IN THE COURT OF APPEALS OF IOWA

No. 8-790 / 08-0386
Filed October 29, 2008

DENNIS B. HAYNES,
Plaintiff-Appellant,

vs.

KARL CHEVROLET, INC.,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchinson, Judge.

Plaintiff appeals from the order granting summary judgment on his constructive discharge claim against a former employer. **AFFIRMED.**

Robert A. Wright, Jr., of Wright & Wright, Des Moines, for appellant.

Robert A. Nading II of Nading Law Firm, Ankeny, for appellee.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

POTTERFIELD, J.

Dennis Haynes appeals from the order granting summary judgment on and dismissing his constructive discharge claim against a former employer, Karl Chevrolet, Inc. We affirm.

Background Facts and Proceedings.

Haynes began his employment as a used car salesman at Karl Chevrolet in October of 2004. He was an at-will employee. On June 20, 2005, Haynes voluntarily terminated his employment by submitting a letter of resignation. In that letter Haynes cited the "unprofessional situations" at the dealership that led to his resignation. He attached to the letter a series of journal entries detailing unprofessional treatment to which he allegedly was subjected. Those incidents, which spanned from November of 2004 through May of 2005, included verbal harassment, vulgarity, and threatened physical contact by co-workers.

On June 5, 2006, Haynes filed an action against Karl Chevrolet seeking damages for his alleged constructive discharge from the dealership. He repeated his claims of "derogatory and harassing conduct and physical assault by his co-workers and management." He claimed this conduct created a hostile work environment and led to his constructive discharge. Karl Chevrolet later filed a motion for summary judgment seeking dismissal of Haynes's claims. After hearing on the motion, Haynes filed a motion seeking to amend his petition. The court then granted Karl Chevrolet's motion for summary judgment. Haynes later filed a motion asking the court to rule on his motion to amend. The court subsequently denied that motion and reaffirmed its summary judgment ruling. Haynes appeals.

Scope and Standards of Review.

We review the district court's summary judgment rulings for the correction of errors at law. Iowa R. App. P. 6.4; *Alliant Energy-Interstate Power & Light Co. v. Duckett*, 732 N.W.2d 869, 873 (Iowa 2007). 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); *Walderbach v. Archdiocese of Dubuque, Inc.*, 730 N.W.2d 198, 199 (Iowa 2007). A fact question arises if reasonable minds can differ on how the issue should be resolved. *Walderbach*, 730 N.W.2d at 199.

We review the district court's denial of the motion to amend for an abuse of discretion. *Lake v. Schaffnit,* 406 N.W.2d 437, 441 (Iowa 1987). We accord the district court considerable discretion when ruling on such motions; therefore, we reverse only when a clear abuse of discretion is shown. *Bennett v. Redfield*, 446 N.W.2d 467, 474-75 (Iowa 1989).

Discussion.

Motion to Amend. We first address Haynes's contention that the court abused its discretion in denying his request to amend his petition. In particular, he sought to state more specifically that his co-workers' conduct, which he claimed ran counter to the public policy of the State of Iowa, constituted assault in violation of Iowa Code sections 708.1 and 708.2. The court ruled on the motion to amend after it had granted the summary judgment, concluding first that it was untimely. However, it further noted that even assuming the petition had been amended as proposed, Haynes could not have prevailed on summary

judgment because he had not engaged in a protected activity and was not a member of a protected class. We find no abuse of discretion in the court's ruling.

Iowa Rule of Civil Procedure 1.402(4) governs the amendment of pleadings. This rule instructs district courts to grant leave to amend freely when required by the interests of justice. Iowa R. Civ. P. 1.402(4). Amendments are the rule and denials are the exception. *Ackerman v. Lauver*, 242 N.W.2d 342, 345 (Iowa 1976). As will be noted in the following section of this opinion, Haynes's claim was susceptible to summary judgment even if the amendment had been allowed. Moreover, we believe the attempted amendment only further explained facts and legal claims already sufficiently made under Iowa's notice pleading rules. *See Adam v. Mt. Pleasant Bank & Trust Co.*, 355 N.W.2d 868, 870 (Iowa 1984) (noting a petition is sufficient if it "apprises the opposing party of the incident from which the claim arose and the general nature of the action").

Public Policy Exception. As noted, the parties agree that Haynes was an at-will employee. In Iowa an employer may discharge an at-will employee at any time, "for any *lawful* reason, that is, a reason that is not contrary to public policy." *Lockhart v. Cedar Rapids Cmty. Sch. Dist.*, 577 N.W.2d 845, 846 (Iowa 1998). Because he resigned, Haynes now maintains he was constructively discharged from that at-will employment. Constructive discharge arises "when the employer deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation." *First Judicial Dist. Dep't of Corr. Servs. v. Iowa Civil Rights Comm'n*, 315 N.W.2d 83, 87 (Iowa 1982). On this type of claim, our supreme court has stated that

> constructive discharge is actionable only when an express discharge would be actionable in the same circumstances. Therefore, the mere allegation that a discharge is constructive does not convert a nonactionable discharge of an at-will employee into an actionable tort. Something more is needed. What is needed additionally is an accompanying claim that the discharge was the result of illegal conduct such as the violation of public policy or statutory law or breach of a unilateral contract of employment created through an employer's handbook or policy manual.

Balmer v. Hawkeye Steel, 604 N.W.2d 639, 643 (Iowa 2000).

Accordingly, we return to the general rule in Iowa that an employer may discharge an at-will employee for any reason, subject to two exceptions: (1) a discharge in violation of public policy, and (2) a discharge in violation of the employer's handbook, which constitutes a unilateral contract. *Fitzgerald v. Salsbury Chemical, Inc.*, 613 N.W.2d 275, 281 (Iowa 2000).

Here, Haynes only claims the first of those exceptions—that his discharge was in violation of public policy. In particular, he contends the abusive acts perpetrated by Karl Chevrolet's employees, which Karl failed to remedy, constitute a violation of public policy. An employee asserting a wrongful-discharge claim based on a violation of public policy must establish:

> (1) The existence of a clearly defined public policy that protects an activity.
> (2) This policy would be undermined by a discharge from employment.
> (3) The challenged discharge was the result of participating in the protected activity.
> (4) There was lack of other justification for the termination.

Davis v. Horton, 661 N.W.2d 533, 535 (Iowa 2003).

The district court rejected this contention, concluding Haynes "makes no claim of engagement in a protected activity of any kind, or that the pattern of harassment and derogatory activity he alleges was the result of engagement in a

protected activity." We agree. The record reflects that Haynes's only activity was performing the duties of a used car salesman. He does not allege he was engaged in some statutorily protected right or some socially desirable act. *Borschel v. City of Perry*, 512 N.W.2d 565, 567 (Iowa 1994). In cases in which the Iowa Supreme Court has found a public policy exception to the at-will employment doctrine, the employee was engaged in some affirmative act above and beyond his employment duties. *See, e.g.*, *Tullis v. Merrill*, 584 N.W.2d 236, 239 (Iowa 1998) (employees who made demand for wages due); *Teachout*, 584 N.W.2d at 299 (employee who reported or intended to report child abuse); *Lara v. Thomas*, 512 N.W.2d 777, 782 (Iowa 1994) (employees who sought unemployment compensation); *Springer v. Weeks & Leo*, 429 N.W.2d 558, 560 (Iowa 1988) (employees who sought workers' compensation for work-related injuries).

Haynes asks us to fashion a new public policy exception for employees whose only additional acts in the workplace are to be the victims of assault or harassment. In determining the existence of a public policy, we must "proceed cautiously" and "only extend such recognition to those policies that are well recognized and clearly defined." *Davis*, 661 N.W.2d at 536. Our goal is to promote "our continuing general adherence to the at-will employment doctrine and the need to carefully balance the competing interests of the employee, employer and society." *Fitzgerald*, 613 N.W.2d at 283. Freedom from assaultive or abusive behavior in a workplace is critical for a victimized employee, but it is not a protected activity in the context of recognized public policy under our supreme court's narrow definition. Because Haynes failed to present a genuine

issue of material fact on his claim that his employment status is protected by a public policy against assault, we affirm the order granting summary judgment.

AFFIRMED.