IN THE COURT OF APPEALS OF IOWA

No. 9-857 / 09-0364
Filed December 30, 2009

V.H., Mother and Next Friend of M.M.,
Plaintiff-Appellant,

vs.

HAMPTON-DUMONT COMMUNITY SCHOOL DISTRICT and SCOTT SACKVILLE, Individually and as an elected Director of the Hampton-Dumont Community School District,
Defendants-Appellees.

Appeal from the Iowa District Court for Franklin County, Brian H. McKinley, Judge.

The plaintiff appeals from the district court's grant of summary judgment in favor of the defendants. **AFFIRMED.**

Andrea Miller of Miller & Miller, P.C., Hampton, for appellant.

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

Heard by Potterfield, P.J., Mansfield, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MANSFIELD, J.

This case presents the question whether the Hampton-Dumont Community School District or a member of its board of directors violated the rights of V.H. and her minor daughter M.M. by disseminating information regarding improper sexual conduct by a former school district employee that involved M.M. After review of this record, we agree with the district court that the plaintiffs failed to submit evidence sufficient to withstand the defendants' motion for summary judgment. Accordingly, we affirm.

I. Facts and Procedural Background

Because we are reviewing a grant of summary judgment, we set forth the facts in the light most favorable to V.H. The summary judgment record included excerpts from various depositions, as well as excerpts from a hearing on V.H.'s earlier request for a temporary injunction, which the district court denied.

Tyler Radcliffe, aged twenty-one, was employed by the Hampton-Dumont district as a teaching assistant and coach. During the summer of 2007, Radcliffe's duties included coaching the freshman and junior varsity softball teams. M.M., who was entering the ninth grade, was a member of those teams. Radcliffe and M.M. exchanged text messages. Radcliffe arranged to have M.M. meet him at his house over the lunch hour on August 20 and 21, 2007. During those two occasions, sexual activity occurred.

The next day, August 22, which was the first day of the 2007-08 school year, M.M. confided in her best friend M.B. what had happened. Rumors started to spread among the students about what had occurred between M.M. and Radcliffe. M.M. concedes the rumors started with her friend M.B. In mid-

September, V.H. learned of the rumors. On October 15, 2007, M.M. went to Trent Gundmeyer, the principal of the Hampton-Dumont High School, to complain of the rumors. Grundmeyer asked M.M. if the rumors were true. She replied they were not. Grundmeyer subsequently confronted another student, A.J., whom M.M. accused of spreading rumors.[1] Later that week, Grundmeyer asked M.M. if the situation had improved, and she replied it had.

On October 17, 2007, M.M. and her best friend M.B. were at the house of M.B.'s aunt, J.E. M.M. was upset, and J.E. asked M.M. what was going on. M.M. explained there were rumors going around the school concerning Radcliffe and herself. J.E. asked M.M. if the rumors were true, and she started crying and said, "Yes, the rumors are true." M.M. then told J.E. about the sexual activity involving Radcliffe.

On Friday, October 19, 2007, J.E. called V.H. during the day to report what M.M. had told her. V.H. tried to reach Principal Grundmeyer, but when he was unavailable, she called Hampton-Dumont Superintendent Todd Lettow and told him she needed to see him immediately regarding an incident involving M.M. V.H. then picked up M.M. at school and drove to Lettow's office. While en route to Lettow's office, V.H. told M.M. she "knew about it" and asked her to go over the details. M.M. then told her mother what she had previously related to M.B.'s aunt about Radcliffe.

When V.H. and M.M. arrived at Lettow's office, M.M. described the incident for Superintendent Lettow. Superintendent Lettow took a page of notes

[1] M.M. later conceded that she was aware A.J. had learned of the incident from M.B.

summarizing what he was told, including Radcliffe's name, V.H.'s full name, and M.M.'s first name. Lettow never showed these notes to anyone other than the school district's attorney. At the conclusion of the meeting, Lettow told V.H. and M.M. that he would be speaking with Radcliffe, the school board, and the police.

Lettow spoke with Radcliffe that day. Radcliffe denied the allegations, but Lettow informed him that he needed to err on the side of student safety and placed him immediately on administrative leave. Lettow also made a report to the police, who contacted V.H. The following Monday, October 22, V.H. and M.M. went to the police station, where M.M. gave a statement. The police thereupon commenced a criminal investigation.

Lettow spoke the evening of October 19 with all the board members about the incident, informing them Radcliffe had been placed on administrative leave because of sexual activity with a student. Lettow also provided the same information to certain school administrators and office staff. Lettow testified that he did not disclose the identity of the student in any of these discussions with board members or school personnel, but V.H. claims Lettow later admitted to her that he disclosed M.M.'s identity to the board members.

Scott Sackville was one of the Hampton-Dumont board members who had been advised by Lettow of Radcliffe's having been placed on administrative leave. Sackville, whose fifth-grade son went to school in the same building as Radcliffe, told his wife what he had been told. Sackville testified that he did not know the name of the student who had been involved in the incident with Radcliffe, or even if it was a male or female student. Sackville testified he did not learn the identity of the student until after the lawsuit was filed.

V.H. testified that she discussed the incident with approximately thirteen individuals who were relatives, friends, coemployees, or professionals. Also, M.M. had related the incident to at least one other student besides M.B.

On November 1, 2007, Kristy Reynolds, a hairstylist who is V.H.'s friend, told V.H. that gossip about Radcliffe and M.M. was being spread by a teacher at the school and by Sackville's wife. Reynolds had previously been informed of the Radcliffe-M.M. incident by V.H. Reynolds did not have firsthand knowledge that anyone was spreading gossip; this was something that she had heard indirectly.

On November 2, 2007, V.H. called Lettow to complain that a board member was talking about the incident in public. V.H. would not disclose the identity of the alleged board member to Lettow. However, Lettow e-mailed the board members reminding them not to discuss the matter.

On November 7, 2007, V.H., on her own behalf and as best friend of M.M., brought this action for injunctive relief against the school district, Sackville, and a teacher (who was later dismissed). The petition asserted the defendants had violated Iowa Code chapter 22 (2007) and the Family Education Rights and Privacy Act (FERPA).

V.H. initially sought a temporary injunction, but the district court denied this request following a one-day hearing. Subsequently, the Hampton-Dumont school district and Sackville moved for summary judgment. On February 12, 2009, the district court granted the defendants' motion. The court reasoned: (1) Superintendent Lettow's notes were not a "confidential public record" within the meaning of Iowa Code section 22.7; (2) Lettow did not violate Iowa

Administrative Code chapter 281-102, pertaining to "Procedures for Charging and Investigating Incidents of Abuse of Students by School Employees"; (3) Lettow's communications with district board members and employees were based on his own recollection rather than the notes in any event; and (4) there is no private right of action under FERPA. V.H. appeals the district court's ruling with respect to the claims under Iowa Code chapter 22 and Iowa Administrative Code chapter 281-102. She does not appeal the dismissal of her FERPA claim.

II. Standard of Review.

We review a district court's ruling on a motion for summary judgment for correction of errors at law. Iowa R. App. P. 6.907 (2009). Summary judgment should be granted when the entire record demonstrates there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3). The moving party bears the burden to demonstrate the absence of a genuine issue of material fact and we review the facts in the light most favorable to the nonmoving party. *Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000).

We review the district court's interpretation of Iowa Code section 22.7 for correction of errors at law. *DeLaMater v. Marion Civil Serv. Comm'r*, 554 N.W.2d 875, 878 (Iowa 1996). However, the district court's application of section 22.7 to the undisputed facts before it is reviewed de novo. *Rathmann v. Bd. of Dirs. of Davenport Cmty. Sch. Dist.*, 580 N.W.2d 773, 776 (Iowa 1998); *DeLaMater*, 554 N.W.2d at 878.

III. Analysis.

This case calls upon us to decide whether the defendants violated Iowa Code chapter 22. That chapter generally establishes a right of access to the records of or belonging to state or local governmental entities. *See* Iowa Code §§ 22.1, 22.2. However, it specifically provides that certain categories of government records "shall be kept confidential, unless otherwise ordered by a court." *Id.* § 22.7. These records, sometimes incongruously called "confidential public records," include

> [c]ommunications not required by law, rule, or procedure that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination.

Id. § 22.7(18).[2] However, a communication of this nature is not treated as a confidential public record

> to the extent it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person.

Id. § 22.7(18)(c). It should also be noted that "[d]isclosure is the rule, and one seeking the protection of one of the statute's exemptions bears the burden of demonstrating the exemption's applicability." *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42, 45 (Iowa 1999).

[2] On appeal, V.H. relies solely on Iowa Code subsection 22.7(18) as the basis for her assertion that the defendants violated chapter 22.

At the outset, we decline to hold that Lettow's notes cannot be considered a confidential public record because they were his "personal" notes and he maintained them at the office in a "personal" file that he entitled "Tyler Radcliffe." Under Iowa law, public records can be "stored or preserved in any medium," as long as they are "of or belonging to" a governmental entity, including a school corporation. *See* Iowa Code § 22.1(3). We believe Lettow's notes, which he made and filed in his own office while carrying out his official duties as school superintendent, were records "of" the school and "belonged to" it. *See Dubuque v. Dubuque Racing Ass'n*, 420 N.W.2d 450, 453 (Iowa 1988) (noting that "the appropriate inquiry [to determine whether records "belong to" a city] is whether the documents are held by the city officials in their official capacity"); *Howard v. Des Moines Register & Tribune Co.*, 283 N.W.2d 289, 299 (Iowa 1979) (noting that to "facilitate public scrutiny of the conduct of public officers, the statute generally permits public access to writings held by them in their official capacities" and stating "As originally proposed, the Act purported to designate all documents in the legal possession of a public official as public records. Specific exemptions . . . were added by floor amendment.").

The district court observed that federal statutes may be helpful in interpreting Iowa Code chapter 22. However, in this area, the federal Freedom of Information Act (FOIA) contains somewhat different terminology than Iowa law, because the relevant question there is whether the record constitutes an "agency record," 5 U.S.C. § 552, not whether it is "of or belonging to" a governmental entity. Thus, under FOIA, it appears that a document may avoid "agency record" classification *either* because it does not relate to official business *or* because a

single employee created it for his/her convenience only. *See, e.g., Grand Cent. P'ship, Inc. v. Cuomo*, 166 F.3d 473, 480 (2d Cir. 1999). Given the different (and we believe more expansive) wording in the Iowa statute, we do not find the federal precedents persuasive here. *Cf. City of Dubuque v. Telegraph Herald, Inc.,* 297 N.W.2d 523, 526 (Iowa 1980) (finding federal court interpretations "helpful" where the question involved Iowa's disclosure exemption for confidential information in "personnel" files, which is similar in wording to the federal exemption), *superseded by statute as recognized in Sioux City v. Greater Sioux City Press Club*, 421 N.W.2d 895, 897 (Iowa 1988).

We also believe summary judgment cannot be upheld on the ground, asserted by the defendants, that "the evidence of record is undisputed that Superintendent Lettow . . . did not provide the student's name to board members or staff." V.H. testified Lettow admitted to her that he *did* provide M.M.'s name to board members. Although there is significant evidence to the contrary, we cannot resolve the matter on summary judgment.

However, we believe the grant of summary judgment can and should be affirmed on other grounds. First, it is undisputed that Lettow did not rely on the notes in speaking with the district's school board members and certain administrative and office staff; rather, he relied on his own recollection of what V.H. and M.M. had told him.[3] Iowa Code section 22.7 is a provision requiring certain "records" to be kept confidential. It is not a general privacy law that prohibits public officials from discussing information that is neither a record itself

[3] As the district court put it, "[T]here is no issue of genuine material fact that the information disseminated to other school personnel did not originate from the superintendent's notes, but rather, the superintendent's own recollection."

nor derived from a record. *Cf. Gabrilson v. Flynn*, 554 N.W.2d 267, 275 (Iowa 1996) (indicating that a court properly relied on Iowa Code section 22.7(19) in enjoining a school board member from making the "content" of a performance assessment test public; the board member would only have known that "content" from the record itself).

Additionally, Iowa Code section 22.7(18), the only provision relied on by V.H., actually authorizes disclosure of the "immediate facts and circumstances surrounding the occurrence of a crime or other illegal act" unless disclosure would (1) jeopardize a continuing investigation or (2) pose a clear and present danger to the safety of any person. *See* 1990 Iowa Op. Atty. Gen. 85 (finding that Iowa Code section 22.7(18) does not allow the identity of a sexual assault victim to be withheld unless either of the two exceptions is met). Although a separate law, Iowa Code section 915.36(1), prohibits any "public employee" from identifying a minor victim of sexual abuse, V.H. is not asserting a claim based on that statutory provision. Nor does V.H. claim that release of M.M.'s identity would have jeopardized a continuing investigation or posed a clear and present danger to her safety. To the contrary, V.H. herself disclosed the incident to a substantial number of individuals. V.H. also conceded that the high school students knew about this incident before any of the adults, including Lettow and Sackville. As V.H. put it:

> I work in a high school. I know how it operates. And the rumors just started going around. You tell one. By the end of the day, 50 kids know. The next day, 200 kids know.

Thus, we cannot agree that section 22.7(18) gives V.H. a cause of action in these circumstances.

We now turn to V.H.'s alternative claim that the defendants violated Iowa Administrative Code chapter 102. This chapter is intended to implement Iowa Code section 280.17.[4] It provides that "[a]ny person who has knowledge of an incident of abuse of a student committed by a school employee may file a report with the designated investigator," and the "report shall be in writing, signed and witnessed by a person of majority age." *See* Iowa Admin. Code r. 281-102.6. The Administrative Code further provides,

> Any school employee receiving a report of alleged abuse of a student by a school employee shall immediately give the report to the designated investigator or alternate and shall not reveal the existence or content of the report to any other person.

Id. r. 281-102.7. V.H. claims Lettow violated this rule.

However, we agree with the district court that V.H. and M.M.'s verbal report to Superintendent Lettow does not constitute a "report" within the meaning of these provisions. It was not in writing, nor was it filed with the designated investigator. We also agree with the defendants that neither the underlying statute nor the implementing regulations contain an express right of private action, and there is no indication the legislature intended to create an implied right of private action in this area. *See, e.g.*, *Meinders v. Dunkerton Cmty. Sch. Dist.*, 645 N.W.2d 632, 636 (Iowa 2002) (summarizing the circumstances under which a private right of action may be inferred). With some notable exceptions, *see, e.g.*, Iowa Code § 280.21A, chapter 280 entitled "Uniform School

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[4] Iowa Code section 280.17 requires "[t]he board of directors of a public school . . . to prescribe procedures, in accordance with the guidelines contained in the model policy developed by the department of education in consultation with the department of human services, and adopted by the department of education pursuant to chapter 17A, for the handling of reports of child abuse . . . alleged to have been committed by an employee" of the school.

Requirements" appears to be a "regulatory measure" that requires schools to implement certain policies and procedures, but does not envision private lawsuits in the event of a failure to follow those policies and procedures. *See Stotts v. Eveleth*, 688 N.W.2d 803, 808-09 (Iowa 2004) (holding that section 272.2, giving the school board authority to suspend or revoke the license of a person who has had a sexual relationship with a student, does not create a private right of action for the student against the teacher because it is a "regulatory measure").

Most importantly, at oral argument, V.H. conceded that a private right of action is not available under Iowa Administrative Code rule 281-102.7, thus effectively waiving this argument.

IV. Conclusion.

For the foregoing reasons, we affirm the summary judgment entered by the district court in this matter.

AFFIRMED.