

IN THE COURT OF APPEALS OF IOWA

No. 8-697 / 97-1858

FILED

ROI J. BROWN,
Appellant,
vs.

**PLEASANT VALLEY COMMUNITY SCHOOL
DISTRICT, ROBERT MATTISON, CARL
BOEHL, BILL ROMANS, JAMES GRAY,
LARRY DODDS, KEVIN O'HARA, PHYLLIS
AHLSTRAND, CHRISTINE HARVEY, and
JUDY BROWN,**
Appellees.

ROI J. BROWN,
Appellant,
vs.

**PLEASANT VALLEY COMMUNITY
SCHOOL DISTRICT,**
Appellee.

Appeal from the Iowa District Court for Scott County, Edward B DeSilva
(motion to dismiss) and Max R. Werling, Judges.

Roi Brown appeals from district court rulings denying an amendment to his
mandamus action and dismissing his appeal from an adjudicator's decision affirming
the termination of his employment contract. **AFFIRMED.**

Thomas C. Fritzsche, Bettendorf, for appellant.

Michael L. Noyes, Lane & Waterman, Davenport, for appellees.

Thomas W. Foley and Kathryn Atkinson Overberg of Nyemaster, Goode, Voigts, West, Hansell & O'Brien, P.C., Des Moines, for amicus curiae Iowa Association of School Boards.

Heard by Streit, P.J., and Vogel and Zimmer, JJ.

STREIT, P.J.

Roi Brown appeals the trial court's dismissal of his mandamus action to order the Pleasant Valley Community School Board (Board) to hold an evidentiary hearing regarding his termination and awarding him damages and attorney fees. He also appeals the trial court's dismissal of his petition for judicial review of the adjudicator's decision upholding the Board's termination of his contract. Because the Board was not required to hold an evidentiary hearing under the applicable statutes or constitutional principles and Brown is not entitled to damages or attorney fees, we affirm the dismissal of the mandamus action. Because Brown did not exhaust his administrative remedies prior to seeking court intervention, we affirm the trial court's dismissal of his petition for judicial review.

I. Background Facts & Proceedings.

Roi Brown was a tenured teacher in the Pleasant Valley Community School District. On February 15, 1996, he was served with notice and recommendation to terminate contract by the superintendent. He was also informed he had five days to request a private hearing. He did not request a private hearing. On March 4, 1996, the Board of Directors of Schools convened in open session and conducted a roll call vote on whether to terminate Brown's contract. The Board voted to terminate his contract. Brown was served with notice of termination the next day.

Brown notified the Board Secretary of his intention to appeal its decision to an adjudicator of the Iowa Public Employment Relations Board (IPERB) and requested

notice of the appeal be sent to the IPERB. Based on the belief Brown was not entitled to an appeal because he did not request a private hearing before the Board, the Board refused to send notice of the appeal to the IPERB.

Brown filed a mandamus action to require the Board to forward notice of his appeal to the IPERB and seeking compensatory and punitive damages and attorney fees for the Board's five-month delay. The Board sent the notice to the IPERB after the mandamus action was filed. In September 1996, Brown filed for leave to amend his mandamus petition to add a new party, state a second cause of action for the Board's failure to conduct an evidentiary hearing regarding his termination, and requiring the Board to make an evidentiary record. The court allowed the addition of a new party, but denied Brown's other requests. Brown's 179(b) motion was also denied.

In October 1996, the IPERB adjudicator upheld the Board's termination decision. Brown did not reject the adjudicator's decision within ten days as required by statute. Rather, in November 1996, he filed a petition for judicial review of the adjudicator's decision in district court.

Brown's mandamus action and petition for judicial review were consolidated for hearing by the district court in September 1997. . The court dismissed the remaining causes of action on Brown's mandamus action and dismissed the petition for judicial review on grounds of lack of subject matter jurisdiction. Brown appeals.

II. Brown's Mandamus Action.

Brown contends the trial court erred in the trial court erred in refusing to order the Board to hold a public evidentiary hearing and in dismissing his claim for actual and punitive damages and attorney fees incurred. Because mandamus is an equitable action, our review is de novo. *Hunziker v. State*, 519 N.W.2d 367, 369 (Iowa 1994); *Fitzgarrald v. City of Iowa City*, 492 N.W.2d 659, 663 (Iowa 1992).

Our mandamus statute provides a writ of mandamus may issue to compel an inferior tribunal, board, corporation, or person to act or not to act as required by law, included duties mandated by statute. See Iowa Code § 661.1 (1997); *Graham v. Baker*, 447 N.W.2d 397, 400 (Iowa 1989). Further, a writ of mandamus may issue only where a plain, speedy, and adequate remedy is not available. *Bellon v. Monroe County*, 577 N.W.2d 877, 879 (Iowa App. 1998).

As the basis of his mandamus action, Brown argues the Board was required to hold a public evidentiary hearing under Iowa Code Section 279.16¹ and due process.²

¹ Brown argues that the requirement under 279.16 that the Board convene in open session in the event a teacher does not elect a private hearing entitles him to a public evidentiary hearing.

² A due process claim can give rise to three different kinds of constitutional protection. The specific protections defined in the Bill of Rights, a substantive component, sometimes referred to as "substantive due process," which bars certain arbitrary government actions regardless of the fairness of the procedures used to implement them, and a guarantee of fair procedure, sometimes referred to as "procedural due process," whereby the State may not take property without providing appropriate procedural safeguards. *Willson v. City of Des Moines*, 386 N.W.2d 76, 80 (Iowa 1986)(citation omitted).

Neither section 279.16 nor the constitutional principles referred to by Brown entitle him to a public hearing in this case.

Section 279.16 requires Brown have the opportunity to have a private hearing. In the event a teacher does not select a private hearing, different rules apply: (1) the Board may proceed and make a determination upon the superintendent's recommendation; (2) the determination may not be later than May 31; (3) the Board shall convene in open session and by roll call vote to determine the termination or continuance of the teacher's contract. Iowa Code § 216.16 (1997). The statute does not require Brown be given notice of the open session. The statute does not state Brown is entitled to a public evidentiary hearing. In short, section 279.16 simply does not give Brown the right he asserts.

Brown contends the Board's failure to hold a public hearing violated his due process rights. It cannot be disputed Brown's status as a nonprobationary state employee with a continuing contract of employment gave him a protected property interest in continued employment which triggered due process protections upon his termination. *Lee v. Giangreco*, 490 N.W.2d 814, 817 (Iowa 1992) (quoting *Board of Regents v. Roth*, 408 U.S. 564, 576-78, 92 S.Ct. 2701, 2708-09, 33 L.Ed.2d 548, 560-61 (1972)). The "root requirement" of procedural due process is the "opportunity for hearing before [an individual] is deprived of any significant property interest." *See id.* Our supreme court has noted that, under the due process clause, proposed action against a tenured public servant entitles the employee to oral or written notice

of the charges precipitating the termination, an explanation of the employer's evidence, and an *opportunity* to present the employee's side of the story. *Id.* at 817 (quoting *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546, 105 S.Ct. 1487, 1495, 84 L.Ed.2d 494, 506 (1985)). We find procedural due process met by the Board in this case. Brown was given the opportunity for a hearing before an impartial tribunal. He did not exercise his opportunity. The due process clause does not require the State to provide an opportunity for a hearing other than that clearly provided by statute. Brown's due process rights have not been violated.

Brown's claims for damages and attorney fees based in his mandamus action are without merit. Brown offered no evidence in his resistance the Board's delay in turning over his appeal to the adjudicator caused him actual damages. He alleges in his brief the delay exacerbated his depression, required him to be on additional medication, and made him contemplate suicide. However, his allegations are belied by the fact that these conditions took place around February 20, 1996, approximately one month before he filed his notice of appeal with the Board. Brown's failure to prove actual damage disallows his claim for punitive damages. Some actual damages must be shown to support a claim for punitive damages. *Schlegel v. Ottumwa Courier, a Div. of Lee Enterprises, Inc.*, 585 N.W.2d 217, 226 (Iowa 1998). Brown has cited no contractual or statutory right to attorney fees and is not entitled to such fees. *See Kent v. Employment Appeal Bd.*, 498 N.W.2d 687, 689 (Iowa 1993).

We affirm the trial court's dismissal of Brown's mandamus action.

III. Brown's Petition for Judicial Review.

Brown contends the trial court erred in dismissing his petition for judicial review of the adjudicator's decision.

Our review is for correction of errors at law. Iowa R. App. P. 4. Because we are reviewing a district court's dismissal of plaintiff's cause of action, we view plaintiff's allegations in a light most favorable to him, resolve doubts in his favor, and will uphold the ruling only if jurisdiction can not be established under any state of facts provable under the allegations in the petition. *IES Utilities Inc. v. Iowa Dept. of Revenue and Finance*, 545 N.W.2d 538, 539 (Iowa 1996).

Judicial review proceedings are fundamentally different from original actions commenced in the district court in their jurisdictional basis, the manner of disposition, and the types of relief provided to a successful petitioner. *Black v. University of Iowa*, 362 N.W.2d 459, 462 (Iowa 1985). A district court lacks jurisdiction to review an agency action if the challenge meets the criteria of section 17A.19 of the Iowa Code. *Id.* (citations omitted).

Under Iowa Code chapter 17A, the Iowa Administrative Procedure Act (APA), a litigant seeking judicial review of an adverse agency action must first have fulfilled certain administrative prerequisites. *Id.*; *see also* Iowa Code §17A.19(1) (1995). One of the prerequisites is that the litigant has exhausted his administrative remedies prior to seeking judicial review. *Id.* There are three exceptions to this rule: (1) when the agency action was in violation of the rule-making procedures set forth under the APA

See Lundy v. Iowa Dept. of Human Serv., 376 N.W.2d 893, 894(1985); (2) when a constitutional challenge is made; and (3) when the plaintiff claims the applicable statute does not expressly or implicitly require all adequate administrative remedies be exhausted prior to bringing an action in district court.³ *See id.*

Because he has not proven his claim fits under an exception, he was required to fulfill the administrative prerequisites set out in Chapter 279 of the Iowa Code prior to seeking court intervention. Brown only partially fulfilled these prerequisites. He appealed the decision of the Board to an adjudicator. The adjudicator affirmed the Board's decision. At that point, Brown was required to reject the decision of the adjudicator if he wished to seek further review of the decision. Section 279.17 states: "The decision of the adjudicator shall become the final and binding decision of the Board unless either party within ten days notifies the secretary of the Board that the decision is rejected." That written rejection of the adjudicator's decision is necessary

³ Brown's challenge does not fit within any of the exceptions to the general rule that administrative remedies must be exhausted prior to seeking judicial review. Although he raises constitutional challenges, we find neither of them meritorious.

As discussed above, his procedural due process rights have not been violated as he was given notice and an opportunity to be heard. Likewise, his substantive due process claim, that the adjudicator's decision was arbitrary and capricious, is without merit. For the adjudicator's to violate Brown's substantive due process right it must have lacked a rational basis, *See Lee v. Giangreco*, 490 N.W.2d 814, 818 (Iowa 1992) rather, having been based upon ill will of the adjudicator. *See Bailey v. Lancaster*, 470 N.W.2d 351, 361 (Iowa 1991). The record shows the adjudicator's decision to affirm the Board's termination decision was not based upon ill will against Brown. The adjudicator affirmed the decision of the Board based on the reasoning that the Board had fulfilled its statutory duties under 279.16 and that there was no record on which to determine whether the merits of the Board's decision should be overturned. Because Brown has not shown the adjudicator's decision arbitrary or based on ill will, he has not proven a substantive due process claim.

prior to appeal to a district court is emphasized by the language in Section 279.18. That section states: “If either party rejects the adjudicator’s decision, the rejecting party shall, within thirty days of the initial filing of such decision, appeal to the district court. . .” Iowa Code § 279.18.

Brown argues requiring him to meet the prerequisite of section 279.17 is a mere technicality and that the appellate courts of our state have refused to deny a plaintiff a hearing on the merits based on procedural technicalities.

In the context of this case, Brown’s argument is without merit for two reasons. First, the administrative prerequisite of written rejection of the adjudicator’s decision is not a mere technicality. The requirement gives the adjudicator the opportunity to modify his decision if an error has been made prior to court intervention. Second, our supreme court has explicitly upheld the time limits set out in Chapter 279 and we find Brown’s assertion these cases have been overruled meritless. *See Wollenzien v. Manson Comm. Sch. Dist.*, 297 N.W.2d 215, 218 (Iowa 1980)(holding section 279.17 making the adjudicator’s decision final and binding “means what it says and says what it means” and that failure to reject the decision required dismissal of appeal); *In re Bishop.*, 346 N.W.2d 500, 505 (Iowa 1984)(holding 279.17 requires written, not oral, rejection, and barring such, adjudicator’s decision is final and binding).

By failing to reject the arbitrator’s decision as required by 279.17 of the Code, Brown failed to exhaust his administrative remedies prior to seeking judicial intervention. For this reason, the district court lacked subject matter jurisdiction to

hear his appeal and properly dismissed the claim. The trial court's ruling on this issue is affirmed.

AFFIRMED.

No. 97-1858. [8-697] BROWN v. PLEASANT VALLEY

Appeal from the Iowa District Court for Scott County, Edward B. DeSilva and Max R. Werling, Judges. **AFFIRMED.** Heard by Streit, P.J., and Vogel and Zimmer, JJ. Opinion by Streit, P.J. (11 pages \$4.40)

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