IN THE COURT OF APPEALS OF IOWA

No. 3-431 / 92-1709

FILED
OCT 05 1993
CLERK SUPREME COURT

FRANCIS J. PICRAY, JR.,

Appellant,

vs.

**CITY OF DES MOINES, IOWA, REGINALD V. SIPPLE, HAROLD E. SMITH, JERRY THOMPSON, TERRANCE HOPKINS, NELDA MICKLE, PAT KOZITZA, RICHARD WILKEY, EDDIE L. CARR** and **WILLIAM McLAUGHLIN,** Individually and as Agents for the City of Des Moines.

Appellees.

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Appeal from the Iowa District Court for Polk County, Glenn Pille, Judge.

The plaintiff brought this action against the City of Des Moines claiming city employees violated his civil rights by not hiring him. The plaintiff also claimed the defendants tortiously failed to hire him. The plaintiff now appeals the district court's orders granting the defendants' motions for summary judgment. **AFFIRMED.**

Francis J. Picray, Jr., Des Moines, pro se.

Bruce E. Bergman, City Solicitor, and Emily Gould Chafa, Assistant City Attorney, Des Moines, for appellee.

Heard by Donielson, P.J., and Schlegel, J., and Perkins, S.J.*

*Senior judge from the 5th Judicial District serving on this court by order of the Iowa Supreme Court.

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**PER CURIAM**

This case involves Francis Picray, Jr.'s, suit against various current and former employees of the City of Des Moines. Picray claimed in his petition, inter alia, the City refused to hire him in violation of his civil rights under 42 U.S.C. §§ 1983, 1985, and 1986 (1988) and the Fair Labor Standards Act of Title 29 U.S.C. Picray also claimed the employees tortiously failed to consider his application for employment.

Picray is a former city employee who filed suit against the City for wrongful discharge. Apparently the City settled out of court. Picray subsequently applied to the City for an advertised position. After he heard no response, Picray called the City and allegedly learned the City would not process his application because his file was marked not recommended for rehire. Picray then brought this action against the City.

The defendants denied Picray's allegations and claimed they were entitled to qualified immunity. They also claimed Picray had failed to state a claim upon which relief could be granted. The district court granted defendant Terrence Hopkins' motion for summary judgment.

The remaining defendants filed a separate motion for summary judgment based, in part, on the grounds of qualified immunity and Picray's failure to allege any specific deprivation of his rights under federal law. At this point in the proceedings, Picray was represented by

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counsel. In Picray's motion for summary judgment he agreed he failed to specify any deprivation of rights under 42 U.S.C. §§ 1983, 1985, 1986 and the Fair Labor Standards Act. The court granted the defendants' motion as to Picray's claims under federal law.

The defendants subsequently filed a motion for summary judgment as to Picray's claim they tortiously failed to hire him. Acting pro se, Picray resisted the motion. The court granted the motion on the ground Picray failed to state a cause of action for which relief could be granted. Picray appeals from the court's orders granting the defendants' motions for summary judgment except, apparently, the cause of action against Terrance Hopkins.

We review a summary judgment ruling to determine "(1) whether a genuine issue of material fact exists, and (2) if the law was correctly applied." Ottumwa Housing Auth. v. State Farm Fire, 495 N.W.2d 723, 726 (Iowa 1993). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237; Colton v. Branstad, 372 N.W.2d 184, 187 (Iowa 1985). No fact question exists if the only dispute concerns the legal consequences flowing from undisputed facts. Brown v. Monticello State Bank, 360 N.W.2d 81, 84 (Iowa 1984).

Picray conceded in the proceedings on the first motion for summary judgment that his petition failed to specify any violation of his rights under 42 U.S.C. 1983, 1985, 1986, and the Fair Labor Standards Act. Since he did not pursue any administrative remedies under Iowa civil rights law within the specified 180 days, he cannot pursue that claim in court. See Iowa Code section 601A.15(12) (1991) (now codified as section 216.15(12) (1993)). We find no genuine issue of material fact relating to the civil rights claims in the record. Summary judgment was appropriate concerning his civil rights claims.

Picray also alleges tortious failure to hire or tortious failure to consider his application for employment. After careful examination of the record, we find no genuine issue of material fact. We agree with the district court appellant has failed to state any statutory authority or basis for a cause of action. We therefore affirm the district court's grant of summary judgment on the tort claim.

**AFFIRMED.**