IN THE COURT OF APPEALS OF IOWA

No. 6-615 / 95-1967

SUSANNE BOLT,

Petitioner-Appellant,

vs.

IVA GRIEP, CEO, PRESBYTERIAN HOME OF ACKLEY,

Respondent-Appellee.

FILED
JAN 29 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Hardin County, Carl D. Baker, Judge.

Susanne Bolt appeals a district court ruling granting Iva Griep's motion for summary judgment and motion to dismiss Bolt's petition claiming she was wrongly fired for ethical misconduct as a nurse. **AFFIRMED.**

Susanne Bolt, Holland, pro se, appellant.

Philip H. Dorff, Jr. of Hopkins & Huebner, P.C., Des Moines, for appellee.

Heard by Streit, P.J., and Vogel, J., and Schlegel, S.J.* Sackett, J., takes no part.

* Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

SCHLEGEL, S.J.

Susanne Bolt began employment as a charge nurse in the Presbyterian Home of Ackley in November 1992. She voluntarily terminated her employment on October 16, 1993, following a series of events which resulted in a negative relationship between her and a patient terminally ill with cancer. The patient required considerable care due to his paralysis and pain, and Bolt was one of his primary care givers. Bolt began developing a relationship with the patient which was evolving into something more than simply a nurse-patient relationship.

On September 30, 1993, Bolt went to the office of Iva Griep, the administrator of the facility. Bolt told Griep she had developed a special relationship with the patient. Griep told her it was not unusual for nurses to develop close, personal relationships with their patients, but suggested she step away from the patient to obtain a more professional relationship. After talking with the director of nursing, it was agreed Bolt should be temporarily transferred to the lower unit of the care facility. Despite warnings from her superiors not to have contact with the patient, Bolt continued to visit him. The patient started becoming upset and told other nurses he did not want Bolt to come around him again. He stated Bolt wanted something more from him than simply a friendship. Bolt continued to see the patient. He told the nursing staff he was afraid Bolt was going to physically assault him.

Despite further orders from her superiors not to have contact with the patient, Bolt continued her attempts to see him. Following a visit on October 16, 1993, the

patient told the nursing staff he no longer wished to work with Bolt. Bolt told the patient she would submit her resignation before she was fired for talking to him.

In November 1993, Griep filed a complaint against Bolt with the Iowa Board of Nursing alleging unethical conduct. On July 1, 1994, the Board issued an order finding that Bolt had violated Iowa Code section 147.55(3) (1993) by engaging in unethical conduct when she failed to respect the rights of the patient. Bolt was placed on two years probation. She also was required to complete a specified number of continuing education hours and to submit periodic reports to the Board. Bolt subsequently filed a timely petition for judicial review of the Board's decision. The district court affirmed the Board's decision on December 22, 1994. Bolt did not appeal that decision.

On July 28, 1995, Bolt filed a petition for administrative relief against Griep and a notice of claim for relief. In the notice, Bolt alleged civil rights violations of Iowa Code sections 216.11 and 216.11A., and violations of Iowa Code sections 659.1(2) (libel and slander), 720.5 (false representation of records), 720.6 (malicious intent), and 720.2 (perjury). Bolt also filed a petition and notice with the Equal Employment Opportunity Commission (EEOC) claiming discrimination based on sex and retaliation. The EEOC ultimately dismissed Bolt's petition, claiming there was no basis for a finding of discrimination or retaliation. The Iowa Civil Rights Commission also rejected Bolt's claim of retaliation.

Griep filed a motion to dismiss and a motion for summary judgment. The district court ordered Bolt to recast her pleading to allege a claim under the Iowa Civil Rights Act or her petition would be dismissed. Recasting her pleading, Bolt filed a notice of claim, seeking relief under Iowa Code sections 216.11 and 216.11A. Griep resisted the notice. The district court dismissed the claim and found Bolt had failed to file her claim within 180 days of the alleged discriminatory act as provided by Iowa Code section 216.15(12) and Iowa Administrative Code section 161-3.3. The district court further ruled that her claim for defamation had been previously ruled on and rejected. The court additionally rejected the claim for defamation on the ground that any statements by Griep were privileged because they were made in relation to the issues placed with the Board of Nursing. The court lastly rejected Bolt's claims of malicious prosecution and perjury. The court granted the motion for summary judgment and dismissed Bolt's claims in their entirety. Bolt has appealed.

Bolt, appearing pro se, reiterates her arguments made in previous proceedings, namely, that there was no basis for the Board of Nursing's conclusion she had violated Iowa Code section 147.55(3) by failing to respect the rights of a patient. She also reiterates her argument Griep's actions were retaliatory and discriminatory.

Pursuant to an order of the supreme court filed April 29, 1996, Griep's objection to Bolt's designation of appendix and Bolt's resistance to Griep's objection are submitted with this appeal.

I. Motion for Summary Judgment. We review a district court's ruling granting summary judgment for errors at law. Iowa R. App. P. 4; *First Nat'l Bank v. Fidelity & Deposit*, 545 N.W.2d 332 (Iowa App. 1996) (citing *Lihs by Lihs v. Lihs*, 504 N.W.2d 890, 892 (Iowa 1993)). The court upholds a summary judgment when the moving party shows there is no genuine issue as to any material fact and is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); *See C-Thru Container Corp. v. Midland Mfg. Co.*, 533 N.W.2d 542, 544 (Iowa 1995). On review, we determine whether a genuine issue of fact exists and whether the law was applied correctly. *First Nat'l Bank*, 545 N.W.2d at 334. The record is reviewed in the light most favorable to the nonmoving party. *Hoffnagle v. McDonald's Corp.*, 522 N.W.2d 808, 811 (Iowa 1994).

a. Civil Rights Violation. The district court dismissed Bolt's claim that her civil rights were violated as she failed to file her complaint with the Iowa Civil Rights Commission within the 180-day period following the alleged discriminatory or unfair practice. We affirm the district court's dismissal of this allegation.

The Iowa Civil Rights Act, Iowa Code section 216.15(12) in pertinent part, clearly states:

> A claim under this chapter shall not be maintained unless a complaint is filed with the commission within one hundred eighty days after the alleged discriminatory or unfair practice occurred.

See Iowa Admin. Code r. 161-3.3 (1995). The only complaint made by Bolt was on November 24, 1993. The record reveals that Bolt's complaint was not filed until

February 24, 1995, over fifteen months after the alleged discriminatory act. As such this matter was properly dismissed by the district court.[1]

b. Defamation. "Iowa recognizes an absolute privilege (or immunity) from liability for defamation which takes place in a judicial proceeding." *Spencer v. Spencer*, 479 N.W.2d 293, 295 (Iowa 1991), *cert. denied*, 506 U.S. 840 (1992). We find the district court correctly found Griep had an absolute privilege from liability for defamation as the statements made took place in a judicial proceeding before the Board.

c. Iowa Code sections 720.2, 720.5, and 720.6. We find Bolt's perjury claim under Iowa Code section 720.2 for testimony given at the hearing before the Board was properly dismissed by the district court. "A civil action is not recognized for perjury." *Beeck v. Kapalis*, 302 N.W.2d 90, 97 (Iowa 1981).

We affirm the trial court's dismissal of Bolt's claim alleging Griep's "false representation of records or process" in violation of Iowa Code section 720.5 for failure to state a claim upon which relief can be granted. *See* Iowa R. Civ. P. 104(b). Iowa Code section 720.5 provides:

> Any person who represents a document or paper to be any public record for any civil or criminal process, when the person knows such representation to be false, commits a simple misdemeanor.

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[1] We also affirm the district court's finding that there has been no discrimination or retaliation based on the continuing violations doctrine. *See* Iowa Admin. Code r. 161-3.3(2); *Hy-Vee Food Stores vs. Civil Rights Comm'n*, 453 N.W.2d 512 (Iowa 1990).

This chapter of the Iowa Code is wholly inapplicable to the case at hand. Furthermore, chapter 720 of the Iowa Code does not give rise to a civil cause of action. The trial court correctly dismissed Bolt's claims made under Iowa Code section 720.5.

Bolt's allegation of malicious prosecution against Griep, in violation of Iowa Code section 720.6, was also dismissed by the district court. The elements of malicious prosecution are as follows:

> (1) [A] previous prosecution, (2) instigation of that prosecution by the defendant, (3) termination of that prosecution by acquittal or discharge of the plaintiff, (4) want of probable cause, (5) malice on the part of the defendant for bringing the prosecution, and (6) damage to the plaintiff.

Wilson v. Hayes, 464 N.W.2d 250, 259 (Iowa 1990).[2]

We affirm the trial court's determination that as the Board found there was probable cause for the complaint against Griep, any claim for malicious prosecution was waived when Bolt failed to appeal from the Board's decision. *See Penn v. Iowa Bd. of Regents*, 999 F.2d 305, 307 (8th Cir. 1993) (probable cause defeats a malicious prosecution action, even if the plaintiff shows malice).

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[2] "Malicious prosecution began as a remedy for unjustifiable criminal proceedings. Gradually the remedy was extended to the wrongful institution of civil suits. In fact, the Restatement refers to the civil side of the remedy as the 'wrongful use of civil proceedings.' So when applied to civil proceedings, malicious prosecution is actually a misnomer. In our own cases we make no distinction." *Wilson v. Hayes*, 464 N.W.2d 250, 259 (Iowa 1990) (citations omitted).

II. Claim Preclusion. In reviewing Bolt's petition, it is apparent to us that in bringing this action she merely attempts to relitigate issues already decided by the Iowa Board of Nursing and affirmed by the district court. She is estopped from doing so. Claim preclusion is a part of the doctrine of res judicata. *State ex rel Iowa Dep't of Natural Resources v. Shelley,* 512 N.W.2d 579, 581 (Iowa App. 1993). Under claim preclusion, an adjudication in a former suit between the same parties on the same claim is final as to all matters which could have been presented to the court for determination, and a party must litigate all matters growing out of its claim at one time rather than in separate actions. *Id.*

Bolt's appeal of the Board's decision was denied by the district court on December 22, 1994. Bolt did not appeal the matter further.[3] As Bolt is estopped from now appealing the Board's decision, we give no consideration to the issues raised concerning this matter and we affirm the district court's dismissal of the petition. *See Board of Supervisors v. Chicago and North Western Transp. Co.*, 260 N.W.2d 813 (Iowa 1977); *Shelley,* 512 N.W.2d at 579.

III. Appendix. Bolt has included documents outside of the record within the appendix and has requested additional documents outside of the record be made a part of the appendix. Information contained in the appendix is to be comprised of

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[3] Bolt asserts she did not appeal that matter as she could not afford legal counsel. We do not allow pro se litigants substantial departure from our rules of appellate procedure. *Polk County v. Davis,* 525 N.W.2d 434, 435 (Iowa App. 1994). Lay persons choosing to proceed without counsel do so at their own risk. *Id.*

evidence from the district court record. Iowa Rule of Appellant Procedure 15(b) requires, in pertinent part:

> Designations of *parts of the district court record* to be included in the appendix shall be served and filed by each party at the time the proof copy required briefs . . . are served and filed.

Iowa R. App. P. 15(b) (emphasis added).

We remind the parties the entire record has been made available to us for review. We find the documents contained in Bolt's motion for designation of additional documents, as well as those outside the record which have been included within the appendix, are inappropriate and are hereby stricken and excluded from the appendix. Furthermore, we note we have not considered this information in rendering our decision under the first two divisions of this opinion.

Griep's motion is sustained. Costs are assessed to Bolt.

AFFIRMED.