IN THE COURT OF APPEALS OF IOWA

No. 3-186 / 12-1210
Filed April 24, 2013

EDWARD T. HARGROVE,
Plaintiff-Appellant,

vs.

MAIL CONTRACTORS OF AMERICA, INC. and MICHAEL PRUETT,
Defendant-Appellees.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

Plaintiff Edward Hargrove appeals the district court's order denying his cross-motion for summary judgment, granting defendant Mail Contractors of America, Inc.'s motion for summary judgment, and dismissing his petition. **AFFIRMED.**

Nathaniel R. Boulton of Hedberg & Boulton, P.C., Des Moines, for appellant.

Mitchell R. Kunert of Nyemaster Goode, P.C., Des Moines, for appellees.

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

DOYLE, J.

Plaintiff Edward Hargrove appeals the district court's order denying his cross-motion for summary judgment, granting defendant Mail Contractors of America, Inc.'s motion for summary judgment, and dismissing his petition. We affirm.

I. Scope and Standards of Review.

We review the district court's summary judgment ruling for the correction of errors at law. *Mueller v*. *Wellmark*, Inc., 818 N.W .2d 244, 253 (Iowa 2012). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Mueller*, 818 N.W.2d at 253. We review the record in the light most favorable to the party opposing the motion. *Mueller*, 818 N.W.2d at 253.

II. Background Facts and Proceedings.

Viewing the disputed facts in a light most favorable to plaintiff Edward Hargrove, a reasonable fact finder viewing the summary judgment record could find the following facts. Defendant Mail Contractors of America, Inc. ("MCA") is a private corporation that contracts with the United States Postal Service ("USPS") to transport mail throughout the United States. Pursuant to that contractual relationship, MCA is required to conduct its operations in full compliance with the federal government's Department of Transportation ("DOT") Motor Carrier Safety Regulations, including random drug testing of certain employees as set forth in parts 40 and 382 of Title 49 of the Code of Federal Regulations.

Edward Hargrove was hired by MCA on March 15, 2010, as a full-time "class C mechanic" in MCA's Urbandale facility. This job required Hargrove to service tractor-trailers, semi tractors, and semi trailers used for transporting the mail. Hargrove did not have a commercial driver's license (CDL) at the start of his employment, but as a condition of continuing his employment with MCA, he was required to obtain a CDL within one year from his date of hire. If he failed to obtain his CDL, his employment would be terminated. Hargrove stated he understood at the time of his hire he needed to obtain his CDL "to be able to drive a semi truck on any street for a test drive for that company it required a CDL by federal law," but further testified that, in maintaining the oil and tires of MCA's vehicles, he had no reason to drive them. He also testified in his deposition:

> The only time I had to move a vehicle was to move it off the line into my area and that was it. Other than that I had no test driving needs of any kind. I didn't prepare anything that would require a test drive. [W]e did our oil changes, we never had to actually go out into a test drive on a truck. . . . You never did any repairs that would require a test drive is what I'm trying to say."
>
> The only thing that I ever drove for that company was tractor from the yard into the shop. And the yard is in the shop area. It's all in one area. You never touch the street to do it.

On August 25, 2010, Hargrove was subjected to an unannounced drug test. Based upon the results of that test, Hargrove's employment with MCA was terminated the next month.

On April 12, 2011, Hargrove filed his petition at law against MCA, asserting he was wrongfully terminated in violation of Iowa Code section 730.5 (2011). Alternatively, he asserted he was wrongfully terminated by MCA in

violation of public policy. MCA answered, resisting Hargrove's claims and asserting numerous affirmative defenses.

On May 1, 2012, MCA filed a motion for summary judgment. It asserted, because MCA is required to conduct its operations in full compliance with the federal government's DOT Motor Carrier Safety Regulations, as well as the language of Iowa Code section 730.5(2), Hargrove's claim was preempted by federal law and must be dismissed. MCA also asserted Hargrove's alternative claim should be dismissed because his claim was not a recognized public policy of the State of Iowa.

In response, on May 8, 2012, Hargrove filed his cross-motion for summary judgment. Therein, Hargrove stated the "factual issues in this lawsuit are minor" and the "legal issues can be decided by the [c]ourt as a matter of law." Hargrove did not file a statement of disputed facts, but filed his own statement of undisputed facts. He admitted he worked for MCA as a class C mechanic, but stated "[i]n performing his duties as a class C mechanic for . . . MCA, [he] did not drive on public roads." Ultimately, Hargrove argued he did not qualify as "operating a commercial motor vehicle" or as a "driver" under the federal law governing the drug testing of private sector employees, and therefore his claim should not be preempted by federal law.

Following a hearing on the motions for summary judgment, the district court entered its order granting MCA's motion, denying Hargrove's motion, and dismissing Hargrove's petition. It found Hargrove's section 730.5 claim was preempted by federal law and his alternate claim failed to state a claim for a violation of a recognized public policy, requiring dismissal of his claims.

Hargrove appeals.

III. Discussion.

A. Section 730.5 Claim.

Hargrove's first claim was asserted pursuant to Iowa Code section 730.5, which is entitled "private sector drug-free workplaces." Paragraph 2 of that section sets forth its applicability, in relevant part: "This section does not apply to drug or alcohol tests conducted on employees required to be tested pursuant to federal statutes, federal regulations or orders issued pursuant to federal law." Both parties agree that if federal law governs the drug testing that occurred in this case, Hargrove's claim under Iowa Code section 730.5 must be dismissed. Therefore, the question we must answer is whether the district court correctly determined federal law preempted Hargrove's state law claim.

The Motor Carrier Safety Improvement Act of 1999 was enacted to improve the federal motor carrier safety program through the establishment of a permanent government agency, the Federal Motor Carrier Safety Administration [FMCSA], and "to reduce the number and severity of large-truck involved crashes through more commercial motor vehicle and operator inspections and motor carrier compliance reviews, stronger enforcement measures against violators, expedited completion of rulemaking proceedings, scientifically sound research, and effective commercial driver's license testing, recordkeeping and sanctions." Pub. L. No. 106-159, § 4, 113 Stat. 1748, 1749. The FMCSA then promulgated regulations, which, among other things, set forth procedures for transportation workplace drug and alcohol testing programs, as well as establishing "programs designed to help prevent accidents and injuries resulting from the misuse of

alcohol or use of controlled substances by drivers of commercial motor vehicles." *See* 49 C.F.R. §§ 40.1-.413, 382.101-.605. Relevant here, part 382 of Title 49, entitled "Controlled Substances and Alcohol Use and Testing," provided drug testing procedures that apply "to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any State, and is subject to . . . [t]he commercial driver's license requirements of part 383 of this subchapter and . . . ." *Id.* § 382.103.

The parties do not dispute that MCA is an employer as defined by the DOT regulations and that MCA's trucks are commercial motor vehicles covered by the regulations. *See* 49 C.F.R. § 382.107. It is undisputed that Hargrove did not test-drive vehicles on any public highway or street. However, Hargrove does not dispute he drove the vehicles he serviced, essentially, in and out of the servicing area. The questions thus boils down to whether Hargrove's limited driving of the commercial vehicles is enough to make him a "driver" and a "operat[or] a commercial motor vehicle" in the stream of commerce, within the meanings of section 382.107.

We are not directed to, nor do we find, any other state or federal court's review of this issue. However, we are guided by the general rules of statutory interpretation. "When a statute is plain and its meaning clear, courts are not permitted to search for meaning beyond its express terms." *Kolzow v*. *State*, 813 N.W.2d 731, 736 (Iowa 2012) (internal quotation marks and citations omitted). In determining plain meaning, "statutory words are presumed to be used in their ordinary and usual sense and with the meaning commonly attributable to them."

State v. *Anderson*, 782 N.W.2d 155, 158 (Iowa 2010) (internal quotation marks and citation omitted).

Upon our review, we find the plain language of the regulation to be unambiguous. In defining "driver," section 382.107 states "[d]river means any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed drivers; *casual*, *intermittent or occasional drivers*; leased drivers and independent owner-operator contractors." (Emphasis added.) Breaking the sentences down, the language "any person" is satisfied by Hargrove, a person. *See* 49 C.F.R. § 382.107. The next part, who "operates," refers to a person who "run[s] or control[s] the functioning of: *operate[s] a machine*." The American Heritage Dictionary of the English Language 920 (1969). In moving vehicles to and from the service area, Hargrove was required to run or control the functioning of those vehicles, and therefore he operated them. The final part of the first sentence requires the operation of a "commercial motor vehicle," defined by section 382.107 in relevant part to be "a motor vehicle or combination of motor vehicles used in commerce . . . ." MCA's vehicles were used in commerce in transporting the mail pursuant to its contract with the USPS, and thus, the vehicles operated by Hargrove meet the definition of commercial motor vehicles. *See* 49 C.F.R. § 382.107. The next sentence of the definition of driver clarifies that it does not matter how frequently a person operates a commercial motor vehicle; even persons who operate a commercial motor vehicle casually, intermittently, or occasionally are considered a "driver" within the meaning set forth in section 382.107. Hargrove agreed he operated the

vehicles on occasion. Hargrove's operation of MCA's commercial motor vehicles, even only on an occasional basis, meets the definition of driver. *See id.*

This reading of the language makes sense. Although Hargrove only serviced the vehicles, he was required to operate them in moving them in and out of the service area, creating a potential safety risk to himself, his coworkers, and possibly the public. Moreover, ensuring commercial motor vehicles are serviced by someone who is not under the influence of drugs or alcohol is consistent with the Act's intent to reduce the number and severity of crashes. Finally, the definition of "drive" in section 382.107 could have easily been narrowed to include only those persons who operated commercial motor vehicles on public roads, or only those persons who operated commercial motor vehicles while in commerce, or to exclude those persons who operated commercial motor vehicles only for service purposes. We are not permitted to search for meaning beyond the regulation's express, plain, and clear terms. We therefore agree with the district court's conclusion that federal law governed the drug testing performed on Hargrove by MCA and thereby preempted Hargrove's state law claim. Accordingly, we affirm the district court's grant of summary judgment in favor of MCA dismissing this claim, and its denial of Hargrove's cross-motion on this claim.

B. Contrary to Public Policy.

Hargrove's petition alternatively asserted a tort claim of wrongful discharge from employment in violation of public policy. *See Berry v. Liberty Holdings, Inc.*, 803 N.W.2d 106, 109 (Iowa 2011) (setting forth the elements necessary to establish "an intentional tort claim of wrongful discharge"). The

district court found, as asserted by MCA, Hargrove's wrongful-discharge claim failed to state a claim upon which any relief could be granted. We agree.

"Iowa recognizes that as a general rule the relationship between employers and employees is one that is at-will." *Smuck v. Nat'l Mgmt. Corp.*, 540 N.W.2d 669, 671 (Iowa Ct. App. 1995). When an employee is employed at will, that employee can be fired "for any lawful reason or for no reason at all." *Lloyd v. Drake Univ.*, 686 N.W.2d 225, 228 (Iowa 2004). However, a discharge is not lawful if it violates public policy. *Id.*; *Smuck*, 540 N.W.2d at 672 ("Iowa courts recognize an exception to the employment at-will doctrine where discharge violates well-recognized and defined public policy."). Put another way; the employee must establish the discharge was caused by the employee's participation in an activity protected by a clearly defined public policy. *Berry*, 803 N.W.2d at 109-10. When relying on a statute as a source of public policy to support the tort, our supreme court explained that its wrongful-discharge cases finding a violation of public policy "can generally be aligned into four categories of protected activities: (1) exercising a statutory right or privilege; (2) refusing to commit an unlawful act; (3) performing a statutory obligation; and (4) reporting a statutory violation." *Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751, 762 (Iowa 2009) (internal citations omitted).

Hargrove correctly points out that "federal law can serve as an appropriate source for state public policy." *Smuck*, 540 N.W.2d at 672. However, under the undisputed facts of this case, Hargrove cannot establish his discharge was caused by his participation in an activity protected by a clearly defined public policy as a matter of law. Here, Hargrove was not discharged because of his act

in participating in any recognized category of protected activity. Rather, Hargrove's employment was terminated based upon the results of his drug test. Consequently, we agree with the district court that Hargrove failed to allege his termination was in violation of the well-recognized public policy of the state of Iowa and failed to state a claim for relief. Accordingly, we affirm the district court's grant of summary judgment in favor of MCA dismissing this claim, and its denial of Hargrove's cross-motion on this claim.

IV. Conclusion.

For the foregoing reasons, we affirm the district court's grant of summary judgment in favor of MCA, its denial of Hargrove's cross-motion, and its dismissal of Hargrove's petition.

AFFIRMED.