

IN THE IOWA DISTRICT COURT FOR LEE (SOUTH) COUNTY

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| <p>DIANA R. VERDUGHT, Plaintiff, v. LEE COUNTY IOWA, Defendants.</p> | <p>Cause No. LALA006276 RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT</p> |
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This matter is before the Court on Defendant Lee County Iowa's Motion for Summary Judgment filed on May 18, 2016. Plaintiff Diana R. VerDught filed a Resistance on July 7, 2016. Defendant filed a Reply on July 15, 2016. The matter was scheduled for hearing on July 25, 2016. Defendant appeared by attorney Steven E. Ort. Plaintiff appeared by attorney Curtis Dial. Both attorneys made arguments but introduced no evidence or testimony.

BACKGROUND FACTS AND PROCEEDINGS

On April 30, 2014, Plaintiff filed a Petition for Wrongful Discharge and Violation of the Whistleblower Statute against Defendant. In her Petition, Plaintiff alleges that she was employed by Defendant for over sixteen years until January 13, 2014. In February, 2013, Plaintiff alleges that she discovered acts which were violations of State rules, mismanagement, gross abuse of funds, and abuse of authority, committed by others who were employed by Defendant. Plaintiff reported these acts to her supervisor, disclosures she alleges are statutorily protected by Iowa Code §§70A.28 and 70A.29. After Plaintiff made these disclosures, she alleges that Defendant made her working conditions so intolerable that she was forced to resign, resulting in constructive discharge from her employment.

Defendant moved for summary judgment, arguing that Plaintiff was in fact employed by the Lee County Conservation Board, and that because Defendant Lee County Iowa and the Lee County Conservation Board are separate legal entities and separate employers, Plaintiff erred in bringing this suit against Defendant instead of the Lee County Conservation Board. In its Answer, Defendant denies that it employed Plaintiff. Defendant's evidence shows that the Lee County Conservation Board hires its employees, establishes its own employee policies and procedures, and directs all activities of its employees, but admits that employees are paid by Defendant's payroll system. Def. Appendix of Exhibits, Ex. 1, pg. 1-2.

SUMMARY JUDGMENT STANDARD

Summary judgment is only appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment on the merits as a matter of law. Iowa R. Civ. P.1.981(3); Behr v. Meredith Corp., 414 N.W.2d 339, 341 (Iowa 1987). The burden of demonstrating the nonexistence of a material fact is upon the moving party. Willow Tree Investments, Inc. v. Wagner, 453 N.W.2d 641, 642 (Iowa 1990). In determining whether a genuine issue of material fact exists which would preclude the granting of a motion for summary judgment, a court is required to view all material before it in the light most favorable to the non-moving party. Bates v. Allied Mutual Ins. Co., 467 N.W.2d 255 (Iowa 1991); Merriam v. Farm Bureau Ins. Co., 793 N.W.2d 520, 522 (Iowa 2011).

The requirement of a "genuine issue of fact" means the evidence is such that a reasonable trier of fact could find for the nonmoving party. Fees v. Mutual Fire and Auto. Ins. Co., 490 N.W.2d 55, 57 (Iowa 1992). An issue of fact is "material" only when the dispute is over facts that might affect the outcome of the suit, given the governing law. Fees, 490 N.W.2d at 57; Junkins v. Brandstad, 421 N.W.2d 130, 132 (Iowa 1988). The materiality issue must be decided

by reference to applicable substantive law, and only fact disputes that might affect the outcome of the suit under governing law will properly preclude the entry of judgment. Behr, 414 N.W.2d at 341. A fact issue is generated if reasonable minds could differ on how the issue should be resolved. Hofer v. Wisconsin Educational Association Insurance Trust, 470 N.W.2d 336, 338 (Iowa 1991); Scheckel v. Jackson County, Iowa, 467 N.W.2d 286, 289 (Iowa App. 1991).

With the foregoing in mind, the Court must view the entire record in the light most favorable to the nonmoving party. Des Moines Register and Tribune Co. v. Dwyer, 452 N.W.2d 491, 495 (Iowa 1996). However, once the movant satisfies the burden of production demonstrating no genuine issue of material fact exists, the burden shifts to the resisting party to produce specific facts showing that a genuine issue for trial remains. Konz v. Ehly, 451 N.W.2d 504, 506 (Iowa App. 1989). The resisting party “may not rest upon the mere allegations or denials in the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” Iowa R. Civ. Pro. 1.981(5).

DISCUSSION

Summary judgment is appropriate only if there is no genuine issue of material fact that Defendant was not Plaintiff’s former employer, and therefore the incorrect defendant in this suit. Defendant argues that Lee County Conservation Board is Plaintiff’s former employer, and is a separate municipality from Defendant and therefore liable for torts under Iowa Code §670.1 et. seq. Plaintiff resists the motion for summary judgment, arguing that Lee County Conservation Board is not a municipality as defined under Iowa Code §670.1(2), and that Defendant is Plaintiff’s former employer.

A municipality, for purposes of tort liability, is defined at Iowa Code §670.1(2): “city, county, township, school district, a chapter 28E entity as provided in section 670.4, subsection 1, paragraph “p”, and any other unit of local government except soil and water conservation districts as defined in section 161A.3, subsection 6.” The question is whether the Lee County Conservation Board is “any other unit of local government.”

There is no precedent in Iowa law which states that a county conservation board is a municipality under Iowa Code §670.1(2). Previous cases show that cities, counties, school districts, and chapter 28E entities are municipalities, as directly provided for in §670.1(2). However, caselaw which has examined other types of county departments, such as drainage districts, has determined that they are not municipalities which may be sued in tort. *Gard v. Little Sioux Intercounty Drainage Dist. of Monona and Harrison Counties*, 521 N.W.2d 696 (Iowa 1994). County conservation boards are statutory creations, with specific duties and limitations. Iowa Code §§350.1 et. seq. Viewing the facts in the light most favorable to Plaintiff, the Lee County Conservation Board is more similar to a municipality department such as a drainage district than it is to a municipality such as a city or county and is therefore not a municipality which may be held liable in tort.

Further, the Court notes that Defendant issued Plaintiff’s paychecks, which indicates that Defendant was Plaintiff’s employer. For these reasons, the Court finds that Defendant has not met its burden to show that it is entitled to judgment as a matter of law.

CONCLUSION

Defendant Lee County Iowa has not satisfied its burden of production to demonstrate that no genuine issue of material fact exists. Therefore, the Motion for Summary Judgment is denied.



State of Iowa Courts

Type: OTHER ORDER

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So Ordered

A handwritten signature in cursive script, reading "John G. Linn".

John G. Linn, District Court Judge,
Eighth Judicial District of Iowa