IN THE COURT OF APPEALS OF IOWA

No. 9-721 / 09-0401
Filed November 25, 2009

HEARTLAND INSURANCE RISK POOL,
An Iowa Municipal Corporation,
Plaintiff-Appellant,

vs.

STATE OF IOWA,
Defendant-Appellee.

Appeal from the Iowa District Court for Mahaska County, Joel D. Yates, Judge.

Heartland Insurance Risk Pool appeals from a district court ruling entering summary judgment in favor of the State. **AFFIRMED.**

Carlton G. Salmons of Gaudineer, Comito & George, L.L.P., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Robin G. Formaker and Richard E. Mull, Assistant Attorneys General, Ames, for appellee.

Heard by Vogel, P.J., and Doyle and Mansfield, JJ.

DOYLE, J.

Heartland Insurance Risk Pool appeals from a district court ruling entering summary judgment in favor of the State on Heartland's action seeking indemnification from the State for its attorney fees incurred in defending a lawsuit brought by Mary Vance against Mahaska County and its treasurer's office. We affirm the judgment of the district court.

I. Background Facts and Proceedings.

The summary judgment record reveals the following undisputed facts: In April 2003, the Iowa Department of Transportation (DOT) authorized Mahaska County to issue drivers' licenses. The Mahaska County Board of Supervisors decided to offer "full-service" driver's license services to the public, including the issuance of general operator, commercial (CDL), and motorcycle licenses. The board authorized staffing the county treasurer's office with two full-time employees who could "do everything." The employees' duties included clerical functions such as administering vision and written tests, entering information to be printed on a driver's license, and taking photographs of licensees, as well as giving "skills tests" for all three types of licenses. Skills tests involve "on-the-road behind-the-wheel testing." The county offered the CDL skills tests on Tuesdays by appointment, the motorcycle skills tests on Thursday mornings only, and the general operator skills tests Monday through Friday, except when CDL or motorcycle skills tests were being given.

For one of the two positions, the county hired Mary Vance to work as a driver's license supervisor. Her job duties included giving skills tests at least one week each month to individuals seeking general operator, CDL, or motorcycle

licenses. She also performed clerical duties, such as balancing the cash drawer and computer, submitting the day's work to the DOT for review, issuing and checking written tests, and answering the telephone. In early April 2005, Vance was de-certified from giving CDL skills tests.

On April 22, 2005, Vance suffered a seizure while at work. Several days later, she voluntarily surrendered her driver's license to the DOT for suspension. Mahaska County Treasurer Sone Scott was told by her supervisors at the DOT, Cheryl Dunkin and Kim Snook, that "drive givers" needed a valid license. Vance returned to work on May 2 and performed all her usual duties except for giving skills tests. Soon after her return to work, she was informed by Scott that the county's board of supervisors required the treasurer's office to employ two full-time employees capable of giving skills tests. As a result, Vance was terminated from her employment.

Vance filed a lawsuit against Mahaska County and its treasurer's office, alleging her termination violated the American with Disabilities Act (ADA) and the Iowa Civil Rights Act (ICRA). *See* 42 U.S.C. § 12111; Iowa Code § 216.1. The county was insured by Heartland, a local government risk pool. Heartland undertook the county's defense but sent a letter to the Iowa Attorney General's office requesting that the State assume the defense pursuant to Iowa Code section 669.21 (2007). In support of that request, Heartland asserted that in terminating Vance from the county driver's license division, the county and its treasurer's office were acting as agents of the State. An assistant attorney general informed Heartland the State would not be accepting the county's defense.

Heartland accordingly proceeded with the county's defense by filing a motion for summary judgment asserting that (1) the county acted as an "arm of the State" in terminating Vance and as such could not be sued under Title I of the ADA and (2) Vance's disability claims under the ADA and the ICRA were meritless. Following a hearing, the district court entered a ruling denying Heartland's first assertion but accepting its second. The court determined, in relevant part, that

> Mahaska County and its Treasurer's Office retained significant autonomy with regard to structuring the Driver's License Department's structure, the qualifications of each position, and the driver's licensing functions that each position was to perform. Accordingly, the court concludes that Mahaska County and its Treasurer's Office is not acting as an "arm of the State" when it makes employment decisions regarding its driver's license department, i.e. when it decided to terminate Vance. Therefore, the [county was] not entitled to assert sovereign immunity with regard to the ADA claim.

The court nevertheless agreed with Heartland that Vance's disability claims under the ADA and ICRA failed on their merits because "skills testing was an essential function of Vance's position and . . . she was not qualified to perform that function with or without a reasonable accommodation." Vance did not appeal from the resulting dismissal of her action against the county.

Heartland then filed an administrative claim with the state appeal board seeking indemnification from the State for Heartland's defense of the county in the Vance litigation. After six months passed with no response from the board, Heartland withdrew its claim and filed the current lawsuit against the State under the Iowa Tort Claims Act (TCA). Heartland claimed the State breached its duty to defend the county as required by Iowa Code section 669.21. As a result,

Heartland asserted that as a subrogee of the county, it was entitled to indemnification from the State for the attorney fees, costs, and expenses incurred in defending the suit brought by Vance.

The State filed a motion for summary judgment asserting, among other things, that the doctrine of issue preclusion barred Heartland from relitigating the issue of whether the county was acting as an agent of the State in terminating Vance due to the adverse ruling on that question in the Vance lawsuit. Heartland resisted and filed its own summary judgment motion. Following a hearing, the district court entered a ruling granting the State's motion for summary judgment. The court found the agency issue was essential to the summary judgment ruling in the Vance case and could not be relitigated by Heartland in this case. The court therefore concluded Heartland could not succeed in its indemnification claim against the State.

Heartland appeals. It claims the district court erred in applying the doctrine of issue preclusion in this case. The State defends the court's ruling on that issue and asserts several alternate grounds for affirmance. *See Iowa Coal Mining Co. v. Monroe County*, 494 N.W.2d 664, 668 (Iowa 1993) ("[A] party for whom a favorable judgment has been rendered may attempt to save the judgment by urging any ground asserted in the trial court."). We believe the State's claim that it had no duty to defend the county under section 669.21 because the county and its treasurer's office were not acting as its agents in terminating Vance is dispositive of this appeal.

II. 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. 6.907 (2009); *Faeth v. State Farm Mut. Auto. Ins. Co.*, 707 N.W.2d 328, 331 (Iowa 2005). 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); *Grinnell Mut. Reins. Co. v. Jungling*, 654 N.W.2d 530, 535 (Iowa 2002). A fact question arises if reasonable minds can differ on how the issue should be resolved. *Grinnell Mut. Reins.*, 654 N.W.2d at 535. No fact question arises if the only conflict concerns legal consequences flowing from undisputed facts. *Id*.

III. Discussion.

A. Statutory Framework.

In order to give some context to the parties' arguments on appeal, we believe the following discussion of the statutory framework underlying this case will be helpful. In Iowa Code section 321.2, the legislature designated the DOT as the sole agency responsible for administering the issuance, suspension, and revocation of driver's licenses in the state of Iowa. *See City of Davenport v. Seymour*, 755 N.W.2d 533, 547 (Iowa 2008) (Wiggins, J., dissenting). Notwithstanding that grant of sole authority, the legislature enacted Iowa Code chapter 321M pursuant to which the DOT was authorized to allow "certain counties . . . to issue driver's licenses." *See* Iowa Code § 321M.2. Mahaska County became eligible to issue drivers' licenses in April 2003. *See id.* § 321M.3. In order to maintain uniformity in licensing practices across the state,

section 321M.10(1) provided the DOT would "retain all supervisory authority over the county driver's license issuance program." That section additionally provided, "The county treasurers and their employees *shall be considered agents of the department* when performing driver's licensing functions." *Id.* § 321M.10(1) (emphasis added).

Based on the above-italicized language in section 321M.10(1), Heartland argued the county and its treasurer's office were acting as agents of the DOT in firing Vance thus triggering the State's duty to defend under section 669.21(1). That section requires the State to

> defend any employee, and . . . indemnify and hold harmless an employee against any claim as defined in section 669.2, subsection 3, paragraph *"b"*, including claims arising under the Constitution, statutes, or rules of the United States or of any state.

Id. § 669.21(1). Section 669.2(3)(b) defines a "claim" as:

> Any claim against *an employee of the state* for money only, on account of damages to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the state while acting within the scope of the employee's office or employment.

(Emphasis added.) An "employee of the state" includes "any one or more officers, *agents*, or employees of the state or any state agency." *Id.* § 669.2(4) (emphasis added).

The key issue in this case is whether the county and its treasurer's office were acting as agents of the State in terminating Vance from the county driver's license department. If so, the State likely had a duty to defend the county in the Vance litigation under section 669.21. Whether the State was then required to indemnify Heartland for its successful defense of the county is a separate

question we need not answer due to our conclusion on the agency issue, which we turn to next.

B. Agency Issue.

In *Graham v. Worthington*, 259 Iowa 845, 853, 146 N.W.2d 626, 632 (1966), our supreme court noted that political subdivisions of the state, such as cities and counties, are ordinarily "classified as agencies or arms of the state." *See also Fennelly v. A-1 Mach. & Tool Co.*, 728 N.W.2d 163, 170 (Iowa 2006) ("Cities and counties are not sovereign bodies, but in many aspects, are agencies of the state."). Yet, for the purposes of the TCA the court determined:

> We are satisfied political subdivisions such as cities, school districts and counties are [n]either agencies of the state nor corporations as those terms are employed and defined in the Act, and are not included within its clear intent and purpose.
>
> Surely the officers, agents and employees of political subdivisions are not officers, agents and employees of the state while acting within the scope of their office or employment.

Graham, 259 Iowa at 854, 146 N.W.2d at 633.

Heartland nevertheless contends Mahaska County and its treasurer's office were acting as agents of the State under the TCA given the particular circumstances presented in this case. *See Benson v. Webster*, 593 N.W.2d 126, 130 (Iowa 1999) ("The party asserting the existence of an agency relationship bears the burden of proof."). We do not agree.

Heartland places much reliance on Iowa Code section 321M.10(1), which as we previously noted provides, "The county treasurers and their employees shall be considered agents of the department *when performing driver's licensing functions*." Heartland argues the county was performing driver's licensing functions in firing Vance, while the State argues the county's decision in that

regard was a "personnel decision" unrelated to the performance of driver's licensing functions. We find the State's argument more convincing.

When Mahaska County began participating in the county issuance program under chapter 321M, it executed a 28E agreement[1] with the DOT establishing "the terms and conditions whereby the County will perform driver's licensing functions. *See* Iowa Code § 321M.5 (requiring participating county to execute 28E agreement with DOT "detailing the relative responsibilities and liabilities of each party to the agreement"). Under that agreement, the county was permitted to employ "under [its] direction and control" "only those persons who have been approved by the [DOT] to administer skills testing." Each "skills tester" certified by the DOT and employed by the county was required to "[p]ossess and maintain a valid driver's license." The county was required to notify the DOT if any of its "examining personnel" received notice "of any denial, suspension, revocation, cancellation, or disqualification of his or her driver's license." The DOT reserved the right to withdraw its authorization for the county to issue driver's licenses in the event the county employed "skills testers who do not have a valid driver's license, whose driver's license is revoked, suspended, cancelled, disqualified, or whose application for a driver's license had been denied." *See also id.* § 321M.6(3) (allowing DOT to decertify a county).

Despite those requirements in the 28E agreement, Kim Snook, the field service manager for the DOT's office of driver services, testified in her deposition that the DOT was not concerned with the county's "employees as far as who they

[1] Chapter 28E allows the joint exercise of power by state and local governments. *See* Iowa Code § 28E.3; *Warren County Bd. of Health v. Warren County Bd. of Supervisors*, 654 N.W.2d 910, 914 (Iowa 2002).

are or whatever, they just have to be able to perform the job . . . within the laws federally, and state laws." She explained that although the DOT retained supervisory authority over the county's issuance of driver's licenses, it did not involve itself in "any customer service issues, like whenever the treasurer decides to be open, their hours of service, their employees." The county was thus able to develop and adopt its own job descriptions and classifications for the people in its employ. It was also free to structure its driver's license department in whatever manner it chose.

To that end, the county's board of supervisors determined two full-time positions were needed to perform "drivers licensing tasks" in its issuance program even though the 28E agreement only required the county to employ one individual capable of giving skills tests. A joint affidavit from members of the Mahaska County Board of Supervisors explained

> that both positions, and whoever filled them, would be trained such that each person knew the other person's job, and that both individuals would be trained and qualified in all licensing responsibilities, those in the office and those out of the office, dealing with drive testing for the three licenses the Treasurer would offer.

Scott testified in her deposition that the county's issuance program was structured in that manner so that it could operate as a "full-service county." She was aware of no code provision, statute, law, or regulation that required her to have two full-time employees available to give drive tests, and testified that requirement was between the board of supervisors and her when the driver's license station was opened. According to Scott, Vance was terminated from her position "because she didn't have a driver's license and the board of supervisors

wanted me to have two full-time employees to do everything, drive tests, written tests." Scott did not feel that she could run the office with only one employee capable of giving skills tests. She was concerned she would have "unhappy constituents" if the availability of skills testing was limited by the county's continued employment of Vance while her driver's license was suspended.

Indeed, Snook testified the DOT would not have de-certified the county if Vance had remained in the county's employ[2] after the suspension of her license so long as she did not give skills tests:

> It would be up to the county . . . if there was any other duties that they would want to put [Vance] in and allow [her] to do as far as another position.
>
> We would de-certify if we ever had knowledge that she was doing car drives in that county. If for some reason she was put in a different job and was giving vision tests or knowledge tests, I wouldn't have de-certified the county.

Elsewhere in her deposition testimony, Snook confirmed that although Vance's driver's license was suspended that "did not prevent her from performing whatever other functions she performed aside from those of a skills tester."

In light of the foregoing, we agree with the State that the undisputed facts establish the county was not performing driver's licensing functions or acting as an agent of the DOT in terminating Vance. *See Smith v. Air Feeds, Inc.*, 519 N.W.2d 827, 831 (Iowa Ct. App. 1994) ("The existence of an agency is ordinarily a fact question, but there must be substantial evidence to generate a jury question."). Instead, it appears that decision resulted from the county's own personnel policies, which the DOT did not control. *See Anderson v. Boeke*, 491

[2] It is noted that after Vance was disqualified from giving CDL skills tests, but remained in the county's driver's license division, the county was not de-certified by the DOT.

N.W.2d 182, 187 (Iowa Ct. App. 1992) ("The fighting issue in proving agency is whether the alleged agent is subject to the control of the principal."). We therefore conclude the State had no duty to defend the county and its treasurer's office in the Vance litigation.

IV. Conclusion.

The decision of the district court granting summary judgment in favor of the State and dismissing Heartland's suit for indemnification is affirmed, although for different reasons than that relied upon by the court. We find it unnecessary to address the remaining arguments raised by the parties in support of their respective positions on appeal.

AFFIRMED.