IN THE COURT OF APPEALS OF IOWA

No. 4-166 / 93-1214

FILED
JUN 28 1994
CLERK SUPREME COURT

KEVIN KNUTSON,

Appellant,

vs.

NORTHWESTERN NATIONAL CASUALTY COMPANY,

Appellee.

Appeal from the Iowa District Court for Hardin County, Ronald H. Schechtman, Judge.

Knutson appeals a district court order denying his application for sanctions against the insurance company. **AFFIRMED.**

John L. Butler of Lindy, Butler & Smith, P.C., Eldora, for appellant.

James L. Kramer of Johnson, Erb, Gibb, Bice & Carlson, P.C., Fort Dodge, for appellee.

Heard by Donielson, C.J., and Hayden and Habhab, JJ. Cady, J., takes no part.

DONIELSON, C.J.

Kevin Knutson is an employee and president of King-Knutson Construction Co. In March 1990 Jeffery Mulford was severely injured in the course of his employment for King-Knutson. Mulford sued Knutson and a foreman, Mark Nicholson, for gross negligence.

Northwestern National Casualty Co. provided general commercial liability insurance to King-Knutson. The policy provided coverage to King-Knutson executives for actions which were part of their duties as officers. Coverage for bodily injury to employees in the course of their employment was excluded.

Based on the policy language Northwestern National initially refused to defend either Knutson or Nicholson. After consulting outside counsel, Northwestern National agreed to provide a defense under a reservation of rights.

Knutson later filed a declaratory judgment action against Northwestern National, seeking a declaration that the insurer would be liable for Mulford's claims against him. Northwest National employed attorney James L. Kramer of Fort Dodge to defend the declaratory judgment action and set up a "Chinese wall" between Kramer and the attorneys preparing a defense against Mulford's claim.

Knutson moved for summary judgment in his declaratory judgment action. After a hearing, the district court denied the motion. The court found it was impossible to determine if Mulford is claiming that Knutson was liable

for breaching his duty as executive officer or as coemployee. The court declared:

> If the Mulford claim is tried first and results in a finding of no liability, the coverage question in this case is completely academic. If the court or jury finds no liability in Mulford, this case doesn't have to be tried at all. As presently scheduled, the parties, their attorneys and the court could invest a lot of time, expense and effort in litigating an issue that eventually means nothing.

Northwestern National later settled with Mulford for $20,000, making the issues in the declaratory judgment action moot.

Knutson filed a motion for sanctions against Northwestern National pursuant to Iowa Rule of Civil Procedure 80 and Iowa Code section 619.19. After a hearing, the district court denied the motion. Knutson appeals. We affirm the district court.

The district court has broad discretion in applying rule 80(a). Alden v. Iowa Dist. Court in and for Delaware County, 479 N.W.2d 318, 320 (Iowa 1992). We review the decision of the district court for an abuse of discretion. Schettler v. Iowa Dist. Court for Carroll County, 509 N.W.2d 459, 464 (Iowa 1993). We find an abuse of discretion only when the district court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. State ex rel. Miller v. National Dietary Research, Inc., 454 N.W.2d 820, 822 (Iowa 1990). "Unreasonable has been said to mean action in the face of evidence as to which there is no room for

difference of opinion among reasonable minds . . . or not based on substantial evidence." Citizens' Aide/Ombudsman v. Rolfes, 454 N.W.2d 815, 819 (Iowa 1990) (quoting Churchill Truck Lines v. Transportation Regulation Bd., 274 N.W.2d 295, 299-300 (Iowa 1979)). Of course we will not defer to erroneous applications of law. Weigel v. Weigel, 467 N.W.2d 277, 280 (Iowa 1991).

Iowa Rule of Civil Procedure 80(a)states in part:

> Counsel's signature to every motion, pleading, or other paper shall be deemed a certificate that: . . . it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or cause an unnecessary delay or needless increase in the cost of litigation.

In assessing the appropriateness of a sanction pursuant to rule 80(a) the district court applies an objective test to the actions of counsel. Fields v. Iowa Dist. Court for Polk County, 468 N.W.2d 38, 39 (Iowa 1991). The test is "reasonableness under the circumstances." Weigel, 467 N.W.2d at 281 (quoting Golden Eagle Distrib. Corp. v. Burroughs Corp., 801 F.2d 1531, 1536 (9th Cir. 1986)). Kramer based his motion for a continuance in part on the comments of Judge Goode cited above which suggest the underlying damage case should be tried first so the basis of Mulford's claim could be determined. These comments provide an adequate ground for Kramer's motion. The district court recognized this in denying the motion for sanctions. We conclude the district court did not abuse

its discretion in determining no violation of rule 80(a) or Iowa Code section 619.19 was proven and denying the motion for sanctions. We also conclude any other issues the parties may have raised are either covered by this opinion or are without merit.

AFFIRMED.