IN THE COURT OF APPEALS OF IOWA

No. 2-078 / 91-709

FILED
MAR 24 1992
CLERK SUPREME COURT

ROMANUS NGENE-IGWE,

Appellant,

vs.

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IOWA STATE UNIVERSITY, et al.,

Appellees.

Appeal from the Iowa District Court for Polk County, Anthony M. Critelli, Judge.

Plaintiff appeals from a judgment of the district court finding the plaintiff was not terminated from Iowa State University's doctoral program in economics on the basis of his race. **AFFIRMED.**

Romanus Ngene-Igwe, Columbus, Ohio, pro se.

Bonnie J. Campbell, Attorney General; Gordon E. Allen, Deputy Attorney General; and Mark Hunacek, Assistant Attorney General, for appellees.

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

PER CURIAM 228

The plaintiff, Romanus Ngene-Igwe, is a black Nigerian citizen and has been a graduate student at Iowa State University (ISU). Ngene-Igwe commenced this action against the university and fifteen other defendants in Polk County district court in November 1986. He alleges he was dismissed from the university's doctoral program in economics based on his race and national origin, a violation of Iowa Code chapter 601A. The defendants contend Ngene-Igwe was dismissed for purely academic reasons.

Professor Dennis Starleaf, chairman of the economics department, testified to the academic requirements necessary for the attainment of a doctorate degree in economics at ISU. A student must pass qualifying examinations in microeconomics and macroeconomics as well as two fields of concentration. These qualifying exams are anonymously graded; the students are assigned numbers by which they identify themselves on their exams, and the committee grading the exams is not privy to the list correlating the names and numbers. Each of the theory exams (microeconomics and macroeconomics) may be taken three times as a matter of right and four times if the student successfully appeals.

Ngene-Igwe took the microeconomics exam three times failing it each time. He also took the macroeconomics exam twice failing it both times. Finally, he twice failed the

field of study exam in agricultural production policy and finance.

The economics department at ISU has an extensive procedural apparatus for contesting the results of a qualifying examination. The first level of review is an interdepartmental appeal. This appeal is directed to an appeals committee consisting of five people: the chairman of the examination committee, two other economics professors, an economics graduate student, and another economics professor chosen by the student bringing the appeal. Two such committees exist, one for the microeconomics exam, and one for the macroeconomics exam. The appeals committee may in its discretion reverse the failing grade and allow the student to take a theory qualifying exam for a fourth time, or it may deny the appeal.

After failing his microeconomics qualifying exam for the third time in 1984, Ngene-Igwe appealed to the appeals committee requesting that he be allowed to take the exam for a fourth time. In initiating this appeal, Ngene-Igwe wrote a letter to the chairman of the economics department in which he stated: "This mistake is mine, I must admit, for not budgeting my time wisely; but I must endeavor to correct this mistake if given a chance to retake the exam." After receiving this letter, Professor Mattila, chairman of the microeconomics examination committee, referred the matter to the microeconomic appeals committee, chaired by Professor Huffman.

However, Ngene-Igwe later sent another letter of appeal. In this second letter, Ngene-Igwe stated he should have passed the exam and discussed the substance of the exam in great detail. Professor Mattila wrote to Professor Huffman regarding Ngene-Igwe's allegations. This memorandum states Ngene-Igwe attempted only two questions on the exam, although the exam required students to answer three out of four. The appeals committee denied Ngene-Igwe's appeal after considering and rejecting his contention the microeconomics exam committee had erred in grading the exam. Professor Mattila informed Ngene-Igwe of the committee's action in a memorandum dated May 10, 1984. The memo states the appeals committee had decided, by a three to two vote, to refuse to allow Ngene-Igwe to take the exam a fourth time. In reaching its decision, the committee reviewed Ngene-Igwe's overall grade point average, which was in the bottom ten percent of the department, his grades in relevant theory courses, his experiences on the qualifying exams, and his background on entry into the graduate program.

The next step after an interdepartmental appeal is an interdepartmental grievance, which is conducted in accordance with the rules of the graduate college. Ngene-Igwe filed such a grievance after his unsuccessful appeal. A grievance committee considered and rejected his claim.

While he was engaged in the process of appealing his failure on the microeconomics qualifying exam, Ngene-Igwe appealed his failure of the macroeconomics qualifying exam as well. The chairman of the examination committee, Barry Falk, wrote the appeal committee a memorandum responding to the substance of Ngene-Igwe's allegations of improper grading. The macroeconomics appeals committee considered and rejected Ngene-Igwe's appeal. His written defense of his answers was considered.

After exhausting the departmental appeal and departmental grievance procedures, the next step is a grievance to the graduate college. Ngene-Igwe filed a grievance with Dean Zaffarano appealing his failure of his microeconomics qualifying exam. Apparently skipping a step, he filed a grievance with Dean Zaffarano appealing his failure of his macroeconomics qualifying exam as well. The graduate committee entertained his grievance, meeting twelve times, and obtained oral presentations from both Ngene-Igwe and members of the economics department. The committee found no improprieties on the part of the economics department, but did issue a nonbinding recommendation that Ngene-Igwe be given until May 1985 to pass the microeconomics qualifying exam. The economics department discussed this recommendation with the dean, and the dean accepted the department's decision not to allow Ngene-Igwe to attempt the exam for a fourth time.

Nevertheless, Ngene-Igwe was provided another opportunity to remove one of the microeconomics qualifying exam failures from his record. This opportunity, the "amnesty program," was created due to concern on the part of the faculty and students that a large number of students were failing the microeconomics and macroeconomics qualifying exams. In order to remove a failure from one's record, a student was required to take a course designed to prepare the student for the exam and to complete the exam with a certain grade. Because Ngene-Igwe was experiencing financial difficulties, the university allowed him to take the preparatory course without payment of fees or tuition. Ngene-Igwe did not complete the course, however, and did not show up for the final exam. He was offered a make-up exam, but he declined.

According to Professor Starleaf, it was Ngene-Igwe's failure to pass the microeconomics qualifying exam for the third time, and his failure to obtain a fourth attempt, that resulted in his expulsion from the graduate program.

Ngene-Igwe then filed this action in Polk County district court alleging sixteen defendants unlawfully discriminated against him on the bases of his race and national origin. On May 16, 1989, the defendants moved for summary judgment asserting Ngene-Igwe's petition was frivolous. Ngene-Igwe's attorney, Dennis Eaton, filed a response to the motion for summary judgment, claiming that Ngene-Igwe had been misled by prior counsel concerning the

merit of his claim. Attorney Eaton requested that any sanctions imposed be assessed against former counsel Greg Bal. On July 31, 1989, the district court granted the motion for summary judgment and dismissed the case, but declined to award sanctions. Later, however, Ngene-Igwe procured the services of new counsel, Robert L. Wright, Jr. On August 7, 1989, Wright filed a motion to vacate the judgment. On November 15, 1989, the district court granted the motion and reinstated the lawsuit on the ground there had been a breakdown in communication between Ngene-Igwe and Attorney Eaton. The defendants filed an application for interlocutory appeal, which was denied by order of Justice Schultz on December 22, 1989.

On December 27, 1989, the defendants filed a second motion for summary judgment asserting the case had not been filed in the county where the alleged discrimination took place, and that the Polk County district court lacked jurisdiction to hear the case. The district court denied the motion, finding there was a factual question concerning where the discriminatory conduct occurred.

In January 1991 the case finally proceeded to trial. On April 9, 1991, the trial court rendered its judgment holding Ngene-Igwe had filed the action in the wrong county. The trial court found that no discriminatory conduct had occurred in Polk County, and the case should have been filed in Story County where ISU is located. The court also held ISU had done all it could to provide

Ngene-Igwe the opportunity to pass the microeconomics examination. The court noted few other students were allowed to retake the examination a fourth time, and the university had allowed Ngene-Igwe to take preparatory courses free of charge when it was apparent he could not afford to pay. Finally, the court determined Ngene-Igwe's dismissal was justifiable on purely academic grounds. Ngene-Igwe has appealed.

Ngene-Igwe, representing himself, reiterates his argument that he was dismissed from the ISU doctoral program in economics based on his race and national origin. Our review in this law action is for the correction of errors at law. Iowa R. App. P. 4. Because we affirm the trial court's ruling on the merits of this case, we assume, without deciding, that the action was filed in the proper county.

When the trial court, following a bench trial, denies recovery because the plaintiff failed to carry his or her burden of proof on an issue, we will not interfere unless we find the plaintiff carried his or her burden as a matter of law. Whiteaker v. State, 382 N.W.2d 112, 114 (Iowa 1986). To find that the plaintiff has carried his or her burden as a matter of law, we must find the evidence was so overwhelming on each critical fact issue that only one reasonable inference could be drawn and the trial court drew the wrong one. Id. We are unable to make such a finding on the record before us. We believe the record

demonstrates that Ngene-Igwe was dismissed for academic reasons.[1] We affirm.

Finally, the appellees argue this appeal is frivolous and request an award of sanctions, amounting to a reasonable attorney fee, pursuant to Iowa Rule of Civil Procedure 80(a) and Iowa Code section 619.19(2). We decline to grant the appellee's request.

The costs of this appeal are taxed to Ngene-Igwe.

For all the reasons stated, the judgment of the district court is affirmed.

AFFIRMED.

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1. See Lunde v. Iowa Board of Regents, No. 91-760, slip op. (Iowa App. filed Mar. 24, 1992).