IN THE COURT OF APPEALS OF IOWA

No. 1-524 / 10-1382
Filed October 5, 2011

MONICA ROUSE,
Plaintiff-Appellee,

vs.

DURANT COMMUNITY SCHOOL DISTRICT and/or BOARD OF DIRECTORS FOR THE DURANT COMMUNITY SCHOOL DISTRICT,
Defendants-Appellants.

Appeal from the Iowa District Court for Cedar County, David H. Sivright Jr., Judge.

In this interlocutory appeal, defendants contend the district court erred in denying their motion to dismiss. **REVERSED AND REMANDED.**

Cameron A. Davidson and Wendy S. Meyer of Lane & Waterman L.L.P., Davenport, for appellants.

Catherine Zamora Cartee of Cartee Law Firm, P.C., and Mark R. Fowler of Gomez, May, Schutte, Yeggy, Bieber, & Wells, Davenport, for appellee.

Heard by Eisenhauer, P.J., and Doyle and Mullins, JJ.

DOYLE, J.

In this interlocutory appeal, defendants contend the district court erred in denying their motion to dismiss Monica Rouse's petition for wrongful termination. Because we conclude Iowa Code chapter 279 (2009) provides the exclusive remedy for a school administrator's challenge to the termination of her contract by a school board, we reverse and remand for an order dismissing the petition.

***I. Background Facts and Proceedings*.**

Plaintiff Monica Rouse's petition sets forth the following facts. Rouse began working as the principal of Durant High School sometime in early August 1999. On September 17, 2009, Superintendent Duane Bark walked Rouse off school grounds and put her on paid administrative leave. On October 6, 2010, defendants voted to consider termination of Rouse's contract as principal for just cause. After a hearing before an administrative law judge (ALJ) pursuant to Iowa Code sections 279.24 and .25, the ALJ ruled that just cause did not exist. In March 2010, despite the opinion of the ALJ, defendants Durant Community School District and/or Board of Directors for the Durant Community School District voted to terminate Rouse's contract. Rouse filed a petition for judicial review on April 20, 2010. That action is currently on appeal to the Iowa Supreme Court.

On April 23, 2010, Rouse filed her three-count petition for wrongful termination. Count one asserted defendants terminated Rouse's contract without just cause in breach of her contract and the requirements of chapter 279. Count two alleged defendants' termination of Rouse's contract was a retaliatory discharge in violation of public policy. Count three asserted that Rouse suffered

emotional and/or mental distress because of defendants' wrongful breach of contract and retaliatory discharge. Rouse's petition specifically requested monetary damages for emotional and/or mental distress, lost wages and benefits, and damage to her career, as well as compensatory damages, liquidated damages, punitive damages, attorney's fees, and costs.

On May 20, 2010, defendants filed their motion to dismiss Rouse's petition. Among other things, defendants asserted that chapter 279 provided the exclusive remedy for Rouse to challenge defendants' decision to terminate her contract for just cause. Rouse resisted.

On August 11, 2010, the district court entered its ruling denying defendants' motion to dismiss. The court found that chapter 279's remedy was merely a cumulative remedy and chapter 279 did not preclude Rouse from filing a separate petition setting forth common law claims.

Defendants filed an application for interlocutory appeal and stay seeking review of the district court's order, which the supreme court granted. The case was then transferred to this court.

II. Scope and Standards of Review.

"A motion to dismiss tests the legal sufficiency of a plaintiff's petition." *Rieff v. Evans*, 630 N.W.2d 278, 284 (Iowa 2001). "A district court's ruling on a motion to dismiss is reviewed for correction of errors at law." *Duder v. Shanks*, 689 N.W.2d 214, 217 (Iowa 2004). We will affirm a dismissal only if the petition "on its face shows no right of recovery under any state of facts." *Klobnak v. Wildwood Hills, Inc.*, 688 N.W.2d 799, 800 (Iowa 2004). Although the district court's factual findings are binding upon us if they are supported by substantial

evidence in the record, "we are not bound by the district court's application of legal principles or its conclusions of law. Ultimately, our decision to overrule or sustain a motion to dismiss must rest on legal grounds." *Id*.

***III. Discussion*.**

The limited question presented in this interlocutory appeal is whether Iowa Code chapter 279 provides the exclusive remedy for Rouse to challenge the termination of her contract by defendants. The district court concluded chapter 279 merely set forth a cumulative remedy and did not preclude Rouse from asserting common law causes of action against defendants. We disagree.

Under chapter 279, school boards and school administrators are required to "enter into written contracts of employment for a specific term, up to two years." *Martin v. Waterloo Cmty. Sch. Dist.*, 518 N.W.2d 381, 383 (Iowa 1994). However, "[a]n administrator may be discharged at any time during the contract year for just cause." Iowa Code § 279.25. "[T]he applicable procedures of section 279.24 shall apply." *Id*.

Section 279.24(5)(c) provides, in relevant part, that within five days after receiving written notice that the school board has voted to consider termination of the contract, the administrator may request in writing a review by an ALJ. After an ALJ is chosen, a hearing shall be held. *Id*. § 279.24(5)(c). "A transcript or recording shall be made of the proceedings at the hearing." *Id*. § 279.24(5)(d).

> The [ALJ] shall, within ten days following the date of the hearing, make a proposed decision as to whether or not the administrator should be dismissed, and shall give a copy of the proposed decision to the administrator and the school board. Findings of fact shall be prepared by the [ALJ]. The proposed decision of the [ALJ] shall become the final decision of the school board unless within ten days after the filing of the decision the

> administrator files a written notice of appeal with the school board, or the school board on its own motion determines to review the decision.

Id. § 279.24(5)(e).

> [I]f the school board determines on its own motion to review the proposed decision of the [ALJ], a private hearing shall be held before the school board within five days after the petition for review, or motion for review, has been made . . . . The school board may hear the case de novo upon the record as submitted before the [ALJ]. In cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on motion of the school board, an opportunity shall be afforded to each party to file exceptions, present briefs, and present oral arguments to the school board which is to render the final decision. The secretary of the school board shall give the administrator written notice of the time, place, and date of the hearing. The school board shall meet within five days after the hearing to determine the question of continuance or discontinuance of the contract . . . . The school board shall make findings of fact which shall be based solely on the evidence in the record and on matters officially noticed in the record.

Id. § 279.24(5)(f). "The decision of the school board shall be in writing and shall include findings of fact and conclusions of law, separately stated." *Id*. § 279.24(5)(g). "When the school board has reached a decision, opinion, or conclusion, it shall convene in open meeting and by roll call vote determine the continuance or discontinuance of the administrator's contract . . . ." *Id*. § 279.24(5)(h).

If the school board votes to discontinue the administrator's contract, the administrator may then, within thirty days after notice of the school board's decision, appeal the school board's decision to the district court. *Id*. § 279.24(5)(i). The district court may affirm the school board's action. *Id*. § 279.24(6). However, the court shall

> reverse, modify, or grant any other appropriate relief from the school board's action, equitable or legal, and including declaratory relief, if substantial rights of the administrator have been prejudiced because the school board's action is any of the following:
>
> a. In violation of constitutional or statutory provisions.
> b. In excess of the statutory authority of the school board.
> c. In violation of school board policy or rule.
> d. Made upon unlawful procedure.
> e. Affected by other error of law.
> f. Unsupported by a preponderance of the evidence in the record made before the school board when that record is reviewed as a whole.
> g. Unreasonable, arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

Id.

Neither section 279.24 nor .25 explicitly provides that the procedures set forth above in section 279.24 are an administrator's sole remedy for challenging a termination of contract by a school board. Nevertheless, we believe our supreme court's analysis in *Walthart v. Board of Directors of Edgewood-Colesburg Community School District*, 667 N.W.2d 873, 876-79 (Iowa 2003), is instructive here.

In *Walthart*, Walthart's teaching contract was terminated by a school board for unprofessional conduct. 667 N.W.2d at 873-74. Walthart filed a notice of statutory appeal to an adjudicator under Iowa Code section 279.17, the teacher-termination statute. *Id*. at 874. Section 279.17 provided, in relevant part, that a "teacher *may*, within ten days, appeal the determination of the board to an adjudicator by filing a notice of appeal with the secretary of the board." *Id*. at 876 (citing Iowa Code § 279.17) (emphasis added). While Walthart's appeal under section 279.17 was pending, Walthart also filed a separate certiorari action in district court, claiming her termination was illegal. *Id*.

The school board moved to dismiss Walthart's certiorari action asserting, among other things, that Walthart's appeal to the adjudicator under section 279.17 was her exclusive remedy. *Id*. The district court denied the board's motion to dismiss. *Id*. On appeal, the Iowa Supreme Court reversed. *Id*. at 876-79.

The court explained that "[m]uch of chapter 279 . . . was new in 1976. Prior to that [chapter's] revision, a teacher had few rights in challenging a termination for cause, as compared to the present provisions of chapter 279." *Id*. at 878; *see also* 1976 Iowa Acts ch. 1151. "The extensive rights now accorded to teachers [under chapter 279], including the right to an appeal to an adjudicator, were not known prior to the 1976 Act." *Walthart*, 667 N.W.2d at 878. Remarking that "[w]here the legislature has provided a comprehensive scheme for dealing with a specified kind of dispute, the statutory remedy provided is generally exclusive," the court found "these statutory changes provided a new right in the form of more protection for teachers in termination proceedings, and the remedy provided—an appeal to an adjudicator—must be considered the exclusive remedy." *Id*. (citing *Van Baale v. City of Des Moines*, 550 N.W.2d 156 (Iowa 1996); 1A C.J.S. Actions § 14, at 338 (2002)).

Like section 279.17, sections 279.24 and .25 were part of the 1976 major overhaul to chapter 279. *See* 1976 Iowa Acts ch. 1149, §§ 3-6. Additionally, the extensive rights now accorded to administrators in sections 279.24 and .25, including the rights to a review by an ALJ, to an appeal to the school board of the ALJ's decision, and then to an appeal to the district court of the school board's decision, were not known prior to the 1976 Act. *See* 1976 Iowa Acts ch. 1149,

§§ 3-6. We reiterate the supreme court's pronouncement: "Where the legislature has provided a comprehensive scheme for dealing with a specified kind of dispute, the statutory remedy provided is generally exclusive." *See Walthart*, 667 N.W.2d at 878. Based upon the supreme court's holding in *Walthart*, we must conclude the statutory changes and additions to chapter 279 concerning administrators, like teachers, provided a new right in the form of more protection for administrators in termination proceedings, and the remedy provided—a review by an ALJ, and then further appeals to the school board and district court—must be considered an administrator's exclusive remedy for challenging the termination of an administrator's contract by a school board. *See id*. at 876-79.

Rouse argues the district court accurately interpreted the supreme court's holdings in *George v. D.W. Zinser Co.*, 762 N.W.2d 865, 866 (Iowa 2009), and *West v. Wessels*, 534 N.W.2d 396, 397 (Iowa 1995), to find the remedy set forth sections 279.24 is merely permissive, not exclusive. We find these cases to be distinguishable.

In *West*, a superintendent's contract was terminated by a school board. 534 N.W.2d at 397. The superintendent exercised his statutory remedy under sections 279.24 and .25 to challenge his termination by the school board. *Id*. The superintendent also filed a separate suit in district court against the school board and others for (I) breach of express and implied terms of the superintendent's written contract; (II) tortious breach of contract; (III) abuse of process; (IV) willful tort; (V) tortuous interference with the superintendent's relationship with the school district; and (VI) civil rights violations under 42 U.S.C.

§ 1983. *Id*. at 397-98. The defendants in *West* asserted that all of the superintendent's claims were precluded by the final judgment in the contract termination proceeding brought under Iowa Code sections 279.24 and.25, and the district court agreed and dismissed the superintendent's petition. *Id*. at 398. The superintendent appealed. *Id*.

The supreme court on its review affirmed in part and reversed in part the district court's dismissal. *Id*. at 400. The court concluded that the only portion of the superintendent's claims that were barred were the portion of those claims that sought money damages that were "in some way dependent upon the termination of his contract with the school district or measured by the loss of that contract." *Id*. at 398. However, the court found that the superintendent's claims that were not dependent on the termination of his contract should survive dismissal. *Id*. The court in *West* allowed the superintendent's breach of contract claim to continue, but it remanded the claim "to the district court for further proceedings on liability of the school district for breach of contract, if any, *other than damages based on the termination of his employment contract*." *Id*. at 400 (emphasis added).

Here, Rouse's claims specifically concern the termination of her contract, and her petition solely requests monetary damages as relief from her claims. For that reason, we find that *West* does not support Rouse's proposition and is distinguishable from the legal issue at hand.

In *George*, the plaintiff Jeffery George filed a complaint with the Iowa Division of Labor Services Occupational Safety and Health Bureau (the Division),

alleging his employer violated provisions of Iowa's Occupational Safety and Health Act (IOSHA). 762 N.W.2d at 866.

> Soon thereafter, his employment with the company was terminated. George filed another complaint with the Division alleging retaliatory discharge in violation of IOSHA as well as a claim for wrongful discharge in the district court. The Division dismissed George's complaint. The district court also dismissed George's complaint on the grounds of res judicata, concluding the Division's dismissal precluded further litigation on the issue. George appealed.

Id. On appeal, the supreme court reversed. *Id*.

Among other things, the court in *George* concluded:

> The fact that the statute creates an administrative remedy does not indicate such a remedy is exclusive. The language in section 88.9(3) is permissive. "An employee who believes that the employee has been discharged . . . in violation of this subsection *may* . . . file a complaint with the commissioner alleging discrimination." Iowa Code § 88.9(3)(b)(1) (emphasis added); *cf*. Iowa Code § 216.16(1) ("A person claiming to be aggrieved by an unfair or discriminatory practice *must* initially seek an administrative relief by filing a complaint with the commission. . . ." (Emphasis added.)). If the legislature had intended section 88.9(3) to be the exclusive remedy and preclude a private cause of action, it could have done so expressly.

Id. at 872 (emphasis in original). The court then held "that the remedy set forth in Iowa Code section 88.9(3) does not preclude an employee from bringing a common law action for wrongful discharge." *Id*.

Here, we agree with Rouse and the district court the language of section 279.24 contains the word "may" rather than "must," and neither section 279.24 nor .25 state that the procedures of section 279.24 are intended to be an administrator's exclusive remedy in challenging the termination of an administrator's contract by a school board, similar to the non-exclusive remedy provided in section 88.9(3). *See* Iowa Code §§ 279.24-.25; *see also George*,

762 N.W.2d at 872. Nevertheless, despite the legislature's use of the word "may" in section 279.17, the court in *Walhart* expressly concluded the statutory changes to chapter 279 providing new rights in the form of more protection for teachers in termination proceedings "must be considered the exclusive remedy." 667 N.W.2d at 878. Although the court in *Walthart* was not faced with the statutes concerning the termination of an administrator's contract, we find the supreme court's interpretation of a similar code section in the same chapter to be determinative of the question before us, and thus distinguishable from *George*, which interpreted a chapter 88 statute.

We also note that since the *Walthart* decision in 2003, the legislature has amended chapter 279 several times, but has not amended sections 279.17, .24 and .25. This can be interpreted as a "tacit approval of [the] decision." *See Drahaus v. State*, 584 N.W.2d 270, 276 (Iowa 1998) (holding that where the legislature has failed to amend a statute in response to a particular interpretation of the statute announced by the court, it is presumed that the "legislature has acquiesced in that interpretation"). Finally, we are bound by Iowa Supreme Court pronouncements. *State v. Hughes*, 457 N.W.2d 25, 28 (Iowa Ct. App. 1990) (citing *State v. Eichler*, 248 Iowa 1267, 1270, 83 N.W.2d 576, 578 (1957) ("If our previous holdings are to be overruled, we should ordinarily prefer to do it ourselves.")). Based upon the supreme court's holding in *Walthart*, we conclude the statutory changes and additions to chapter 279 concerning administrators must be considered an administrator's exclusive remedy for challenging the termination of an administrator's contract by a school board.

***IV. Conclusion*.**

For these reasons, we conclude the district court erred as a matter law in failing to grant defendants' motion to dismiss. Accordingly, we reverse the district court decision and remand for an order dismissing the petition.

REVERSED AND REMANDED.