

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT
Filed September 24, 1985

JANICE CONINGSBY,)

Plaintiff-Appellee,)

vs)

HULL AVENUE LAWN MOWER SALES,)

Defendant-Appellant.)

$\frac{5-432}{85-23}$

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Appeal from the Iowa District Court for Polk County - Joel Novak, Judge.

On discretionary review, the defendant contends the district court erred in refusing to consider the merits of the case anew on appeal. **AFFIRMED.**

David R. Gault, Des Moines, for the defendant-appellant.

Bryce Christianson, of Christianson, Hohnbaum & George, Des Moines, for the plaintiff-appellee.

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

SACKETT, J.

This discretionary review raises two issues: (1) whether the district court properly ruled that a motion to reconsider is not appropriate after a judgment has been entered in small claims court, and (2) whether the district court erred in refusing to consider the merits of the case anew on appeal. We hold that a motion to reconsider is not an available remedy in a small claims court and that the time for the defendant to appeal upon the record had expired. We affirm the district court.

Plaintiff Janice Coningsby filed a small claims action against the Defendant Hull Avenue Lawn Mower Sales. Plaintiff claimed that she ordered a lawn mower from defendant and made full payment in the amount of \$547.25. Plaintiff states that later she no longer wanted to purchase the lawn mower, but when she notified defendant it refused to refund the money. Defendant claims it was only willing to refund 80 per cent of the purchase price since it had a posted sign in its store notifying purchasers of a 20 per cent service charge for returns. Defendant filed a counterclaim claiming storage charges in the amount of \$1.50 per day resulting from plaintiff's failure to take delivery.

The court entered judgment against the defendant on August 15, 1984 in the amount of \$437.85. Defendant filed a motion to reconsider on September 7, 1984, alleging the discovery of new evidence. Defendant claimed "new evidence" in that it would not be able to return the lawn mower to the manufacturer and this fact had been crucial to the court's decision to enter judgment against the defendant. On September 24, 1984, the court made a new fact finding, reversed his earlier decision, and entered judgment against the plaintiff in the amount of \$547.25.

Plaintiff then appealed to the district court. Iowa Code § 631.13 (1983). The district court ruled that a motion for reconsideration was not appropriate

under the small claims procedure and reversed the judgment entered against the plaintiff on September 24, 1984 and reinstated the judgment entered against the defendant on August 15, 1984. The defendant then applied for discretionary review, and it was granted. Iowa Code § 631.16 (1983); Iowa R. App. P. 201.

I.

We agree with the district court that a motion to reconsider is not a proper remedy in a small claims proceeding under Iowa Code chapter 631. As stated in Severson v. Peterson, 364 N.W.2d 212, 213 (Iowa 1985), "[n]o hint is given in chapter 631 of any such post-trial motions." In Severson, the issue was whether Iowa Rules of Civil Procedure 252 and 253 were available in a small claims action. Id. at 212. The Severson court, citing Barnes Beauty College v. McCoy, 279 N.W.2d 258 (Iowa 1979), held that the relief available to the losing party in a small claims action is in the form of an appeal to the district court. Id. at 213. In determining that a motion for new trial was not an available procedure in a small claims case, the court in Barnes Beauty College v. McCoy, 279 N.W.2d 258 (Iowa 1979) stated:

On the basis of the foregoing we think the legislature's omission of any provision for new trial motions was deliberate. Providing such a motion would be a step toward formalism, expense, and delay in obtaining final judgment. The new trial motions are incompatible with the legislature's desire that any party wishing so could appear without counsel.

Id. at 260.

Defendant's motion to reconsider was not proper in the small claims forum and should have been dismissed. The court improperly entered judgment against the plaintiff on the motion to reconsider. The district court correctly reversed the judgment that was entered against the plaintiff on September 24, 1984.

II.

Defendant argues on appeal that the district court erred in refusing to consider the merits of the case anew on appeal and that based upon the merits of the case defendant is entitled to a judgment as a matter of law.

Defendant, however, did not exercise its right to appeal the judgment against it entered on August 15, 1984. Defendant did not satisfy any of the statutory requirements of Iowa Code section 631.13 for the perfection of its appeal. Specifically, defendant did not file for appeal within the twenty-day limitation. Therefore, the August 15, 1984 judgment is final, and there is no review of any of the issues in that action.

Plaintiff's appeal of the appropriateness of the motion to reconsider and the subsequent judgment entered against plaintiff does not open itself up to other issues. The defendant should have filed an appeal rather than the motion to reconsider if it wished to have the judgment against it reviewed. While defendant is correct in noting that the small claims procedure is to be simple, informal, and inexpensive without regard to the technicalities of procedure, defendant should be aware that "[w]here a procedure is prescribed for review, however, it must be strictly followed in order to confer jurisdiction." Lau v. City of Oelwein, 336 N.W.2d 202, 203 (Iowa 1983).

We affirm the district court in its ruling to reverse the judgment entered against plaintiff on September 24, 1984 and reinstate the judgment entered against defendant on August 15, 1984.

AFFIRMED.