

FILED

MAY 20 1977

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IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

HELEN COURTER,

)

Appellant,

)

Filed May 20, 1977

vs.

)

WINFIELD-MT. UNION COMMUNITY)
SCHOOL DISTRICT; ROBERT HUMPHREY,)
PRESIDENT OF THE BOARD OF EDUCA-)
TION OF THE WINFIELD-MT. UNION)
COMMUNITY SCHOOL DISTRICT; ROBERT)
CONNOP, ELSA GRIMNER, and PAULINE)
PAYNE, MEMBERS OF THE BOARD OF)
EDUCATION OF THE WINFIELD-MT.)
UNION COMMUNITY SCHOOL DISTRICT,)
AND THEIR SUCCESSORS IN TITLE, IF)
ANY, AND RICHARD DRAKE AND MICHAEL)
KLOPFENSTEIN,)

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2-58618

Appellees.

Appeal from Henry District Court - Harlan W. Bainter,
Judge.

Plaintiff schoolteacher appeals dismissal of her
§ 279.13 suit for failure to exhaust administrative remedies.
Reversed and remanded.

Joseph C. Johnston & Emmitt J. George, of Johnston, Penny
and Goetz, of Iowa City, for Appellant.

Robert A. Engberg, of Pryor, Riley, Jones & Walsh, of
Burlington, and Gene R. Krekel, of Hirsch, Wright, Link &
Adams, of Burlington, for Appellees.

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

PER CURIAM

The trial court dismissed plaintiff Helen Courter's petition for failure to exhaust administrative remedies. He based his ruling on *Griffith v. Red Oak Community School District*, 167 N.W.2d 166 (Iowa 1969). However, the alleged discharge there was under Section 279.24, The Code, the discharge for cause section.

In this case the termination of Courter's contract is under §279.13, The Code, the automatic continuation section.

In the latest case involving 279.13, The Code, the issue of exhaustion of administrative remedies was not raised. *Kruse v. Bd. of Dir., Lamoni Comm. School District*, 231 N.W.2d 626 (Iowa 1975).

Only one other case involving §279.13, The Code, has been before the supreme court, *Ramey v. Des Moines Area Community College*, 216 N.W.2d 345 (Iowa 1974). There §279.13 was incorporated by reference in the contract. The court held, citing *Samuelson* (*Independent School District v. Samuelson*, 222 Iowa 1063, 270 N.W. 434 (1936)), that plaintiff need not appeal to county and state school boards. *Ramey* can be distinguished from this case in that *Ramey* was a community college teacher and his termination was not subject to §279.13. The *Ramey* court was only interpreting contractual language which by reference incorporated the language of §279.13. Thus *Ramey* was limited to the specific incorporated language in the contract and did not come within the purview of the statute per se.

Furthermore, there is no comparable administrative county level board for community colleges. *Samuelson* did not involve §279.13, The Code. *Samuelson* had contracted to waive his right to a §279.24 'for cause' hearing, in favor of a mutual 30-day termination clause. The *Ramey* court said in essence that contractual termination clauses are not subject to the exhaustion

of administrative remedies doctrine.

This is a case of first impression. The issue is the meaning of the words in §279.13, The Code; " . . . the action of the board shall be final."

We believe the legislative intent was to prohibit further administrative review by county and state educational boards of terminations pursuant to §279.13, The Code. See *Brownell v. Tom Ve Shung*, 352 U.S. 180, 1 L.Ed2d 225, 77 S. Ct. 252 (1956).

We do not decide the question raised by defendant appellees, whether the petition states a cause of action. But see *Kruse*, 231 N.W.2d at 634, decided after the trial court ruling in this case.

Reversed and remanded for further proceedings.

CARTER, J. (concurring specially)

I concur in the holding of the majority that the plaintiff had no further administrative remedies available and therefore the reason advanced by the trial court for sustaining defendants' motion to dismiss is legally incorrect.

I am cognizant, however, that it is the usual rule that if any ground of a motion to dismiss is good, a ruling granting the motion should be upheld on appeal even though the ground upon which the trial court based its ruling was not good. In *re Lone Tree Community School District*, 159 N.W.2d 522 (Iowa 1968); *Crawford v. City of Des Moines*, 255 Iowa 861, 124 N.W.2d 868 (1964). Application of this rule would ordinarily require us to pass upon appellees' affirmative assertions that the plaintiff's petition fails "to state a cause of action entitling plaintiff to any relief" on five additional grounds enumerated in the motion to dismiss.

In the present case, however, I believe there exists sufficient reason to decline to follow the rule to which I have alluded. The sole ground upon which the trial court sustained the motion to dismiss (failure to exhaust administrative remedies) was a matter which could not have been cured by amendment in the trial court thereby forcing plaintiff to appeal. The other grounds (those contained in paragraphs 1A through 1E, inclusive of the motion) involve contentions which, if sustained, conceivably are capable of being cured by amendment. Had the ruling in the trial court been based upon any of these grounds, plaintiff, under the provisions of rule 86, Rules of Civil Procedure, would have had the right to plead further by amendment. *Nesper Sign Neon Co. v. Nugent*, 168 N.W.2d 805 (Iowa 1969). If we affirm the judgment on appeal based upon any of these grounds we would be depriving the plaintiff of that opportunity. I therefore feel that the trial court should be given the opportunity to rule on the other grounds of the motion in the first instance, even though I feel it is doubtful that the present petition states a valid claim for relief.