D-3. While we may think the term "committee" unfortunate when referring to one person and may think that the rule against types of self-defense too harsh when applied to the facts of Thompson's case, we hold that section III-D-3 clearly provides that an individual hearing officer can constitute a disciplinary committee.

REVERSED.