

IN THE COURT OF APPEALS OF IOWA

No. 1-939 / 11-0514
Filed December 21, 2011

DONALD T. ROSDAIL,
Petitioner-Appellant,

vs.

**CIVIL SERVICE COMMISSION
OF CEDAR RAPIDS, IOWA,**
Respondent-Appellee.

Appeal from the Iowa District Court for Linn County, Marsha Beckelman,
Judge.

A police officer brought action challenging the city civil service
commission's decision discharging him. The district court upheld the discharge,
and the police officer appeals. **AFFIRMED.**

William H. Roemerma of Crawford, Sullivan, Read & Roemerma, P.C.,
Cedar Rapids, for appellant.

Mohammad H. Sheronick, Cedar Rapids, for appellee.

Considered by Danilson, P.J., and Tabor and Mullins, JJ.

DANILSON, P.J.

A police officer, Donald Rosdail, brought an action challenging the Cedar Rapids Civil Service Commission's affirmance of his August 21, 2007 discharge for misconduct detrimental to the public service. The district court upheld the discharge following a trial de novo. Upon our review, we affirm as the sanction of termination was appropriate in light of Rosdail's misconduct and abuse of his position.

On appeal, Rosdail contends the district court erred in finding: (1) he was guilty of nonfelonious misconduct in office in connection with the Lunde investigation (defined by Iowa Code section 721.2(4) as "knowingly . . . by color of the person's office and in excess of authority . . . require[d] any person to do anything or refrain from doing any lawful thing"); (2) he violated department rule 2-1, which requires honesty; (3) he had been insubordinate; and (4) he violated a general order requiring property receipts. Rosdail also contends the court erred in imposing the sanction of discharge. He asks he be reinstated, and if this court rejects some of his arguments, impose a sanction short of discharge.

Review of the decision of the civil service commission under Iowa Code section 400.27 is a trial anew in the district court, limited to the specification of charges made to the commission pursuant to section 400.22.¹ *Mahaffey v. Civil Serv. Comm'n*, 350 N.W.2d 184, 187 (Iowa 1984).

The trial de novo . . . "normally permit[s] the district court to select [from] the same remedies that were available before the commission." "Throughout the trial court and appellate court proceedings, the commission has the burden of showing that the

¹ All references are to the code in effect at the time of discharge—the 2007 Iowa Code.

discharge was statutorily permissible,” and we give no weight to or presumption in favor of the commission’s determination.

Lewis v. Civil Serv. Comm’n, 776 N.W.2d 859, 864 (Iowa 2010) (citations omitted).

We review de novo the decision by the district court. Iowa Code § 400.27; *Lewis*, 776 N.W.2d at 861. We give weight to the court’s findings but are not bound by them. *Lewis*, 776 N.W.2d at 861. Our review is confined to the record made and issues raised in the district court. *Dolan v. Civil Serv. Comm’n*, 634 N.W.2d 657, 662 (Iowa 2001). “[W]e independently construe the factual record as a whole to determine if the [] discipline was warranted.” *City of Des Moines v. Civil Serv. Comm’n*, 513 N.W.2d 746, 748 (Iowa 1994) (emphasis omitted).

The district court wrote extensive findings of fact and conclusions of law. We have thoroughly reviewed the record, and upon our de novo review we, like the district court, find “Rosdail acted as a renegade officer who felt it his duty to avenge all who had crossed the path of his family.” We specifically note our agreement with the district court’s observation of Rosdail’s “lack of truthfulness both during trial and during the Internal Affairs investigation” and that he “failed to exhibit candor” in his testimony at trial. Simply put, Rosdail is not credible.

Rosdail takes issue with the commission’s assertion that his “misconduct tracked the timeline of the contentious dissolution proceedings of his son.” However, we have had no difficulty finding support for the statement.

As background we note that in May 2006, Rosdail was told to “work cases you’re assigned and don’t investigate conflict of interest cases. We are to be impartial, we don’t investigate cases that involve family members.” This occurred

as a result of a complaint of harassment made against Rosdail by a young woman (the former girlfriend of his cousin's son) after Rosdail interviewed her and accused her of theft, though there was no such complaint on record. The woman had sought a no-contact order against Rosdail's cousin's son, and had come to the police station when called by Rosdail, believing it was concerning her request for the no-contact order.

In June 2006, Rosdail was told by his superiors not to conduct personal business while on duty.

Then on July 7, 2006, Rosdail submitted to Gregory Koenighain² computers belonging to a male friend of his former daughter-in-law (Lunde) for a search of the hard drive for child pornography. No record of an official investigation was kept. The computers were purportedly returned to Lunde's ex-wife.

Later in July 2006, an interrogatory submitted in Rosdail's son's dissolution proceedings (where the former daughter-in-law had filed a petition to modify the decree) identifies Rosdail as a potential witness who would testify.

as to observations he has had of the Respondent (former daughter in law) prior and subsequent to this dissolution; observations include observing the Respondent in the company of various male associates. He will further testify as *to the results of his investigation of various male associates of Respondent.*

(Emphasis added.) However, the interrogatory answer does not recite if Rosdail's investigations occurred during his official duties.

² We address Koenighain's appeal of his discharge in a separate appeal also filed this date. See *Koenighain v. Civ. Serv. Comm'n*, No. 11-0442 (Iowa Ct. App. Dec. 21, 2011).

In August 2006, a performance review memorandum notes Rosdail's work output "dropped to zero, despite the fact that he had worked 17 days during the month."

Sometime around this same time period, Rosdail called his daughter-in-law's pastor stating he was investigating a "possible felony." When the pastor arrived at the station, he was taken to an interrogation room, and Rosdail informed him he was investigating statements his former daughter-in-law made in a court case and asked for attendance records and giving records from the church. The pastor stated he would not do so without a subpoena. Rosdail later served the pastor with a civil subpoena signed by his son's dissolution attorney and dated August 30, 2006.

On August 22, 2006, there was an "emergency hearing" in Rosdail's son's dissolution proceeding concerning where Rosdail's grandson (T.R.) was to attend kindergarten. An order filed August 22 set the hearing on the modification action for October 23, 2006.

On September 12, 2006, Rosdail and Koenighain left Cedar Rapids and went to Lunde's workplace in Marion. They asked Lunde to go to the Cedar Rapids police station to answer some questions. As noted earlier, Lunde was a friend of Rosdail's former daughter-in-law. And as indicated in his later testimony at the modification action, Rosdail was aware his grandson spent time with Lunde. Lunde agreed to accompany them to the station. On the way to the police station, the officers asked if they could look at Lunde's apartment to verify his statement he did not have a computer. They did stop and look around his apartment, and then went to the station. Lunde signed a waiver of rights. He

was asked if he was a pedophile and questioned for about an hour. No notes were taken. The interview was not recorded. No official investigation is of record. When Rosdail and Koenighain were driving Lunde back to his workplace, they again asked to see his apartment where Rosdail saw pictures of T.R. and T.R. with his mother on the wall. Rosdail pointed to a picture of T.R. and said "I'm [T.R.'s] f**ing grandfather." Lunde gave the pictures of T.R. to Rosdail. Photographs of other young men were not confiscated. Rosdail told Lunde not to have further contact with his grandson. On September 14, 2006, Lunde made a complaint about Rosdail's conduct, which initiated an internal affairs investigation.

In mid to late September, Rosdail called his grandson's school principal and asked him to come to the station. Rosdail questioned the principal about conversations he had had with Rosdail's son and former daughter-in-law and stated he was "investigating a felony perjury charge." Following the interview, Rosdail told the principal not to tell anyone about the interview and "we just needed to keep it quiet." Rosdail took no notes of this conversation.

On the second day of his son's modification hearing, October 24, 2006, Rosdail testified about his "investigation" of Lunde, his questioning of the school principal, and made accusations the former daughter-in-law had perjured herself in an earlier proceeding. His testimony concerned the trial judge sufficiently that the judge called the police chief to inform the chief of Rosdail's and Koenighain's actions. The modification ruling also outlines some of Rosdail's actions, and the court concludes, "The Court does not believe that any of the actions of [Rosdail]

were official in nature, but were rather under the guise of official business to assist his son in this case.”

The internal affairs investigation was extensive and resulted in a sixty-five page report, several findings of rules violations, and Rosdail’s discharge for misconduct detrimental to public service. The specification of charges indicates Rosdail was terminated for violating six departmental rules and regulations (Rules & Regulations 2-1, 2-11, and 2-8; General Orders 504-99, and 005-98, 500-06) and Iowa Code section 721.2.

We reject Rosdail’s contention the district court erred when it found he engaged in misconduct. We specifically state our agreement with the district court’s findings that Rosdail (1) violated General Order 504-99, which requires the giving of property receipt “whenever an officer takes any property into his/her possession” for evidence or safekeeping, when he collected pictures from Lunde and computers from Lunde’s ex-wife; (2) violated rule 2-1(g) and General Order 005-98(V)(e) prohibiting conduct offensive to the public or adversely reflecting on the department; (3) violated General Order 500-06(II)(g), which prohibits officers from serving civil process or assisting in civil cases by supplying information gained through departmental employment unless specific consent of the chief is obtained; (4) engaged in nonfelonious misconduct in office as defined in Iowa Code section 721.2; (5) was insubordinate, violating rule 2-8, in conducting personal investigations after being told not to; and (6) violated rule 2-1(j) by repeatedly violating department rules and regulations.

We find Rosdail’s use of his office to conduct personal investigations and his intimidation of citizens to further his personal agenda fails to serve the public

interest and brings distrust to the police department, justifying termination of his employment. Moreover, it is apparent Rosdail does not understand, or does not care that his actions constitute an abuse of his position.

“[I]n determining whether dismissal is warranted, ‘we must remember the primary objective of section 400.19 is to protect the public interest.’” *Lewis*, 776 N.W.2d at 864 (quoting *Dolan*, 634 N.W.2d at 664). “Since peace officers are charged with a public trust, the public has every right to expect these officers to conduct themselves with good character, sobriety, judgment and discretion.” *Sieg v. Civil Serv. Comm’n*, 342 N.W.2d 824, 830 (Iowa 1983); see also *Civil Serv. Comm’n v. Johnson*, 653 N.W.2d 533, 541-43 (Iowa 2002) (discussing importance of truthfulness in area of law enforcement and noting a number of cases in which courts have found discharge to be an appropriate sanction where a police officer has been untruthful). Rosdail’s transgressions are detailed in the internal investigation and trial records. We need not recount all the facts that support and detract from the district court’s findings and conclusions. We affirm Rosdail’s termination.

AFFIRMED.