FILED
AUG 25 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-530 / 92-1882

IOWA INTERSTATE RAILROAD, LTD.,

Plaintiff-Appellant,

vs.

IOWA POWER, INC., f/k/a IOWA POWER AND LIGHT COMPANY,

Defendant-Appellee,

vs.

HEARTLAND RAIL CORPORATION,

Plaintiff-Intervenor-Appellant.

Appeal from the Iowa District Court for Polk County, Michael J. Streit, Judge.

Iowa Interstate Railroad and Heartland Rail Corporation appeal a judgment of the district court finding they were not entitled to indemnification from Iowa Power for payments made to Rodney Statler after he was electrocuted when he came into contact with a power line owned by Iowa Power. **AFFIRMED.**

Carlton G. Salmons of Austin, Gaudineer, Salmons & Swanson, Des Moines, for appellant Iowa Interstate Railroad.

T. Scott Bannister of Hanson, Bjork & Russell, Des Moines, for intervenor-appellant Heartland Rail Corporation.

Gregory R. Brown and Mariclaire Thinnes of Duncan, Green, Brown, Langeness & Eckley, Des Moines, for appellee.

Considered by Donielson, C.J., and Sackett and Huitink, JJ.

HUITINK, J.

Iowa Interstate Railroad and Heartland Rail Corporation appeal a judgment of the district court finding they were not entitled to indemnification from Iowa Power for payments made to Rodney Statler after he was electrocuted when he came into contact with a power line owned by Iowa Power while he was working for Iowa Interstate Railroad. We affirm.

Several aspects of this case have been before this court previously in Statler by Statler v. Iowa Resources, Inc., 467 N.W.2d 586 (Iowa App. 1991), and the record is voluminous. However, we consider only those limited facts relevant to the issue of indemnification.

In 1984 Chicago Pacific Corporation (CPAC) purchased certain rights in railroad lands and real property previously owned by Chicago, Rock Island & Pacific Railroad Company under a bankruptcy trustee's deed. This purchase included a railroad spur siding in Pella. The spur ran beneath a transmission line owned by Iowa Power.

On October 4, 1984, CPAC conveyed its interest in the railroad right-of-way (including the railroad spur siding) to Heartland by quit claim deed. In the contract CPAC specifically reserved to itself certain rights, including (1) the exclusive right to grant easements and (2) the exclusive right to enforce any and [all] of the rights and reservations provided within the contract. The quit claim deed issued by CPAC to Heartland also reserved to CPAC the

exclusive right to grant easements. In addition CPAC reserved to itself the exclusive right

> to enforce any and [all] of the rights, reservations and agreements as herein provided, at law or in equity, against any person or entity bound by such rights, reservations and agreements as herein provided to recover any damages suffered by CPAC for any violation, threat of violation or breach hereof.

In July 1984 Heartland had entered into a lease of the tracks with Iowa Interstate, in anticipation of but prior to acquisition of any rights in the property from Chicago Pacific. On October 29, 1985, Chicago Pacific entered into the easement grant with Iowa Power which allowed Iowa Power to operate transmission lines, including the line Rodney Statler came into contact with.

Iowa Interstate's claim it is entitled to indemnification from Iowa Power centers on a provision within paragraph ten of the easement grant which reads:

> Grantee shall indemnify and save grantor, CHICAGO PACIFIC CORPORATION and its employees, agents, invitees, contractors, tenants and licensees harmless from and against all claims, losses, demands and causes of action, including attorneys' fees, court costs and/or judgments arising in favor of any person or other legal entity (including Grantee or its employees, agents, invitees, contractors, tenants or licensees) which are caused by, or arise directly or indirectly from the construction, use and operation of said wire line or the grant of this easement.

The district court rejected Iowa Interstate's claim and granted Iowa Power's motion for summary judgment in October 1992.

Our review is for errors at law. Iowa R. App. P. 4. We view the evidence in the light most consistent with the

judgment. Uhl v. City of Sioux City, 490 N.W.2d 69, 72 (Iowa App. 1992) (citation omitted). The trial court's findings of fact have the force of a jury verdict and are binding upon the appellate court if supported by substantial evidence. Iowa R. App. P. 14(f)(1). However, we are not bound by the trial court's application of legal principles or its conclusions of law in a law action. Selchert v. State, 420 N.W,2d 816, 817-18 (Iowa 1988) (citation omitted).

Iowa Interstate contends the trial court erred when it determined Iowa Interstate was not entitled to indemnification from Iowa Power. Iowa Interstate argues it is entitled to indemnification because (1) it was an intended beneficiary of the easement grant from Chicago Pacific to Iowa Power or (2) Iowa Power breached an independent duty owed to it. We disagree.

There are three grounds for indemnity in Iowa: (1) express contract, (2) vicarious liability, and (3) breach of an independent duty between the indemnitor and the indemnitee. American Trust and Sav. Bank v. United States Fidelity and Guar. Co., 439 N.W.2d 188, 190 (Iowa 1989).[1] Only grounds one and three apply in this case.

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1. Iowa Interstate also argues it is entitled to indemnification under the theory of "comparative indemnity." Our supreme court summarily rejected a similar concept in Woodruff Construction Co. v. Barrick Roofers, Inc., 406 N.W.2d 783, 785 (Iowa 1987), and we reject Iowa Interstate's contention we must consider this claim.

In order to demand performance or recover under a contract to which it is not a party, a stranger to the contract must establish it is an intended beneficiary of that contract. Restatement (Second) of Contracts § 302 (1979). The possibility that another party may benefit from the performance of the contract is not enough to show the intent of the contracting parties. See id. Rather, the contract must have been made or directly entered into for the direct or primary benefit of the third party. Uhl, 490 N.W.2d at 73 (citation omitted).

The language in the easement grant was clear and unequivocal. The rights in the easement were never assigned or transferred by CPAC to Iowa Interstate. Iowa Interstate was never a party to or an intended beneficiary of the easement granted by Chicago Pacific to Iowa Power. Any benefit Iowa Interstate may have received from the easement grant was merely incidental. Finally, since Iowa Interstate was not a party to the easement grant, Iowa Power does not owe it any independent duty.

We agree with the trial court's conclusion that Iowa Interstate is not entitled to indemnification and find no error. Since our deterimination on this issue is dispositive, we need not address Iowa Interstate's remaining claims. The district court is affirmed in all respects. Costs are assessed to Iowa Interstate.

AFFIRMED.