IN THE COURT OF APPEALS OF IOWA

No. 5-701 / 94-1581

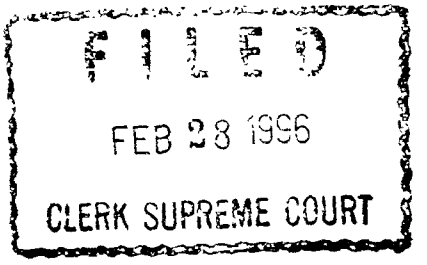
WALTER H. REINHOLDT and VIOLET M. REINHOLDT,

Plaintiffs-Appellants,

vs.

STOKELY USA, INC., a Wisconsin corporation,

Defendant-Appellee.



Appeal from the Iowa District Court for Franklin County, Gilbert K. Bovard, Judge.

Walter and Violet Reinholdt, based on a bailment theory, claims Stokely USA, Inc. negligently stored and failed to keep safe their 1986 dark red kidney bean crop and caused them to suffer damages as a result. **AFFIRMED.**

Ronald J. Pepples, Parkersburg, for appellants.

C. Carleton Frederici of Davis, Wine, Brown, Koehn & Shors, P.C., Des Moines, for appellee.

Heard by Hayden, P.J., and Habhab and Cady, JJ.

HABHAB, J.

Plaintiffs-appellants Walter and Violet Reinholdt filed their action, based on bailment, against Stokely USA, Inc., claiming the Wisconsin company had negligently stored their 1986 dark red kidney bean crop in its plant in Ackley, Iowa. The Reinholdts claimed their beans were unfit for human consumption following the bailment and could only be sold as animal feed at a lower price. The Reinholdts assessed their damages to be $56,633.43 together with the loss of the use, investment, interest, profit, and income therefrom.

One month prior to trial, the Reinholdts filed a motion for leave to amend their petition to add a breach of contract theory. In denying this motion, the district court reasoned the request came two years and two months after the petition was filed, two months after the pleading deadline, and further stated the breach-of-contract concepts would substantially change the issues in the case within one month of the leadoff trial date.

Following trial, the jury returned a verdict in favor of defendant. The Reinholdts' motion for new trial was denied.

The Reinholdts appeal.

I. ***Motion for Leave to Amend the Petition.*** The Reinholdts contend the district court erred in overruling their motion for leave to amend the petition pursuant

to Iowa Rule of Civil Procedure 88.[1] We reverse only if there was an abuse of discretion. *In re Marriage of Fields*, 508 N.W.2d 730, 732 (Iowa 1993).

The Reinholdts filed their original petition on April 2, 1992. It is undisputed the original petition was based upon a bailment theory asserting defendant negligently stored and failed to keep safe the Reinholdts' 1986 dark red bean crop. Defendant filed an answer with affirmative defenses on April 28, 1992. Two pre-trial conferences were held on November 3, 1992 and October 6, 1993. After the 1993 pre-trial conference, an order was filed designating the case as a bailment case and establishing, among other things, a pleadings deadline of April 19, 1994. The case was set in a leadoff position for July 26, 1994.

On June 27, 1994, the Reinholdts filed a motion to amend. Defendant filed a resistance. The Reinholdts' motion essentially sought to add a breach of contract claim into the case asserting defendant agreed to buy all of the Reinholdts' 1986 beans. This claim was largely based upon what will hereinafter be referred to as exhibit 35. Exhibit 35 is a communication from defendant to the Reinholdts dated

---

[1] Iowa Rule of Civil Procedure states:

> A party may amend a pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial calendar, the party may so amend it at any time within twenty days after it is served. Otherwise, a party may amend a pleading only by leave of court or by written consent of the adverse party. Leave to amend, including leave to amend to conform to the proof, shall be freely given when justice so requires.

October 29, 1986. This communication dealt with the receipt of the dark red kidney beans by defendant. The district court overruled the motion and in doing so stated:

> Here, the Request to Amend was made two years and two months after the filing of the Petition as well as some two months after the pleading deadline set out in the Pre-Trial Conference Order. The Court concludes the Application is not timely filed. The Court further considers the fact that Exhibit "A" relied upon as the basis for the amending language was at all times within the control of Plaintiff. While Plaintiffs' able counsel argues that Defendant was under an obligation to produce such documentation, the Court accepts the professional statement of Defendant's counsel that such "form letters" are not kept and that Defendant did not have such a document to produce. While Plaintiffs attach considerable significance to Exhibit "A", this Court is unable to attach equal significance or recognize the relevance of the document to Plaintiffs' theory of recovery.
>
> Finally, the Court concludes that by injecting breach of contract concepts, the Amendment does in fact change the issues in this case within three weeks of the leadoff trial date which has been established since October 6, 1993.

The privilege of amending pleadings after a responsive pleading has been filed is not a matter of right; rather, amendments can only be done by leave of opposing counsel or leave of the court. *Fields*, 508 N.W.2d at 732. The district court has considerable discretion in granting or denying a motion for leave to amend; a reversal will only occur when there is a clear abuse of discretion. *Porter v. Good Eavespout*, 505 N.W.2d 178, 180 (Iowa 1993); *M-Z Enterprise v. Hawkeye-Security Ins. Co.*, 318 N.W.2d 408, 411 (Iowa 1982). Our supreme court encourages allowing the amendments in the usual situations and discourages denying permission. *Fields*, 508 N.W.2d at 732.

The timing of an attempt to amend is not a determinative factor in determining whether there has been an abuse of discretion; rather, the critical factor is whether the proposed amendment substantially changes the issues before the court. *Allison-Kesley Ag Ctr. v. Hildebrand*, 485 N.W.2d 841, 845-46 (Iowa 1992); *In re Marriage of Titterington*, 488 N.W.2d 176, 180 (Iowa App. 1992); *Kitzinger v. Wesley Lumber Co.*, 419 N.W.2d 739, 741 (Iowa App. 1987). If the amendment substantially changes the issues, the amendment should not be allowed. *Beneficial Finance Co. v. Reed*, 212 N.W.2d 454, 456 (Iowa 1973).

We agree with the district court regarding the poor timing of the filing of the motion. The Reinholdts have had the letter in their possession since 1986.[2] The motion for leave to amend came two months after the pleadings deadline of April 19, 1994, and only one month before the case was set for trial in the leadoff position on July 26, 1994. The Reinholdts, since late 1993, were aware of these dates. For reasons not clearly explained, this attempt to amend came more than two years after the filing of the original petition.

More importantly, however, is the question of whether the proposed amendment significantly changes the issues in this case. The Reinholdts filed the original petition claiming damages under a bailment theory. The parties proceeded under this theory during the two years of trial preparation. Adding a breach of

---

[2] There is some question as to when the letter was discovered by the Reinholdts. Walter Reinholdt claims to have found it in his personal files on or about May 6, 1994.

contract theory of recovery clearly changes the issues in this case. The amendment would inject a completely new theory of recovery. This potential and substantial change of the issues, particularly in light of the timing of the motion, provided the district court with a strong basis for denying the Reinholdts leave to amend the petition. Accordingly, we find no abuse of discretion in the district court's overruling of the Reinholdt's motion.

II. ***Evidentiary Ruling.*** The Reinholdts next contend the district court erred in sustaining defendant's objection to the Reinholdt's exhibit 35 and not allowing the exhibit into evidence. Exhibit 35 is the same 1986 letter discussed in the above issue. The district court found the letter was not relevant under the theory that the case was being tried.

Relevant evidence is evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Iowa R. Evid. 401. Irrelevant evidence is inadmissible. Iowa R. Evid. 402. Relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Iowa R. Evid. 403. The balancing of probative value against the grounds for exclusion is for the trial court's discretion. *State v. Harmon*, 238 N.W.2d 139, 144-45 (Iowa 1976), *cert. denied*, 101 U.S. 138 (1981).

The Reinholdts made it clear how closely tied this exhibit is to the contract claim before the case was even tried. The Reinholdts submitted a copy of exhibit 35 to directly support their motion for leave to amend the petition to add a contract claim to the case. The district court found in its ruling overruling the motion for leave to amend that exhibit 35 lacked relevance under the bailment theory.

The Reinholdts contend exhibit 35 is probative regarding "the bailment issues of damages, value and whether fault was relevant." The Reinholdts' explanation of this probative value is very sketchy, however. The letter acknowledges delivery of the dark red kidney beans, mentions storage fees, and mentions crop liens. The mention of storage fees is irrelevant since no fees were charged on the dark red kidney beans at issue. We do not believe there is anything else in the letter with any probative value significant or relevant to the bailment issue. The evidence was not admissible under Iowa Rule of Evidence 402.

Even assuming this evidence had probative value, the probative value would have been very minimal. Had the evidence been presented to the jury, there was a substantial possibility the jury could have been confused on the issues as drawn by plaintiff. We find this to be the case given the significance the Reinholdts placed on this evidence in trying to make their contract claim. Indeed, many of the Reinholdts' arguments in this appeal, dealing with admissibility of exhibit 35, have the ring of a contract claim. The minimal probative value of exhibit 35 would have been

substantially outweighed by the danger of confusion of the issues which would make the marginally relevant evidence inadmissible under Iowa Rule of Evidence 403.

The Reinholdts also argue their proposed jury instructions should have been given. They contend the proposed instructions "go hand-in-hand with the need for the admission of Exhibit No. 35 into evidence." Given our findings on the admissibility of exhibit 35, we find the district court did not err in failing to submit the Reinholdts' proposed jury instructions.

From our examination of the entire record, we agree with appellant's counsel the Reinholdts are respectable, honorable, and honest farmers. We trust our decision does not taint their honesty or integrity. However, the jury has spoken and, after considering all arguments raised by both parties on appeal, we affirm the district court.

AFFIRMED.