IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

114

EXCEPTIONAL PERSONS, INC.,

Plaintiff-Appellee,

vs.

MARTHA WARD, JOY LOWE, and GALE QUIRK, As Commissioners of the Commission of Human Rights for the City of Waterloo, Iowa,

Defendants-Appellants.

8-233
87-1314

Appeal from the Iowa District Court for Black Hawk County (No. 69144), Robert E. Mahan, Judge.

Defendant commissioners appeal from the district court ruling which granted plaintiff's petition in certiorari. **REVERSED AND REMANDED.**

Timothy J. Luce, Assistant City Attorney, for defendants-appellants.

J. Douglas Oberman of Swisher & Cohrt, Waterloo, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson and Habhab, JJ.

PER CURIAM

This case arose when Rhonda Wise filed a discrimination complaint with the Commission of Human Rights for the City of Waterloo against her employer, Exceptional Persons, Inc., pursuant to Chapter 20 of Waterloo City Ordinance No. 3369. Her case was filed February 6, 1985. After an investigation of the complaint, the Commission, by letter dated April 24, 1986, sent to the parties a proposed conciliation agreement. Exceptional Persons declined to enter into that agreement, and on May 2, 1986, informed the Commission that it desired to exercise its right to proceed to a public hearing. Section 20-16(a) of City Ordinance No. 3369 provides that upon failure of conciliation efforts the Commission shall promptly schedule the matter for public hearing.

In addition to their May 2, 1986 letter, Exceptional Persons, by letters dated August 15, September 10, November 6, and November 21, 1986, continued in their request for a public hearing. Finally, after these repeated requests, the Commission scheduled a public hearing for January 6, 1987.

To compound the problem, even though all interested parties appeared for the January 6th hearing, it had to be canceled for only one of the three commissioners attended. This cancellation was without fault of either Exceptional Persons or Rhonda Wise. The blame in this respect was with the Commission.

The matter did not receive the attention of the Commission until June 12, 1987, when June 23, 1987, was fixed as the hearing date. It was at that time that Exceptional Persons moved to dismiss the proceedings on the ground that the hearing was not "promptly scheduled" as required in chapter 20 of Waterloo City Ordinance No. 3369.

The Commission overruled Exceptional Persons' motion. A petition for certiorari was taken to the trial court. That court determined that the Commission acted contrary to chapter 20 of City Ordinance No. 3369 by overruling Exceptional Persons' motion to dismiss. The crux of the trial court's opinion rested on the ground that the hearing date was not promptly scheduled.

The record is without dispute that the first request for a hearing was made on May 2, 1986. When the matter finally reached the attention of the Commission, it was fixed for hearing for January 6, 1987. As previously pointed out, two of the commissioners failed to attend.

But the failure to hold the hearing did not rest with Rhonda Wise. She was present at the January 6, 1987, hearing, as was Exceptional Persons. There is nothing in the record that reveals that Rhonda Wise was dilatory or neglectful in the pursuit of her claim. Under these circumstances, we are of the opinion that the sanction of the dismissal of Rhonda Wise's complaint is much too severe. There were and are other remedies available to compel the

Commission to act in accordance with the mandate of the Waterloo City Ordinance.

City Ordinance No. 3369 provides that judicial review of the Commission's decisions shall be governed by the Iowa Administrative Procedures Act (Iowa Code Chapter 17A). We note that the Commission here ruled on a preliminary or intermediate matter; *i.e.*, a motion to dismiss. "A preliminary, procedural or intermediate agency action is immediately reviewable if all adequate administrative remedies have been exhausted and review of the final agency action would not provide an adequate remedy." Iowa Code § 17A.19(1) (1987). Thus, the trial court had authority to review the Commission's decision on the motion to dismiss.

Section 17A.19(8)(c) (1987) provides:

> . . . the court shall reverse, modify, or grant any other appropriate relief from the agency action, equitable or legal and including declaratory relief, if substantial rights of the petitioner have been prejudiced because the agency action is:
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> * * *
>
> c. In violation of an agency action. (emphasis added).

The Commission argues that Exceptional Persons was not prejudiced by the delay. See Hartvigsen v. Iowa Dep't of Transp., No. 87-420, slip op. (Iowa Supreme Court 1988). We agree; however, by so agreeing, we do not want to leave the impression that we condone the long delay in bringing the complaint to hearing.

In resolving this matter, we assess the costs of appeal to the Commission, *reverse* the trial court, and remand for further proceedings.

REVERSED AND REMANDED.