IN THE COURT OF APPEALS OF IOWA

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No. 7-553 / 96-1483

MERCY HOSPITAL OF FRANCISCAN SISTERS,

Plaintiff-Appellee,

vs.

ANTHONY J. LEO,

Defendant-Appellant.

FILED
MAR 27 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Fayette County, George L. Stigler, Judge.

The Defendant appeals a district court ruling granting the plaintiff's forcible entry and detainer action to remove defendant from his offices in plaintiff's hospital.

AFFIRMED.

David J. Dutton and J. Scott Bayne of Dutton, Braun, Stack, Hellman & Iverson, P.L.C., Waterloo, for appellant.

Eric Johnson, and John R. Walker, Jr. of Beecher, Rathert, Roberts, Field, Walker & Morris, P.C., Waterloo, for appellee.

Heard by Cady, C.J., and Sackett, and Vogel, JJ.

CADY, C. J.

Dr. Anthony Leo appeals a district court decision granting Mercy Hospital's (Mercy) forcible entry and detainer action to remove him from an office located in the hospital. Dr. Leo claims the district court erred by failing to grant his request for a jury trial, granting the forcible entry and detainer action, and lifting a temporary injunction which had been entered preventing his removal from the hospital. We affirm.

After Dr. Leo graduated from medical school, he entered into an agreement with Schoitz Regional Services (Schoitz), a corporation which hires medical personnel for non-profit hospitals. Schoitz arranged for Dr. Leo to provide medical services to Mercy Hospital in Oelwein, Iowa. As a part of the employment arrangement, Dr. Leo was given office space in the hospital rent free for one year. The agreement further gave Dr. Leo the option at the end of the one-year term to rent the facility and equipment with the terms "to be agreed upon by the parties." If an agreement could not be reached, the parties agreed to use an independent consultant to determine fair rental terms. The free rental period expired June 30, 1989.

After the free rental period expired, Dr. Leo did not pursue rental negotiations with Mercy. Ultimately, however, Mercy and Dr. Leo negotiated a lease on January 1, 1994. The terms of the lease required Dr. Leo to pay rent in the amount of $500 per month. The agreement also provided either party could terminate the lease upon thirty days written notice.

On July 13, 1994, Mercy's executive committee decided to terminate Dr. Leo's lease pursuant to the rental agreement. It notified Dr. Leo the lease would terminate September 30, 1994. Prior to the termination date set by the committee, Dr. Leo filed a petition for temporary injunction to prevent Mercy from evicting him. The district court granted the temporary injunction and later continued the injunction after finding the executive committee acted ultra vires by sending the termination notice. The district court indicated Mercy's Board of Directors was the entity authorized to terminate the lease.

On December 1, 1994, the Board of Director's of Mercy sent Dr. Leo notice of termination pursuant to the lease. This notice required him to vacate the premises after December 31, 1994. On December 28, 1994, Dr. Leo filed a petition at law alleging breach of contract, slander, interference with prospective business advantage, and conspiracy. Dr. Leo also sought an injunction barring Mercy from any attempt to evict him until his damage action was heard. Dr. Leo filed a jury demand with the petition.

On January 3, 1995, after Dr. Leo refused to vacate the office, Mercy served him with a notice to quit. On January 10, 1995, Mercy filed a petition for forcible entry and detainer. Dr. Leo then petitioned for and received a temporary injunction in the forcible entry and detainer action.

Initially, the district court determined the actions filed by the parties should be consolidated in order to promote judicial economy. The trial court later severed the

cases, however, in order to try the forcible entry and detainer action before allowing the jury to address the issue of damages. After the severance of the actions, Dr. Leo filed a jury demand in the forcible entry and detainer action. The district court determined no right to a jury trial existed in the forcible entry and detainer action and the parties proceeded to trial on the forcible entry and detainer action. The trial court found Dr. Leo was holding over without cause, issued a writ of ejectment, and lifted the injunctions prohibiting his ejectment.

On appeal Dr. Leo claims he has been denied his right to a jury trial concerning his contractual claims. He also maintains the trial court erred by granting Mercy's forcible entry and detainer action and by lifting the temporary injunction.

I. Standard of Review

Because an action for forcible entry and detainer is triable in equity, our review is de novo. *Powell v. Grewing*, 562 N.W.2d 761, 762 (Iowa 1997). We are obliged to consider both the facts and the law and then determine rights anew on those propositions properly presented. *Id.* at 762-63. Although we are not bound by the district court's findings of fact, we give them weight, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). However, even in equity our review of the construction of statutes is at law. *Rowan v. Everhard*, 554 N.W.2d 548, 549 (Iowa 1996).

II. Jury Trial

Iowa Code section 648.5 expressly provides forcible entry and detainer actions are tried to a district court judge. *See* Iowa Code § 648.5 (1995). In interpreting the forcible entry and detainer statute we must give it a liberal construction with a view to promote its objective. *See Bernet v. Rogers*, 519 N.W.2d 808, 811 (Iowa 1994) (citations omitted). The objective of the statute is to enable a person entitled to possession of real estate to obtain such possession from another illegally in the possession of it. *Id.*; Iowa Code § 648.1.

Originally, forcible entry and detainer actions could not be brought with any other action except for the collection of rent, nor could it be made the subject of a counterclaim. *See Palmer v. Tandem Management Services, Inc.*, 505 N.W.2d 813, 815 (Iowa 1993). These restrictions were created in order to provide a speedy remedy in possession of real property actions free of the diverting and time-consuming litigation of unrelated lawsuits. *Id.* (citing *Votruba v. Hanke*, 202 Iowa 658, 210 N.W. 753 (1926)). The legislature, however, recognized a limited exception to this general prohibition in section 648.19 to enable landlord/tenant disputes involving the same subject matter to be settled at one time. *Id.* at 816. Significantly, the prohibition against other actions in section 648.19 unrelated to the forcible entry and detainer case and the recovery of rent are left unaffected. *Id.*; *see* Iowa Code § 648.19 (provides the exceptions to the bar on joinder of claims and counterclaims).

Dr. Leo claims the trial court erred by failing to allow a jury to decide whether the original Schoitz/Leo agreement contained a continuing option which would have

allowed him to stay in his office. Specifically, he asserts the contract was subject to more than one interpretation and a jury should therefore determine the issue.

We find the trial court properly severed the forcible entry and detainer action from the damages claim and properly tried the forcible entry and detainer action first. The governing statute expressly provides a judge, and not a jury, should resolve forcible entry and detainer disputes. *See* Iowa Code § 648.5. This rule furthers the policy that owners of real property should have a relatively quick means of dealing with individuals wrongly in possession of real property. Although Dr. Leo claims enough ambiguity existed in the contracts to warrant a jury determination of the issue, the context of the forcible entry and detainer action mandates a judge resolve the issue. Furthermore, we have noted the case which is most likely to dispose of the whole controversy should be tried first in order to avoid an unnecessary second trial. *Morningstar v. Myers*, 255 N.W.2d 159, 161 (Iowa 1977). Resolution of the forcible entry and detainer action prior to the action for damages is more logical and efficient as the action for damages will be far more time consuming. Dr. Leo is not precluded from a jury trial on all issues in his separate action. He is not, however, entitled to a jury for the purpose of resolving the forcible entry and detainer action.

Dr. Leo also asserts the consolidation of the forcible entry and detainer action with the damages claim made the forcible entry and detainer action subject to his jury demand. He further argues the subsequent severance of the actions cannot deprive him of a right once it was acquired.

Consolidation does not merge consolidated suits into one suit, change the rights of the parties, or render parties in one suit parties in another suit. *See Johnson v. Manhattan Ry. Co.*, 289 U.S. 479, 496-97, 53 S. Ct. 721, 727-28, 77 L. Ed. 1331, 1345 (1933); *Miller v. Lauridsen Foods, Inc.*, 525 N.W.2d 417, 420 (Iowa 1994) (although cases may be consolidated for trial, they generally preserve their separate identity). Thus, although Mercy and Dr. Leo's claims were originally consolidated, Dr. Leo did not obtain the right to a jury trial in a forcible entry and detainer action simply because of the consolidation. The cases were, however, properly severed later in the proceedings. For the reasons stated above, the severance of the actions did not create a jury trial in the forcible entry and detainer cause of action.

Dr. Leo also speculates issue preclusion would prevent consideration of his damage claim by a jury. Specifically, he asserts the forcible entry and detainer action, at issue in this appeal, would address the same issues raised in the damage claim. Thus, he argues the denial of his jury demand in the forcible entry and detainer action effectively constitutes a denial of his jury demand in the damage action.

We need not resolve the merits of the issue preclusion argument because it is not ripe. The district court has not yet considered the damage claim and we will not speculate on an issue preclusion argument not yet raised. Furthermore, the potential effect of the doctrine of issue preclusion on the damage action is no different than the effect of any other legal doctrine which resolves a case prior to trial. The right to a

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jury trial in a civil case is not so inviolate that it cannot be lost by other substantive legal doctrines that resolve a case prior to trial.

III. Peaceable Possession

Iowa Code section 648.18 provides "[t]hirty days' peaceable possession with the knowledge of the plaintiff after the cause of action accrues is a bar to this proceeding [a forcible entry and detainer action]." Iowa Code § 648.18. Dr. Leo first claims the forcible entry and detainer action "accrued" for peaceable possession purposes on July 13, 1994, when Mercy's executive committee voted to terminate Dr. Leo's lease. Alternatively, he argues it began anew on November 17, 1994, when the district court granted the injunction against the executive committee based on its ultra vires action. In any event, Dr. Leo maintains the forcible entry and detainer action was barred for peaceable possession because it was not commenced until January 10, 1995.

We must initially determine when the "cause of action accrues" for purposes of a forcible entry and detainer action. A cause of action cannot begin to accrue for purposes of a forcible entry and detainer action until one of the grounds stated in Iowa Code section 648.1 is satisfied. *See* Iowa Code § 648.1.

The only ground for forcible entry or detention at issue in this case was the provision concerning a lessee holding over after termination of the lease. *See* Iowa Code § 648.1(2). The cause of action, therefore, would accrue on the date Dr. Leo

became a hold over tenant. The date the executive committee voted to terminate the lease did not implicate the statute.

Prior to the termination date established by the executive committee, September 30, 1994, Dr. Leo filed a lawsuit challening the termination. He also obtained a court order enjoining Mercy from terminating the lease. Thus, his continued presence in his office space after September 30, 1994, could not be considered to be peaceable possession. Peaceable possession is precluded by litigation between the parties concerning the right to possess the property. *Thomas v. Brodsack*, 215 N.W.2d 503, 505 (Iowa 1974).

Dr. Leo next argues peaceable possession began to accrue on November 17, 1994, after the litigation between the parties concluded. He argues his continued presence in his office from this date until the hospital commenced the forcible entry or detention action on January 10, 1995, constituted peaceable posssession.

We agree Dr. Leo peaceably possessed the property for more than thirty days after the litigation concluded. However, the litigation determined the termination notice was unenforceable. Thus, Dr. Leo was not a hold-over tenant and Mercy had no grounds to support an action for forcible entry or detention after November 17, 1994. Without grounds for entry or detention, no cause of action could accrue. Thus, the peaceable possession bar was not activated.

On December 1, 1994, Mercy sent Dr. Leo a second notice of termination pursuant to the lease. This notice required him to vacate the office after December

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31, 1994. Dr. Leo then brought a damages claim against Mercy on December 28, 1994. Finally, on January 10, 1995, Mercy filed its forcible entry and detainer action. Dr. Leo clearly did not enjoy thirty days' peaceable possession following the second notice of termination.

IV. Temporary Injunction

A temporary injunction is a preventive remedy to maintain the status quo of the parties before final judgment and to protect the subject matter of the litigation. *See Economy Roofing & Insulating Co. v. Zumaris*, 538 N.W.2d 641, 648 (Iowa 1995). The function of a preliminary injunction is not "to determine the merits of a case, or to decide controverted facts; and it is not a means for obtaining a piecemeal adjudication of the merits." *Id.* (quoting 43 C.J.S. *Injunctions* § 5, at 745-46 (1978)).

Dr. Leo claims the trial court erred by lifting the temporary injunction it previously granted. The trial court, however, correctly resolved the forcible entry and detainer issue and therefore properly desolved all injunctions on Mercy's property.

We have considered all claims raised by Dr. Leo and affirm the district court.

AFFIRMED.

Vogel, J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I dissent. On a de novo review, I find plaintiff has failed to prove the necessary elements to obtain an order in forcible entry and detainer. I would reverse and dismiss.