FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-374 / 89-1231

DANIEL J. WOLFE, Receiver, and DANIEL J. WOLFE and MARGARET L. WOLFE,

Plaintiffs-Appellants.

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vs.

RAYMOND D. BAUWENS and JOYCE E. BAUWENS,

Defendants,

and

DONALD BAUWENS and MRS. DONALD (LORI) BAUWENS,

Defendants-Appellees.

Appeal from the Iowa District Court for Jackson County, Max R. Werling, Judge.

Appellants appeal an order finding goods not to be fixtures. **AFFIRMED.**

Joseph J. Bitter, Dubuque, for appellants.

Jack E. Dusthimer of Carlin, Hellstrom & Bittner, Davenport, for appellees Don and Lori Bauwens.

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

SACKETT, J.

This interlocutory appeal following foreclosure litigation is basically a dispute between landlords and their farmer tenants over entitlement to certain goods placed on the farm during the tenancy. Plaintiff-appellants Daniel J. Wolfe and Margaret L. Wolfe are the landlords, and their interests are the same as those of the receiver plaintiff-appellant Daniel J. Wolfe. Defendant-appellee Donald Bauwens and his wife, defendant-appellee Lori Bauwens are the former farm tenants. They are the appellees who are parties to this appeal.

When the lease was terminated, the appellees sought to remove from the property goods they contended were dairy equipment. The appellants objected, contending they had become fixtures. The trial court found the property in question belonged to the appellees. We affirm the trial court.

The underlying foreclosure was of a real estate contract where appellants Daniel and Margaret Wolfe had, on March 1, 1982, sold certain Jackson County real estate on an installment sale real estate contract to a party who by a quit claim deed and assignment of the same date assigned all interest in the contract to Raymond D. Bauwens and Joyce E. Bauwens. Raymond and Joyce are the parents of appellee Donald Bauwens. Raymond and Joyce are not parties to the issues in this interlocutory appeal.

I.

The first issue we need address is the appellees' motion that this appeal should be dismissed because the appellants failed to comply in numerous respects with the Iowa Rules of Appellate Procedure. Appellees complain particularly about appellants' failure to comply with Iowa Rule of Appellate Procedure 14(3), (4), and (5), which provide in relevant part:

> (3) **A Statement of the Issues Presented for Review.** Under each issue separately stated shall be a list of all cases, statutes and other authorities referred to in the argument covering that issue. The authorities which are considered to be the most pertinent and convincing shall be indicated by underlining. Not less than one nor more than four authorities under each separately stated issue shall be so indicated. Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue.
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> (4) **A Statement of the Case.** The statement shall first indicate briefly the nature of the case, the course of proceedings and the disposition of the case in the trial court. It shall then recite the facts relevant to the issues presented for review. All portions of the statement shall be supported by appropriate references to the record or the appendix in accordance with subdivision "g".
>
> (5) **An Argument.** The argument may be preceded by a summary. The argument shall contain in separately numbered divisions corresponding to the separately stated issues the contentions of appellant with respect to the issues presented and the reasons therefor, with citations to the authorities relied on and to the pertinent parts of the record in accordance with subdivision "g".

Most of appellees' complaints are well taken, and we have some of the same problems of which appellees' complain in responding to appellants' brief. We overrule appellees'

motion. However, appellants have raised nine issues. We address only those issues which are specific enough to consider. See Kellar v. Peoples Natural Gas Co., a Div. of InterNorth,Inc., 352 N.W.2d 688, 693 (Iowa App. 1984).

We summarize appellants' issues as follows:

(1) That what appellee refers to as dairy equipment should be found to be improvements and should have been found to remain with the farm.
(2) A landlord's lien should have been enforced.
(3) Attorney fees should have been awarded.

Appellees' other issues for review deal with the trial court's determination of burden of proof and admission of certain evidence. This was tried as an equity action. We review de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate rights anew on issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact finding of the trial court, particularly when considering the credibility of witnesses but are not bound by them. Iowa R. App. P. 14(f)(7).

The trial court found the following items were property of appellees and could be removed, namely:

1. Wooden stanchions;
2. Watering cups attached to wooden stanchions;
3. All milking equipment, including, but not limited to those specific items listed below;
4. Bulk tanks;
5. Barn cleaner;
6. Metal grates over the gutters;
7. Milking pipeline;
8. Electric fence posts and electric fence;
9. Shop lights in barn;
10. Shelves in back room of milk house;
11. Electrical box and wiring dropped from the power line pole;

12. Harvestore;
13. Water heater located in the milk house; and
14. Milking pump.

Appellants disagree with this determination. Appellants contend that provisions in a lease the appellees had with the landowners in 1987 are controlling. The trial court found appellees were tenants before 1982. We agree. We find, as the appellants argue, that the items in question came onto the premises prior to 1987, and consequently are not affected by the 1987 lease.

The issue we determine is whether the goods in fact become fixtures. The Iowa Uniform Commercial Code provides

> goods are 'fixtures' when they become so related to particular real estate that an interest in them arises under real estate law.

Iowa Code § 554.9313(1)(a) (1989).

However, a fixture continues to be characterized by Iowa realty law. McDonough, Recent Statutory and Case Law Development In Secured Transactions, 27 Drake L.R. 41, 43 (1977-1978). See also Ford v. Venard, 340 N.W.2d 270, 271 (Iowa 1983) (court applied common law rule on issue of when personal property becomes a fixture). Under common law personal property becomes a fixture when

> (1) it is actually annexed to the realty, or to something appurtenant thereto;
> (2) it is put to the same use as the realty with which it is connected; and
> (3) the party making the annexation intends to make a permanent accession to the freehold.

Ford v. Venard, 340 N.W.2d 270, 271 (Iowa 1983); Cornell

College v. Crain, 211 Iowa 1343, 1345, 235 N.W. 731, 732 (1931); Speer v. Donald, 201 Iowa 569, 571, 207 N.W. 581, 582 (1926); Rahm v. Domayer, 137 Iowa 18, 20, 114 N.W. 546, 546 (1908); Thomson v. Smith, 111 Iowa 718, 721, 83 N.W. 780, 790 (1900); Johnson v. Moser, 82 Iowa 29, 30-31, 47 N.W. 996, 996 (1891); Ottumwa Woolen Mill Company v. Hawley, 44 Iowa 57, 62 (1876).

The intention of the party annexing the improvement is an important factor in assessing the issue. First Trust and Sav. Bank v. Guthridge, 445 N.W.2d 401, 402 (Iowa App. 1989). The character of the attachment is important in determining the intent. Id.

Appellants raised an issue of burden of proof. We agree with appellants that because there was some attachment of the goods, the burden of showing the questionable items were not fixtures was on the appellees. See First Trust & Sav. Bank v. Guthridge, 445 N.W.2d 401, 402 (Iowa App. 1989); Rahm v. Domayer, 137 Iowa 18, 20-21, 114 N.W. 546, 546 (1908). We find appellees have met the burden of proof.

With regard to a Harvestore Silo, there is an agreement signed in 1982 providing that it did not attach to the real estate. We have considered the other items that we note are intended to be used in the dairy business. Their use was limited by the requirements of the business rather than the boundaries of the farm, a factor which negates against

their being determined fixtures. See Speer, 201 Iowa at 572, 207 N.W. at 582; First Trust & Sav. Bank, 445 N.W.2d at 403. We find no reason to disturb the trial court's ruling on this issue.

II.

Appellants argue a landlord's lien should have been imposed. The trial court found appellees owed appellants no rent. Appellants refer to no evidence and we find none which would support a finding there was rent due. We dismiss this claim of appellants as being without merit.

III.

Appellants' request for attorney fees was properly denied.

AFFIRMED.