IN THE COURT OF APPEALS OF IOWA

FILED
OCT 05 1989
CLERK SUPREME COURT

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EDWARD J. McGIVERN and **LILLIAN J. McGIVERN,** Husband and Wife,	)	
Plaintiffs-Appellants,	)	
vs.	)	
DOYLE ROBINSON and **FLORENCE ROBINSON,** Husband and Wife,	)	9-164 88-898
Defendants-Appellees.	)	

Appeal from the Iowa District Court for Taylor County (No. 6907), James W. Brown, Judge.

Plaintiffs appeal from an adverse district court judgment on their claims of breach of oral lease agreement and waste. **AFFIRMED.**

Paul J. Boysen, Jr. of Camp & Harsh, P.C., Creston, for plaintiffs-appellants.

John R. Sandre of Scalise, Scism, Sandre & Uhl, Des Moines, for defendants-appellees.

Heard by Donielson, P.J., and Hayden and Sackett, JJ., but considered en banc.

OXBERGER, C.J.

The McGiverns leased farmland in Taylor County, Iowa, to the Robinsons in May 1984. The written lease provided that the Robinsons would deliver a specified quantity of corn and soybeans to a Lennox farm supply company as rental. The lease was extended for the crop years 1985 and 1986.

Subsequent to the lease, the parties orally agreed the Robinsons would make a cash payment equivalent to the market value of the grain in 1984 and 1985 instead of delivering the grain. Prior to September 1, 1986, but after the 1986 crop had been planted, the McGiverns sent a Notice of Termination of the farm tenancy. The 1986 crop was harvested prior to any agreement between the parties regarding the cash rent payment.

The parties met in February 1987 to discuss the amount of the rental payment due under the 1986 lease. The parties agreed the Robinsons would pay the market value equivalent for the beans. The McGiverns claim the Robinsons agreed to pay $1.75 per bushel for the corn. The market price was $1.24 per bushel at that time.

Following the February meeting, the Robinsons tendered a check to the McGiverns in the amount of $18,527.10, which was the amount of the rental at the market price for both the beans and corn. The McGiverns refused to accept the check advising the Robinsons it was not the proper amount

of rent agreed upon by the parties. When the Robinsons refused to tender the amount claimed, the McGiverns filed a petition seeking judgment in the amount of $22,998.50. The petition was amended to include allegations of waste.

The trial court issued judgment in the Robinsons' favor in May 1988 and ordered them to pay $18,572.10. The McGiverns appeal, contending the trial court erred in concluding no agreement existed for the payment of $1.75 per bushel for the corn and in concluding there was no evidence to award damages for waste. The Robinsons request sanctions under Iowa Rule of Civil Procedure 80(a) for bringing a frivolous appeal.

Our review of this action at law is on assigned error. Iowa R. App. P. 4. The findings of fact of the trial court have the effect of a special verdict. Id. These findings are binding upon this court if they are supported by substantial evidence. Iowa R. App. P. 14(f)(1).

I. Breach of Oral Modification of Lease. The McGiverns claim the trial court erred as a matter of law in concluding the parties did not have an agreement that the cash rent equivalent for the corn would be based on $1.75 per bushel rather than market price. This claim is advanced on appeal despite the uncontroverted evidence in the record that whenever cash was accepted as opposed to delivery, in contravention of the written lease, the rent was always based on market price. In fact, the Robinsons

agreed to accept the market price cash equivalent for the beans under the 1986 lease.

If the Robinsons had delivered the grain pursuant to the written lease, the McGiverns would have only received the market price in any event. Further, McGivern testified that when he initially suggested $1.75, Robinson flatly rejected the amount; when he insisted on receiving $1.75 per bushel, Mr. Robinson did not say no, although he never said yes. McGivern testified Robinson said, "We get along. We always have."

The McGiverns contend that they met their burden of proof that a contract for $1.75 per bushel existed because Mr. McGivern signed a lien waiver form following the February discussions, waiving his right to have his name on the farm program payment check issued to the Robinsons. The evidence shows that McGivern had previously signed the waiver and it had been lost. The signing of the replacement waiver does not as a matter of law establish that a contract existed.

The trial court concluded that no agreement had been reached for $1.75 cash equivalency for corn. This finding is supported by substantial evidence and is thus binding on this court. Iowa R. App. P. 14(f)(1).

II. **Waste.** The plaintiffs claim the defendants committed waste upon the rented property by leaving ruts in the fields, compacting the soil by use of heavy equipment,

not controlling the weeds, and applying too much atrazine. The trial court did not decide whether the evidence supported plaintiffs' contention because it determined that, in any event, plaintiffs failed to establish a measure of damages.

We take a broad view in determining the sufficiency of evidence of damages. If the evidence shows damages have been sustained, we uphold recovery so long as the record discloses a reasonable basis from which the amount can be inferred or approximated. Westway Trading Corp. v. River Terminal Corp., 314 N.W.2d 398, 403 (Iowa 1982). The only testimony plaintiffs offered in this regard was that there were diminished crop yields in 1987. There was no evidence as to the amount of the yield difference or the price. We find the bare assertion that there were diminished yields does not entitle plaintiffs to damages in this regard. The trial court correctly held that as a matter of law plaintiffs cannot recover damages when they put forth no evidence as a basis for measuring damages.

III. **Rule 80(a) Sanctions on Appeal.** The Robinsons contend this appeal was patently and objectively frivolous. Plaintiffs pled the case under breach of contract and waste theories, but produced no factual basis at trial from which the court could find in their favor. The Robinsons claim it is unfair to allow plaintiffs to burden them with additional costs and attorney fees under the circumstances.

The Robinsons are entitled to have the trial costs and fees taxed to the McGiverns under Iowa Rule of Appellate Procedure 28. The Robinsons are asking for appellate attorney fees under Iowa Rule of Civil Procedure 80(a). We will first determine whether rule 80(a) sanctions are available on appeal.

This is an issue of first impression for the Iowa appellate courts. Where there is little case law regarding the interpretation of an Iowa Rule of Civil Procedure, we rely on the federal courts' interpretation of the analogous Federal Rule of Civil Procedure. See Darrah v. Des Moines General Hosp., 436 N.W.2d 53, 54-55 (Iowa 1989) (adopting federal court interpretation of timely rule 80(a) motions); R. E. Morris Invs. v. Lind, 304 N.W.2d 189, 191 (Iowa 1981) (relying on federal court interpretation of Federal Rule of Civil Procedure 37 when ruling on discovery sanctions under Iowa Rule of Civil Procedure 134). See also Folkner v. Collins, 249 Iowa 1141, 1145, 91 N.W.2d 545, 548 (1958) (decisions in the federal courts interpreting Federal Rule of Civil Procedure 13(a) are of persuasive authority in interpreting compulsory counterclaims under Iowa's analogous rule 29); In re Estate of Hoelscher, 249 Iowa 444, 450, 87 N.W.2d 446, 450 (1958) (same); Best v. Yerkes, 247 Iowa 800, 812, 77 N.W.2d 23, 30-32 (1956) (Rule 33(b) is analogous to Federal Rule 14).

Iowa Rule of Civil Procedure 80(a) was adopted in its present form in April 1986, borrowing the wording of the last sentence concerning sanctions from Federal Rule of Civil Procedure 11. Franzen v. Deere and Company, 409 N.W.2d 672, 673-74 (Iowa 1987). The rule uses the word "court" without distinguishing between district court and appellate courts.

Because there is no Iowa case authority, we look to federal court analysis for granting sanctions under rule 80(a). The Eighth Circuit Court of Appeals addressed the imposition of rule 11 sanctions for filing a frivolous appeal in In re Grand Jury Proceedings Relative to Perl, 838 F.2d 304 (8th Cir. 1988). The Eighth Circuit ruled that rule 11 is not applicable in proceedings filed in the appellate court because "[r]ule 1 of the Federal Rules of Civil Procedure, in defining the scope of such rules, states, '[t]hese rules govern the procedure in the United States district courts in all suits of a civil nature.'" Perl, 838 F.2d at 309.

Iowa Rule of Civil Procedure 1 states:

> These rules shall govern the practice and procedure in all courts of the state, except where they expressly provide otherwise, or statutes not affected hereby provide different procedure in particular courts or cases. (Emphasis added.)

The fighting issue is, does the fact the federal rules of civil procedure specifically state they apply to only

federal district courts justify a different interpretation of the Iowa rule patterned on federal rules, when the Iowa rules apply to "all courts in Iowa."

The common law did not authorize the sanctions permitted by Rule 80(a). The Iowa Rules of Civil Procedure apply in "all courts in Iowa;" however, for all practical purposes they primarily apply to district court practice. The appellate court practice is controlled by Rules of Appellate Procedure.

We find that the underlying reasoning of the federal court in In re Grand Jury Proceedings Relative to Perl, 838 F.2d 304 (8th Cir. 1988) applies equally in this instance. If there is to be a change in the common law practice, the statute should be clear and direct.

Since Rule 80A does not in clear and direct language authorize sanctions in the appellate court, we do not find authority in the appellate courts in Iowa to impose sanctions for practice in the appellate courts.

AFFIRMED.

All judges concur except Donielson and Hayden, JJ., who dissent.

DONIELSON, P.J. (dissenting)

I respectfully dissent from the majority's conclusions with regard to the application of rule 80 to frivolous appeals. Iowa Rule of Civil Procedure 1 states:

> These rules shall govern the practice and procedure in all courts of the state, except where they expressly provide otherwise, or statutes not affected hereby provide different procedure in particular courts or cases. (Emphasis added.)

We do not have a rule analogous to Federal Rule of Appellate Procedure 38 under which circuit courts may impose sanctions.[1] Therefore, federal court interpretations of the application of rule 11 sanctions on appeal give us no guidance in this matter.

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

> Counsel's signature to every motion, pleading, or other paper shall be deemed a certificate that: counsel has read the motion, pleading, or other paper; that to the best of counsel's knowledge, information, and belief, formed after reasonable inquiry, 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. . . . . If a motion, pleading, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the motion, pleading, or other paper, including a reasonable attorney fee. The

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1. We do have a withdrawal remedy for frivolous criminal appeals under Iowa Rules of Appellate Procedure 104 and 32.

> signature of a party who is not represented by counsel shall impose a similar obligation on such party.

Rule 80(a) governs the practice and procedure in all courts of this state except to the extent the rules of appellate procedure provide a different procedure. Since we have no appellate rule regarding sanctions for frivolous filings, I would find rule 80(a) applies to the filing of a notice of appeal to the supreme court.

Applying rule 80 to this appeal, I would find appellants' claims are wholly without merit and are unsupported by any substantial evidence in the record. Because this appeal was clearly frivolous, I would award the Robinsons $1,367.52 in fees pursuant to Iowa Rule of Civil Procedure 80(a).

Hayden, J. joins this dissent.