IN THE COURT OF APPEALS OF IOWA

No. 7-867 / 07-0521
Filed January 16, 2008

KAREN WATERMAN,
Plaintiff-Appellant,

vs.

NASHUA-PLAINFIELD COMMUNITY SCHOOL DISTRICT,
Defendant-Appellee.

Appeal from the Iowa District Court for Chickasaw County, George L. Stigler, Judge.

Karen Waterman appeals the dismissal of her breach of contract claim. **AFFIRMED.**

James L. Sayre of James L. Sayre, P.C., Clive, for appellant.

Beth Hansen of Swisher & Cohrt, P.L.C., Waterloo, for appellee.

Heard by Sackett, C.J., and Vaitheswaran and Baker, JJ.

VAITHESWARAN, J.

Karen Waterman appeals the dismissal of her breach of contract claim. She contends (1) the district court erred in holding that her claim was preempted by the Iowa Civil Rights Act, and (2) principles of issue and claim preclusion require a different result.

I. Background Facts and Proceedings

Karen Waterman was a teacher with the Nashua-Plainfield Community School District. During the 2001-2002 school year the school district offered its employees an early retirement plan. The plan was open to applicants "between the ages of fifty-five and sixty on or before June 1, 2002." Waterman submitted an application to participate in the plan. The district superintendent informed Waterman that her age rendered her ineligible. Waterman met all the other prerequisites for participation in the early retirement program.

Waterman sued the school district in federal court. She alleged that the age limitation was illegal and unenforceable. The school district moved to dismiss the petition on the ground that Waterman failed to exhaust her administrative and legal remedies. The federal district court dismissed all Waterman's claims with prejudice except her breach of contract claim, which the court concluded was not subject to the procedures of the Iowa Civil Rights Act or a federal anti-discrimination statute. The court subsequently elected not to exercise supplemental jurisdiction over the breach of contract claim and dismissed it without prejudice.

Waterman next filed a petition in state court, re-alleging the breach of contract claim. The school district again moved to dismiss the petition. The

school district asserted that the Iowa Civil Rights Act preempted the claim and Waterman failed to exhaust her administrative and legal remedies. The Iowa district court granted the motion. The court reasoned that Waterman's complaint was "based on a claim of discrimination" and it was "precisely this sort of discrimination that" was subject to the Iowa Civil Rights Act.[1]

The court also rejected Waterman's assertion that the federal district court's ruling was issue preclusive, stating that the court did not rule on the question of whether the state civil rights act preempted the breach of contract claim and "[i]ssue preclusion therefore has no applicability here." Our review of this ruling is for errors of law. *Greenland v. Fairtron Corp.*, 500 N.W.2d 36, 38 (Iowa 1993).

II. Exclusivity/Preemption

The Iowa Civil Rights Act provides, "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 in accordance with section 216.15." Iowa Code § 216.16(1) (2005). The procedures set forth in this provision are "exclusive" and "preempt" other remedies that might be available. *Polk County Secondary Roads v. Iowa Civil Rights Comm'n*, 468 N.W.2d 811, 816 (Iowa 1991).

Whether preemption applies depends on "the nature of the action." *Grahek v. Voluntary Hosp. Coop. Ass'n of Iowa, Inc.*, 473 N.W.2d 31, 34 (Iowa 1991). As the Iowa Supreme Court stated:

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[1] The district court did not address the effect of the federal Age Discrimination in Employment Act and, therefore, neither do we.

> Preemption occurs unless the claims are separate and independent, and therefore incidental, causes of action . . . . The claims are not separate and independent when, under the facts of the case, success in the nonchapter 601A claims (hereafter alternative claims) requires proof of discrimination.

Greenland, 500 N.W.2d at 38. *Accord Knutson v. Sioux Tools, Inc.*, 990 F. Supp. 1114, 1123 (N.D. Iowa 1998) ("Whichever way Knutson's [breach of contract] claim is characterized . . . it is based in part on failure to prevent discrimination. To that extent, the ICRA provides Knutson's exclusive remedy.").

Waterman's breach of contract claim was based on the age limitation clause in the early retirement plan. The claim, in no uncertain terms, alleged discrimination on the basis of age. As the district court noted, discrimination was "not incidental to the claim of breach of contract" but was "the gravaman of the claim." This type of discrimination is covered by the Iowa Civil Rights Act. *See* Iowa Code § 216.6(1)(a). Therefore, that Act provided the exclusive remedy and preempted the breach of contract action. *Greenland*, 500 N.W.2d at 38. The district court did not err in granting the school district's motion to dismiss on this ground. *See Northrup v. Farmland Indus., Inc.*, 372 N.W.2d 193, 196 (Iowa 1985) (holding plaintiff's wrongful termination claim based on state's anti-discrimination policy preempted by chapter 216).

III. Issue Preclusion

As a fall-back position, Waterman asks us to conclude the doctrines of issue and claim preclusion require reversal of the district court's ruling.

The claim preclusion issue was not preserved for our review. *DeVoss v. State*, 648 N.W.2d 56, 60-61 (Iowa 2002) (stating issues generally must be raised and decided to be preserved for review).

The issue preclusion theory was raised by Waterman for the first time in a resistance to the school district's motion to dismiss. Although she cited the federal court's ruling and pointed out the claims were the same, she did not identify or apply the multi-factor issue preclusion test. The district court mentioned and summarily rejected the theory. Therefore, error was technically preserved. However, we decline to apply the theory because Waterman neither pled nor proved it. *Fischer v. City of Sioux City*, 654 N.W.2d 544, 550 (Iowa 2002) ("[T]he general rule is that issue preclusion—whether offensive or defensive—must be pled and proved by the party asserting it.").

AFFIRMED.