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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ELDON F. BURR,	)	
Plaintiff-Appellant,	)	Filed November 19, 1979
vs.	)	
CITY OF CEDAR RAPIDS, IOWA, a Municipality, **CEDAR RAPIDS PUBLIC SAFETY COMMISSION, CEDAR RAPIDS POLICE DEPARTMENT, DOUGLAS FULLER, DENTON SCHULTZ, THE STATE OF IOWA, IOWA DEPARTMENT OF PUBLIC SAFETY, B.C.I. CRIMINALISTICS LABORATORY, JAMES DAHLGRAN, LINN COUNTY,** and **JOHN EHRHART,** Defendants-Appellees.	)	253 2-62870

Appeal from Linn District Court - Robert E. Ford, Judge.

Plaintiff appeals trial court's order dismissing four counts of his petition alleging his action is outside the scope of chapter 25A, The Code 1977, and thus does not require him to file a claim with the state appeals board, and the doctrine of sovereign immunity should be abrogated to the extent that it would bar his action. APPEAL DISMISSED.

Joseph C. Johnston of Iowa City for plaintif-appellant.

Thomas J. Miller, Attorney General of Iowa, and Fred M. Haskins, Assistant Attorney General, for defendants-appellees.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiff, Eldon F. Burr, appeals trial court's order dismissing four counts of his petition against defendant State of Iowa, Iowa Department of Public Safety, B.C.I. Criminalistics Laboratory, and James Dahlgran, in an alleged action for false arrest, false imprisonment, and malicious prosecution.[1] We dismiss this appeal due to its interlocutory nature.

On August 23, 1978, plaintiff filed a four-count petition against city, county and state-level defendants. State-level defendants filed a motion to dismiss on September 19, 1978. Plaintiff amended his petition on October 13, 1978, by adding a fifth division, alleging breach of contract. Trial court dismissed the first four divisions of plaintiff's petition on November 15, 1978. Plaintiff subsequently filed both a notice of appeal from the final decision of trial court dismissing counts one through four of his petition and an application for interlocutory appeal. By order dated January 18, 1979, the Supreme Court expressly authorized an appeal as to defendants Linn County and Ehrhart. However, plaintiff's request for interlocutory appeal of the order dismissing counts one through four of the petition against the state-level defendants was denied. We, therefore, must determine whether trial court's order is a final order.

The Iowa Supreme Court stated in Johnson v. Iowa State Highway Commission, 257 Iowa 810, 812, 134 N.W.2d 916, 918 (1965): "A final judgment or decision is one that finally adjudicates the rights of the parties. It must put it beyond the power of the court which made it to place the parties in their original position. . . . A ruling or order is interlocutory if it is not finally decisive of the case." An order dismissing only part of the petition, thus, is interlocutory. Shoemaker v. City of Muscatine, 275 N.W.2d 206, 208 (Iowa 1979). While several Iowa cases have held that a petition which alleges a distinct cause of action against two or more defendants may result in an appealable final judgment upon dismissal as to one defendant, it is an independent basis of liability against each defendant which has been the controlling consideration. See Bennett v. Ida County, 203 N.W.2d 228 (Iowa 1972); Bigelow v. Williams, 193 N.W.2d 521 (Iowa 1972); McGuire v. City of Cedar Rapids, 189 N.W.2d 592 (Iowa 1971). "Therefore, while the McGuire rule (an independent basis of liability against each defendant) would not apply

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[1] Counts I, III and IV of plaintiff's petition were actually directed against other defendants.

to all cases involving multiple defendants, . . . it could not apply to any case not involving multiple defendants." Shoemaker, 275 N.W.2d at 208.

We conclude trial court's dismissal of only part of plaintiff's petition against the State-level defendants renders its judgment interlocutory. Plaintiff's application for permission to pursue an interlocutory appeal was denied by the Supreme Court. Due to these factors, we consequently are without jurisdiction to hear this appeal.

APPEAL DISMISSED.