IN THE COURT OF APPEALS OF IOWA

No. 0-470 / 10-0094
Filed August 11, 2010

NATHAN BERRY,
Plaintiff-Appellant,

vs.

LIBERTY HOLDINGS, INC.,
a/k/a LIBERTY READY MIX,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

A plaintiff appeals the district court's ruling dismissing his lawsuit for failing to state a claim for which relief could be granted. **REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.**

Kenneth R. Munro of Munro Law Office, P.C., Des Moines, for appellant.

Kerrie M. Murphy and Julie L. Tomka of Gonzalez, Saggio & Harlan, L.L.P., West Des Moines, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Tabor, JJ.

DOYLE, J.

When injured by negligence attributable to an entity partially owned by the injured party's employer, should the injured party be compelled to choose between keeping the job and risking loss of that job by pursuing legal redress for the injuries? We think not.

Brent Voss was a part owner of two companies: Liberty Holdings, Inc. and Premier Concrete Pumping, L.L.C. Nathan Berry, then employed by Liberty as a plant manager, was struck and injured by a Premier truck after work one day while on his way home. His injuries were not covered by workers' compensation. Berry filed a personal injury suit against Premier pursuant to Iowa Chapter 668 and later settled with Premier. Several months later, Liberty terminated Berry's employment.

Berry sued Liberty alleging he was wrongfully terminated "because he engaged in the protected activity of bringing a claim for personal injury." Liberty moved to dismiss the claim for failure to state a claim upon which relief could be granted. The district court granted the motion.

On appeal, Berry seeks reversal of the ruling on the ground that "there is a public policy in allowing persons to bring negligence actions against companies owned by their employer without risking their job." Our review is on error. *Iowa Tel. Ass'n v. City of Hawarden*, 589 N.W.2d 245, 250 (Iowa 1999).

Iowa is an at-will employment state, which means that an employer can fire an employee "for any lawful reason or for no reason at all." *Lloyd v. Drake Univ.*, 686 N.W.2d 225, 228 (Iowa 2004). "A discharge is not lawful, however, when it violates public policy." *Id*. Put another way, the employee must establish

that the discharge was caused by the employee's participation in an activity protected by a clearly defined public policy. *See Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751, 761 (Iowa 2009).

The Achilles heel of a wrongful discharge claim lies in the definition of public policy. As one court observed:

> When a discharge contravenes public policy in any way the employer has committed a legal wrong. However, the employer retains the right to fire workers at will in cases "where no clear mandate of public policy is involved." But what constitutes clearly mandated public policy?
>
> There is no precise definition of the term. In general, it can be said that public policy concerns what is right and just and what affects the citizens of the State collectively. It is to be found in the State's constitution and statutes and, when they are silent, in its judicial decisions. Although there is no precise line of demarcation dividing matters that are the subject of public policies from matters purely personal, a survey of cases in other States involving retaliatory discharges shows that a matter must strike at the heart of a citizen's social rights, duties, and responsibilities before the tort will be allowed.

Palmateer v. Int'l Harvester Co., 421 N.E.2d 876, 878-79, (Ill. 1981) (internal citations omitted).

In Iowa, it is a "fundamental proposition of public policy that the courts should afford redress for a wrong." *Shook v. Crabb*, 281 N.W.2d 616, 620 (Iowa 1979). It has been suggested that "nothing could be more 'fundamental' than the right of reasonable access to courts to protect those inalienable rights possessed by all persons and recognized by both the United States and Iowa Constitutions." *Lunday v. Vogelmann*, 213 N.W.2d 904, 908 (Iowa 1973) (Reynoldson, J., dissenting). Article I Section 1 of the Iowa Constitution states: "All men and women . . . have certain inalienable rights—among which are those of enjoying

and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness." Justice Reynoldson pointed out:

> It would plainly impinge on basic rights to deny reasonable opportunity for redress in court to one who through the wrongful act of another has been permanently disabled, with a consequent inability to enjoy life and to follow a gainful occupation in order to acquire and possess property.

Lunday, 213 N.W.2d at 908 (Reynoldson, J., dissenting). The "right of access to the courts in matters affecting 'inalienable rights' surely rises to the same level as those of other 'fundamental rights' recognized by the United States Supreme Court." *Id*. (citations omitted).

Since adopting the public-policy exception to the employment-at-will doctrine, our courts have relied on statutes as a source of public policy to support the tort, and they have rejected claims based on public policy when the public policy was not derived from a statute. *See Jasper*, 764 N.W.2d at 762-63. Nevertheless, the door is not closed "to using other sources as a means to derive public policy to support the tort." *Id*. at 763. Our constitution, judicial decisions, as well as administrative regulations, are additional proper sources of public policy. *See id*. at 763-64; *Lloyd*, 686 N.W.2d at 229.

Here, Berry argues his statutory right to file a personal injury suit pursuant to Iowa Code chapter 668 serves as the basis for a public policy exception to the at-will employment doctrine. "A negligence claim for damages resulting from injury to a person is now brought under the provisions of chapter 668 of the Iowa Code; liability in tort—comparative fault." *Cowan v. Flannery*, 461 N.W.2d 155, 157 (Iowa 1990). While the statute's primary purpose is to establish a system for apportioning fault among tortfeasors, *see Waterloo Sav. Bank v. Austin*, 494

N.W.2d 715, 717 (Iowa 1993), it does codify the state's expressed policy that its citizens may seek legal redress for an injury caused by another's negligence. *See Engstrom v. State*, 461 N.W.2d 309, 315 (Iowa 1990). Moreover, "[i]t is the fundamental premise of tort law that the allowance of money damages in a proper case is in the public interest." *Wagner v. Smith*, 340 N.W.2d 255, 256 (Iowa 1983).

In *Springer v. Weeks & Leo Co.*, 429 N.W.2d 558, 560-61 (Iowa 1998), the Iowa Supreme Court recognized the worker's compensation law as a well-recognized and clearly defined public policy of the state permitting employees to seek workers' compensation for work-related injuries. *See Lloyd*, 686 N.W.2d at 229. In this case, Berry was on his way home from work when he was injured by the acts of a truck driver hired by a company partially owned by his own employer. His right to seek redress for this injury in Iowa's civil courts is as well recognized and is as clearly defined as his right to seek worker's compensation benefits if the injury had occurred on his worksite. Similarly, in *Lara v. Thomas*, 512 N.W.2d 777, 782 (Iowa 1994), the court held that an at-will worker could not be discharged for seeking partial unemployment benefits under Iowa Code chapter 96. *Lara* found that the unemployment compensation chapter marked the clear public policy of the state to ensure the economic security of workers. *Lara*, 512 N.W.2d at 782. Berry's actions in this case in suing Premier were in a similar effort to make himself whole from an economic loss.

Chapter 668 and the tradition of civil legal redress it represents should be viewed as establishing a clear and well-defined public policy not to be contravened by employers in discharging employees. To hold otherwise would

create a chilling effect by permitting an employer to indirectly force an employee to give up certain well-recognized rights.

We recognize that our supreme court has rejected other proposed exceptions as not meeting the "clearly defined" public policy standard. *See, e.g.*, *Lloyd*, 686 N.W.2d at 230; *Davis v. Horton*, 661 N.W.2d 533, 536 (Iowa 2003). In *Davis v. Horton*, the court found no cause of action for public-policy discharge of employee for seeking to mediate an employment dispute pursuant to an employee handbook when no statute could be identified that protected the rights of employees to mediate disputes. *Davis*, 661 N.W.2d at 536. The court concluded that "the mediation of disputes, although encouraged and frequently beneficial, is not an activity so imbued with public policy purposes as to satisfy the clarity element that our cases require." *Id*. In rejecting a claim for wrongful discharge by a private security guard for attempting to uphold criminal laws by arresting a perceived lawbreaker when no statute was identified protecting or promoting the employee's activity sought to be protected, the court in *Lloyd* concluded the public policy grounds asserted were "far too generalized to support an argument for the exception to the at-will doctrine." *Lloyd*, 686 N.W.2d at 230. Here, Berry's right to seek judicial redress for his injuries is something more than just a generalized concept of socially desirable conduct; it is statutorily recognized and founded in our constitution and decisional law.

We conclude Berry's right to seek judicial redress for a wrong is a clearly defined public policy supported by court precedent, the Iowa Constitution, and statute. Consequently, the district court erred in concluding Berry "did not

identify a public policy that protects an employee's right to file a civil lawsuit against someone other than his or her employer."

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

Tabor, J., concurs; Vaitheswaran, P.J., dissents.

VAITHESWARAN, P.J. (dissenting)

I respectfully dissent. As the majority notes, Iowa is an at-will employment state, which means that an employer can fire an employee "for any lawful reason or for no reason at all." *Lloyd v. Drake Univ.*, 686 N.W.2d 225, 228 (Iowa 2004). And, as the majority recognizes, our highest court has only recognized limited exceptions to our at-will employment doctrine based on "[t]he existence of a clearly defined public policy that protects an activity." *Id.* at 228. The majority now recognizes a broad exception based on an employee's filing of any type of personal injury lawsuit. I am not convinced that Iowa Code chapter 668, the only authority for such an exception cited by Berry, supports this type of broad exception to the at-will employment doctrine. In my view, that statute does not define a right; it simply creates a system for apportioning fault among potential tortfeasors. *See* Iowa Code ch. 668; *Waterloo Sav. Bank v. Austin*, 494 N.W.2d 715, 717 (Iowa 1993) (quoting 1984 Iowa Acts ch. 1293 and stating section 668.3(2) "narrowly applies to a court's duty to instruct the jury when the fault of more than one party is at issue"). Therefore, I do not believe chapter 668 can serve as the basis for the proposed public policy exception. *See Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751, 766 (Iowa 2009) ("[L]egislative pronouncements that are limited in scope may not support a public policy beyond the specific scope of the statute."): *see also Lloyd,* 686 N.W.2d at 230 (rejecting proposed exception for upholding criminal laws on the ground that it was "far too generalized to support an argument for an exception to the at-will doctrine"); *Davis v. Horton*, 661 N.W.2d 533, 536 (Iowa 2003) (rejecting proposed exception based on participation in a mediation process on the ground that "the mediation

of disputes, although encouraged and frequently beneficial, is not an activity so imbued with public purpose as to satisfy the clarity element that our cases require"). Because Berry has articulated no "clearly defined public policy that protects" his filing of a personal injury lawsuit against a company under common ownership with the company employing him, I do not believe the district court erred in granting Liberty's motion to dismiss.