

IOWA COURT OF APPEALS

Joanne Cote v. Derby Insurance Agency, Inc., an Iowa Corporation, and Kevin Dorn, Individually

888 N.W.2d 422 · No. 16-0558 · Decided March 9, 2018

SUMMARY

The Iowa Court of Appeals reviewed an interlocutory appeal from the denial of summary judgment in Joanne Cote's claims against Derby Insurance Agency and Kevin Dorn. The court held that the Iowa Civil Rights Act's family-member exemption did not apply to the corporate employer, and that factual issues remained regarding the timeliness of the hostile-work-environment and intentional-infliction-of-emotional-distress claims. It affirmed in part, reversed summary judgment on the assault claim, and remanded for further proceedings.

CASE DETAILS

COURT	Iowa Court of Appeals
WRITING FOR THE COURT	Per curiam; Vaitheswaran, P.J.; Tabor, J.; Mullins, J.
JURISDICTION	Iowa
DECIDED	March 9, 2018
DOCKET	16-0558
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal from the Iowa District Court for Woodbury County's denial of defendants' motion for summary judgment, except for a limited grant of summary judgment on tort claims based on events occurring before April 7, 2012.
STANDARD OF REVIEW	The denial of summary judgment is reviewed for correction of errors at law. The record is viewed in the light most favorable to the nonmoving party, with legitimate inferences drawn in that party's favor. Statutory interpretation is also reviewed for correction of errors at law.
PRECEDENTIAL VALUE	Published Iowa Court of Appeals opinion
PARTIES	Derby Insurance Agency, Inc., an Iowa Corporation, Kevin Dorn, Individually v. Joanne Cote

TOPICS

sexual harassment

hostile work environment

employment discrimination

statutory interpretation

interlocutory appeal

PRACTICE AREAS

employment law

civil rights

torts

appellate procedure

QUESTIONS PRESENTED

1. Whether the Iowa Civil Rights Act's family-member exception to its employee-numerosity requirement applies when the employer is a corporation.
2. Whether Cote's Iowa Civil Rights Act hostile-work-environment claim and tort claims were barred by the applicable statutes of limitation.
3. Whether Cote's tort claims were preempted by the Iowa Civil Rights Act.
4. Whether the summary-judgment record generated a genuine issue of material fact on Cote's intentional-infliction-of-emotional-distress claim.
5. Whether the summary-judgment record generated a genuine issue of material fact on Cote's assault claim.

HOLDINGS

1. For purposes of Iowa Code section 216.6(6)(a), the phrase "members of the employer's family" refers to a natural-person employer and does not permit a corporation to count family members of its owners or corporate personnel when determining whether the employer is subject to the Iowa Civil Rights Act.
2. The hostile-work-environment claim was not barred at the summary-judgment stage because Cote presented evidence creating a genuine issue of fact that harassing conduct continued into June or July 2012, within the applicable 300-day filing period.
3. The intentional-infliction-of-emotional-distress and assault claims were not barred at the summary-judgment stage to the extent based on conduct occurring on or after April 7, 2012, although conduct before that date could not serve as the basis for the tort claims.
4. The court declined to decide the preemption issue because Derby had not obtained a district court ruling on it, and preemption is not a subject-matter-jurisdiction issue that could be raised for the first time on appeal.
5. Cote presented sufficient evidence to generate a jury question on whether Dorn engaged in outrageous conduct supporting intentional infliction of emotional distress.
6. Cote's assault claim failed because she did not allege sufficient facts showing an act intended to place her in fear of physical pain, injury, or objectively offensive physical contact that could be carried out immediately. Derby was entitled to summary judgment on that claim.

KEY QUOTATIONS

“We conclude the word “employer,” in the context of section 216.6(6)(a)’s phrase “members of the employer’s family,” is limited to “individuals” as a subset of “person” and as part of the definition of “employer” in section 216.2.” (13-14)

“Given his repetitious behavior, Cote did not need to confirm that Dorn again had an erection to establish his discriminatory acts constituted a hostile work environment that stretched into the requisite time period.” (18)

“We are a court of review, not a nisi prius court.” (20)

“We, like the district court, find a genuine issue of material fact on the claim of intentional infliction of emotional distress and affirm on this issue.” (22)

FACTUAL BACKGROUND

Joanne Cote worked for Derby Insurance Agency from 1998 until 2014 and became its office manager in 2003. She alleged that Kevin Dorn repeatedly sexually harassed her and other female employees, including by exposing or displaying his genitals or erection, over a period beginning in 2005 and continuing through approximately August 2012. Cote alleged that Dorn continued coming into her work area during June and July 2012 when they were alone, causing her to believe he was repeating the earlier harassment.

PROCEDURAL HISTORY

Cote filed an Iowa Civil Rights Commission complaint on April 10, 2013, received an administrative release on January 10, 2014, and filed suit in April 2014 alleging hostile-work-environment sex discrimination. She amended her petition in May 2014 to add claims for assault and intentional infliction of emotional distress. The district court denied Derby's motion for summary judgment in March 2016, except as to tort claims based on pre-April 7, 2012 events. The Iowa Supreme Court granted interlocutory review, and the Iowa Court of Appeals affirmed in part, reversed in part, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for further proceedings consistent with the opinion. The hostile-work-environment and intentional-infliction-of-emotional-distress claims may proceed subject to the limitations rulings, while Derby is entitled to summary judgment on the assault claim.

CASES CITED

- Roll v. Newhall, 888 N.W.2d 422, 425 (Iowa 2016)
- Simon Seeding & Sod, Inc. v. Dubuque Human Rights Commission, 895 N.W.2d 446, 458 (Iowa 2017)
- Baker v. City of Iowa City, 750 N.W.2d 93, 101 (Iowa 2008)
- United States Jaycees v. Iowa Civil Rights Commission, 427 N.W.2d 450, 454 (Iowa 1988)
- Mall Real Estate, L.L.C. v. City of Hamburg, 818 N.W.2d 190, 198 (Iowa 2012)

- Iowa Insurance Institute v. Core Group, 867 N.W.2d 58, 73, 75 (Iowa 2015)
- State v. Howse, 875 N.W.2d 684, 688 (Iowa 2016)
- Foods, Inc. v. Iowa Civil Rights Commission, 318 N.W.2d 162, 170 (Iowa 1982)
- Pippen v. State, 854 N.W.2d 1, 28 (Iowa 2014)
- State v. Rivera, 614 N.W.2d 581, 584 (Iowa Ct. App. 2000)
- State v. Richardson, 890 N.W.2d 609, 619 (Iowa 2017)
- Kerrigan v. Errett, 256 N.W.2d 394, 396 (Iowa 1977)
- Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751, 2767-69 (2014)
- Huebner v. MSI Insurance Co., 506 N.W.2d 438, 440-41 (Iowa 1993)
- Bermel v. Liberty Mutual Fire Insurance Co., 56 A.3d 1062, 1071 (Del. 2012)
- Varro v. Federated Mutual Insurance Co., 854 So. 2d 726, 728 (Fla. Dist. Ct. App. 2003)
- Sears by Sears v. Wilson, 704 P.2d 389, 392 (Kan. Ct. App. 1985)
- Farmland Foods, Inc. v. Dubuque Human Rights Commission, 672 N.W.2d 733, 741, 743, 745 (Iowa 2003)
- Jones v. University of Iowa, 836 N.W.2d 127, 139-40 (Iowa 2013)
- Pitts v. Farm Bureau Life Insurance Co., 818 N.W.2d 91, 96-97 (Iowa 2012)
- Lynch v. City of Des Moines, 454 N.W.2d 827, 832 (Iowa 1990)
- Kopp v. Samaritan Health System, Inc., 13 F.3d 264, 269 (8th Cir. 1993)
- Hall v. Gus Construction Co., Inc., 842 F.2d 1010, 1014 (8th Cir. 1988)
- Kern v. Palmer College of Chiropractic, 757 N.W.2d 651, 657 (Iowa 2008)
- State v. Jorgensen, 758 N.W.2d 830, 835 (Iowa 2008)
- Greenland v. Fairtron Corp., 500 N.W.2d 36, 38 & n.4 (Iowa 1993)
- Van Baale v. City of Des Moines, 550 N.W.2d 153, 156 (Iowa 1996)
- Papillon v. Jones, 892 N.W.2d 763, 769 (Iowa 2017)
- Crowell v. State Public Defender, 845 N.W.2d 676, 681 (Iowa 2014)
- Ackerman v. American Cyanamid Co., 586 N.W.2d 208, 214 n.3 (Iowa 1998)
- State v. Holbrook, 261 N.W.2d 480, 482 (Iowa 1978)
- Smith v. Iowa State University, 851 N.W.2d 1, 26 (Iowa 2014)