IN THE COURT OF APPEALS OF IOWA

No. 3-574 / 12-0919
Filed November 6, 2013

NICOLE LARA SHUMATE,
Plaintiff-Appellant,

vs.

DRAKE UNIVERSITY a/k/a DRAKE UNIVERSITY LAW SCHOOL,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Eliza J. Ovrum, Judge.

A trainer of service dogs appeals the dismissal of her lawsuit alleging a violation of Iowa Code chapter 216C. **REVERSED AND REMANDED.**

Felicia M. Bertin Rocha of Bertin Rocha Law Firm, Urbandale, for appellant.

Andrew Bracken, Amanda G. Wachuta and Nicholas J. Pellegrin of Ahlers & Cooney, P.C., Des Moines, for appellee.

Heard by Tabor, P.J., Bower, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

TABOR, P.J.

Today we are asked to decide if a person training a service dog has the right to file a lawsuit under Iowa Code chapter 216C (2011). Plaintiff Nicole Shumate seeks to litigate her allegations Drake University law school officials denied her access to classrooms and other locations open to the public. The district court dismissed her suit, concluding a violation of the statute could only be enforced by the State charging a simple misdemeanor. Shumate appeals, contending the legislature intended to create a private right of action. Our review of the chapter convinces us the legislature signaled its implicit intent to allow a person in Shumate's position to file a civil action to enforce the important rights protected by the enactment. Accordingly, we reverse and remand for further proceedings.

I. Background Facts and Proceedings

Shumate enrolled in Drake University Law School in 2006 and graduated in 2009. Shumate also trains therapy and service dogs, and in 2006 she founded a non-profit organization dedicated to that purpose called Paws & Effect. The intersection of her two pursuits led Shumate to file suit in August 2011.

In her petition at law, Shumate alleged Drake University denied her "access to law school classes because she was assisted by a service dog in training." She asserted the law school dean notified her in September 2009 that "access to law school facilities with a service dog in training would not be tolerated per the university policy." Her suit also alleged a Drake law professor denied her admittance to a cultural event being held at a local church because

Shumate was accompanied by a service dog in training. Finally, Shumate contended the law school directed hostility toward her and created a "poisonous learning environment." She premised her right to recovery on Iowa Code chapter 216C. Her petition requested compensatory damages.

Drake University moved to dismiss Shumate's suit under Iowa Rule of Civil Procedure 1.421(f), alleging "as a matter of law, there is no private right of action under Iowa Code chapter 216C."[1] The district court held a hearing on the motion to dismiss on April 5, 2012. On April 16, 2012, the court granted the motion to dismiss. Shumate filed a timely notice of appeal.

II. Scope and Standard of Review

We look for errors at law when reviewing the district court's ruling on a motion to dismiss. *Mueller v. Wellmark, Inc*., 818 N.W.2d 244, 253 (Iowa 2012). The district court may grant a motion to dismiss when the petition's allegations, taken as true, fail to state a claim upon which relief may be granted. *Id.* (citing Iowa R. Civ. P. 1.421(1)(f)).

III. Analysis

Not all statutory violations give rise to a private cause of action. *Id.* at 254. A person may sue for damages or other relief under a statute only if the statute explicitly or implicitly allows such an action. *Id*. The Iowa General Assembly did not explicitly provide for a private cause of action in Iowa Code chapter 216C. So the question is whether chapter 216C implicitly allows Shumate's action when

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[1] Drake University does not concede the facts alleged by Shumate, but for purposes of testing the petition's legal sufficiency, we will assume all well-pleaded facts to be true. *See Rick v. Boegel*, 205 N.W.2d 713, 715 (Iowa 1973).

we view the chapter as a whole and in context. "As in all matters of statutory construction, the question whether a private cause of action exists under a statute that does not expressly provide for one is a matter of legislative intent." *Seeman v. Liberty Mut. Ins. Co*., 322 N.W.2d 35, 40 (Iowa 1982).

When deciphering legislative intent, we consider the following four questions. (1) Is the plaintiff a member of the class for whose benefit the statute was enacted? (2) Is there any indication of legislative intent, explicit or implicit, to either create or deny such a remedy? (3) Would allowing such a cause of action be consistent with the underlying purpose of the legislation? and (4) Would the private cause of action intrude into an area over which the federal government or a state administrative agency holds exclusive jurisdiction? *See King v. State*, 818 N.W.2d 1, 34 (Iowa 2012) (noting adoption of this test from *Cort v. Ash*, 422 U.S. 66, 78 (1975)[2]). To infer a private right of action, we must find all four factors generally reflect favorably on the ability of the plaintiff to sue under the statute. *Id*. We address each of the four inquiries in turn.

A. Was Shumate a member of the class the legislature intended to benefit by enacting chapter 216C?

Iowa Code section 216C.11(2) addresses the right of persons to have access to public places accompanied by a service dog. It provides, in pertinent part:

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[2] The continued vitality of *Cort*'s four factors has generated considerable debate in federal courts. *See generally Alexander v. Sandoval*, 532 U.S. 275, 287 (2001) (framing judicial task as determining whether Congress intended to create not just a private right but also a private remedy). But because our supreme court recently reiterated the four-part test in *King*, 818 N.W.2d at 34, and *Mueller*, 818 N.W.2d at 254, we follow the same path here.

> A person with a disability or *person training an assistive animal* has the right to be accompanied by a service dog or an assistive animal, under control, in any of the places listed in section 216C.3 and 216C.4 without being required to make additional payment for the service dog or assistive animal.

Iowa Code § 216C.11(2) (2011) (emphasis added).

Because this statute specifically extends rights to a person training a service dog, the district court decided Shumate fell within a class of persons protected by the statute. Drake University disputes the district court's finding, pointing to language in the 2009 version of section 216C.11(1) defining "service dog" as "a dog specially trained at a recognized training facility."[3] Drake University contends the legislature did not intend "any and every service-dog trainer to be a member of the class of persons protected by Iowa Code chapters 216C (2009)." Drake University asserts Shumate's pleadings fail to assert her service dogs were specially trained at a recognized facility. Drake University also points to the title of the chapter "Rights of Persons with Disabilities" to suggest the legislature did not intend to protect service dog trainers who were not disabled.

By claiming she was denied access to public places while accompanied by a "service dog in training," Shumate has pleaded sufficient facts to place her in the class of persons the legislature intended to benefit by enacting section 216C.11. "In Iowa, very little is required by way of pleading to provide notice."

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[3] The legislature amended Iowa Code section 216C.11(1) in 2010 to delete the reference to "a recognized training facility" regarding both service dogs and assistive animals. *See* 2010 Iowa Acts ch. 1079, § 9. The legislature also deleted reference to "a recognized training facility" in Iowa Code section 216C.10, entitled "use of a hearing dog." *See* 2010 Iowa Acts ch. 1079, § 8.

Wilker v. Wilker, 630 N.W.2d 590, 595 (Iowa 2001). Notice pleading does not require the plaintiff to plead ultimate facts that support the elements of the cause of action but only facts sufficient to give the defendant fair notice of the claim. *See Schmidt v. Wilkinson,* 340 N.W.2d 282, 283–84 (Iowa 1983).

We also conclude the legislature's *express* inclusion of persons who train service dogs as persons protected under section 216C.11(2) is consistent with the chapter's policy as articulated in Iowa Code section 216C.1—the policy "to encourage and enable" the participation of disabled persons in the full "social and economic life of the state." Ensuring access to public places and accommodations for persons training service dogs will increase the availability of skilled dogs for disabled persons, who will then be better equipped to participate in the "social and economic life" of the community.

Statutory language that creates a right—like the language of section 216C.11(2)—is generally "the most accurate indicator of the propriety of implication of a cause of action." *See Cannon v. Univ. of Chicago*, 441 U.S. 677, 690 n.13 (1979) (contrasting statutory language expressly identifying a class lawmakers intended to benefit *with* language customarily found in criminal statutes enacted to protect the general public (such as the language construed in *Cort*)). We agree with the district court's determination the first *Cort* factor favors Shumate's action.

B. Did the legislature indicate its intent to create or deny a private right of action under chapter 216C?

To assess the second *Cort* factor, we examine the statute itself. *See Marcus v. Young*, 538 N.W.2d 285, 289 (Iowa 1995). Section 216C.11(2) bestows a "right" on a person training a service dog to be accompanied by the dog at certain public facilities and places of public accommodation. This language is more than a general statement of policy; instead it sets out concrete requirements to allow access to trainers accompanied by service dogs. *See King*, 818 N.W.2d at 34–35 (finding no legislative intent to create a remedy where statute's wording is only aspirational). In situations where the law "has granted a class of persons certain rights, it is not necessary to show an intention to *create* a private cause of action, although an explicit purpose to *deny* such cause of action would be controlling." *See Cannon*, 441 U.S. at 694 (citing *Cort*, 422 U.S. at 82).

The district court nevertheless searched for some positive indication that chapter 216C may give rise to a civil suit, concluding: "Nowhere in the statute is there any indication that the legislature intended a private right of action for damages." The court observed the legislature set forth the following remedy: "A person who knowingly denies or interferes with the right of a person under this section is, upon conviction, guilty of a simple misdemeanor." *See* Iowa Code § 216C.11(3). The court cited the Latin maxim "expressio unius est exclusio alterius"—expression of one thing is the exclusion of another—the maxim relied upon by the Iowa Supreme Court in *Marcus*, 538 N.W.2d at 289. The district

court then concluded the legislature's inclusion of the simple misdemeanor remedy communicated the legislature's exclusion of a private suit for damages.

But the district court's reliance on *Marcus* and its expression-exclusion maxim is misplaced. In *Marcus*, the plaintiff filed a negligence action under Iowa Code chapter 22, alleging the release of his confidential student records caused him damages. *Marcus*, 538 N.W.2d at 288. The supreme court found chapter 22 provided "a number of remedies for its violation" including injunctions to restrain copying and examination of records, mandamus actions, judicial review, and as well as a simple misdemeanor for knowing violations. *Id*. at 289. The legislature's inclusion of numerous remedies for a violation of chapter 22 explains the *Marcus* court's allegiance to the expression-exclusion maxim in denying a private cause of action.

But the expression-exclusion maxim provides less insight into the legislative intent behind statutes like 216C.11—where the sole remedy provided by the drafters was a simple misdemeanor. "Clearly, provision of a criminal penalty does not necessarily preclude implication of a private cause of action for damages." *Cort*, 422 U.S. at 79.

Moreover, the district court did not consider the implications of Iowa Code section 611.21. Iowa courts have interpreted section 611.21[4] to prevent the merger of a civil remedy into a criminal offense created by the legislature. *See Heick v. Bacon*, 561 N.W.2d 45, 54 (Iowa 1997); *Hall v. Montgomery Ward &*

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[4] "The right of civil remedy is not merged in a public offense and is not restricted for other violation of law, but may in all cases be enforced independently of and in addition to the punishment of the former." Iowa Code § 611.21.

Co., 252 N.W.2d 421, 423 (Iowa 1977). Iowa Code section 611.21 does not itself create a private cause of action for violation of a criminal provision. But conversely, section 611.21 does not permit a judicial determination that the legislature's imposition of a public offense precludes a civil remedy. *See Heick*, 561 N.W.2d at 54 (recognizing a civil cause of action for violation of the criminal aiding-and-abetting and serious-injury-by-vehicle statutes). The district court erred in finding the inclusion of a simple misdemeanor penalty in Iowa Code section 216C.11(3) revealed a legislative intent to deny a private cause of action for a violation of Iowa Code section 216C.11(2).

On appeal, Drake characterizes section 216C.11 as a criminal statute and contends the location of chapter 216C within the Iowa Code indicates the legislature did not mean to create a private cause of action for persons who train service dogs. We disagree. Chapter 216C is not part of the criminal code. Chapter 216C appears in the title of the code devoted to Human Services and subtitled "Social Justice and Human Rights." The chapter has been in existence since 1967 and moved to its current location during the code reorganization of 1993. It is complementary to, but independent of the "Iowa Civil Rights Act of 1965," codified as Iowa Code chapter 216, which created the state civil rights commission to investigate and enforce complaints regarding discriminatory practices in housing, employment, accommodations and education. The overarching purpose of chapter 216C is to guarantee persons with disabilities greater access to public facilities and wider participation in the social and

business community, not to craft a criminal offense to punish those who exclude persons training service dogs from public places. *See* Iowa Code § 216C.1.

The district court mistook the drafters' inclusion of the simple misdemeanor remedy as a sign they meant to deny a private right of action. We conclude the rights-creating language in the statute and the chapter's position in the code imply the opposite—the legislature's expectation that a person whose rights are violated could pursue a suit for damages. Accordingly, the district court erred in deciding the second *Cort* factor did not weigh in favor of Shumate's action.

C. Would allowing Shumate to initiate a private action be consistent with the underlying purpose of chapter 216C?

The next question is whether allowing a private cause of action would be consistent with the statutory aims. Under the *Cort* test, courts should not imply a private remedy if it would frustrate the underlying purpose of the legislative scheme. *See Cannon*, 441 U.S. at 703. On the other hand, when that remedy is necessary or at least helpful to accomplishing the statutory purpose, courts are "decidedly receptive to its implication under the statute." *See id*.

As the district court noted, the chapter's purpose is spelled out in its opening sections:

> 1. It is the policy of this state to encourage and enable persons who are blind or partially blind and persons with disabilities[5] to

[5] The legislature amended Iowa Code chapter 216C in 2010 to delete references to *physical* disabilities, leaving the reference to "disabilities." *See* 2010 Iowa Acts ch. 1079, §§ 3, 4, 5, 6. We perceive this amendment as further indication the legislature intended chapter 216C to have significant impact on the integration of all persons with disabilities into our society.

> participate fully in the social and economic life of the state and to engage in remunerative employment.
> 2. To encourage participation by persons with disabilities, it is the policy of this state to ensure compliance with federal requirements concerning persons with disabilities.

Iowa Code § 216C.1 (2011).

These broad policy goals are the foundation for the more specific rights granted to persons with disabilities, and to persons who train service dogs for the benefit of persons with disabilities, in section 216C.11(2). It would be inconsistent with the underlying purpose of the chapter to pair these robust rights with the meager remedy of a simple misdemeanor prosecution.

Without analyzing whether Shumate's suit would advance the legislative goals of chapter 216C, the district court jumped to the purposes served by chapter 216, the "Iowa Civil Rights Act of 1965." *See* Iowa Code § 216.1. The court noted persons with disabilities have the right to seek monetary damages under that chapter, but only after they have exhausted their administrative remedies by filing a complaint with the Iowa Civil Rights Commission. The court reasoned it would be contrary to the procedures in chapter 216 to allow a private cause of action under chapter 216C. We disagree.

Shumate is not covered by chapter 216 because she is not a person with a disability.[6] But she is covered by chapter 216C as a trainer of service dogs. *See* Iowa Code § 216C.11(2). The district court's reference to chapter 216 is not directly relevant to the third *Cort* factor. Chapter 216C aims to encourage and

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[6] The record shows Shumate filed a complaint with the civil rights commission. Her complaint was dismissed by the administrative law judge for lack of jurisdiction because Shumate was not disabled.

enable persons with disabilities to participate fully in the social and economic life of the community. Ensuring that service dog trainers have full access to places open to the public, and thereby creating a pool of well-trained dogs to assist disabled persons in navigating public facilities, advances the stated aim of chapter 216C. It follows that allowing a service dog trainer to enforce this policy by bringing a private right of action, if denied access while accompanied by a service dog, is consistent with the underlying purpose of the statute. The fact persons with disabilities have a different route for enforcing the provisions of chapter 216 does not undermine the effectiveness of a private lawsuit for persons expressly included within, and whose rights are violated under, chapter 216C. We perceive no inconsistency between these separate remedies. *See Cannon*, 441 U.S. at 707-09. Accordingly, we find the third *Cort* factor also weighs in favor of Shumate's action.

D. Would Shumate's private cause of action intrude into an area over which the federal government or a state administrative agency holds exclusive jurisdiction?

Finally, we turn to the fourth factor, which examines whether implication of a private cause of action will intrude into an area over which the federal government has exclusive jurisdiction or which has been delegated exclusively to a state administrative agency? *See Seeman*, 322 N.W.2d at 40. In this case, the question is whether an administrative agency has jurisdiction over section 216C.11(2). *See King*, 818 N.W.2d at 35.

The district court concluded allowing a private right of action under section 216C would intrude on the jurisdiction of the Iowa Civil Rights Commission under chapter 216—when the suit is brought by a person with a disability. As it did when analyzing the third factor, the district court looked outside the chapter at issue to determine if the private right of action would be intrusive to another, separate regulatory scheme. When we look more particularly at chapter 216C and the right of access it extends to persons training service dogs, we detect no interference with the province of any federal or state agency.

Drake University argues it "makes no sense" to allow Shumate, a non-disabled, service dog trainer, to initiate a direct private right of action for monetary damages under chapter 216C when disabled persons are forced to first go through the agency process in chapter 216. While this argument has some superficial appeal, it is a diversion from the fourth question. The more pinpointed inquiry under *Cort* is whether Shumate's lawsuit intrudes into the realm of a state or federal agency. *See Cort*, 422 U.S. at 78. We find no such intrusion.

Shumate's ability to enforce her right to be accompanied by a service dog by filing a petition in court does not interfere with the rights of disabled persons to file administrative complaints about discriminatory practices under chapter 216. The legislature is free to craft a more complex investigation and mediation system under one chapter while leaving open a more direct route to remedying a violation under another chapter.

In finding no implied cause of action in *Mueller*, our supreme court noted the plaintiffs were not left without a remedy, being able to turn to the

administrative enforcement mechanisms under chapter 17A. *Mueller*, 818 N.W.2d at 257. The same cannot be said for Shumate. Under the district court's ruling, Shumate's only recourse to allegedly being denied access to public facilities when accompanied by a service dog is to contact local law enforcement or the county attorney's office to see if those authorities would exercise their discretion to file a simple misdemeanor charge. As Shumate argues, even if the prosecutor decides to pursue a simple misdemeanor, the maximum fine of $625 under Iowa Code section 903.1(1)(a) would not serve as much of a deterrent to an institution like Drake University. A civil lawsuit, with the possibility of injunctive relief or damages, provides a more realistic protection for members of the class of persons protected by Iowa Code section 216C.11(2).

In sum, we find all four *Cort* factors point to an implication the legislature intended citizens afforded rights under chapter 216C to be able to seek civil redress when those rights are violated. "Normally, cases are not resolved on the pleadings." *See King*, 818 N.W.2d at 37 (Cady, C.J., concurring specially). Our courts do not set a high bar for litigants to clear when the question is whether they have stated a claim for relief. *Id*. This case is no exception. Shumate has cleared the bar by stating a claim for relief under Iowa Code section 216C.11(2). We reverse the dismissal of her petition and remand for further proceedings.

REVERSED AND REMANDED.