FILED
JAN 29 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CLARKE COUNTY STATE BANK,

Plaintiff-Appellee,

vs.

EDWARD J. SCANLAN and JEANNETTE SCANLAN,

Defendants-Appellants.

Filed January 29, 1986

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5-571
85-736

Appeal from the Iowa District Court for Clarke County - Michael J. Streit, Judge.

Defendant appeals the trial court's grant of summary judgment to plaintiff and its subsequent denial of defendant's motion for a new trial. **AFFIRMED.**

Edward J. Scanlan, pro se, Osceola, Iowa.

John D. Lloyd of Reynoldson, Van Werden, Kimes, Reynoldson, Lloyd & Wieck, Osceola, Iowa, for plaintiff-appellee.

Considered by Donielson, P.J., Schlegel, and Sackett, JJ.

Defendant appeals the trial court's grant of summary judgment to plaintiff and its subsequent denial of defendant's motion for a new trial. We affirm.

On October 17, 1984, plaintiff filed a petition for foreclosure of a note and mortgage executed and delivered by defendant and his wife on August 25, 1979. Defendant filed an answer pro se which denied generally plaintiff's petition on December 10, 1984. He also filed a counterclaim the same day, alleging plaintiff had not acted properly and failed to act according to the laws of Iowa and the United States. No other specific authority was cited by defendant. Plaintiff denied defendant's allegations, and on February 13, 1985, filed a motion for summary judgment.

The motion was granted following a hearing on April 17, 1985. During the two months between the filing of the summary judgment motion and the hearing, defendant did not file any resistance motions or affidavits opposing the motion or contradicting the affidavit filed by plaintiff. At the time of the hearing on the motion, defendant still was without counsel, and offered no resistance to plaintiff's affidavit accompanying its motion for summary judgment. Defendant's only explanation for default was his wife's illness.

On appeal defendant alleges that the trial court's haste in conducting the hearing on the summary judgment motion had a chilling effect on his ability to resist and defend against the foreclosure action. He argues the chilling effect, in turn, denied defendant his right to a fair and impartial hearing under the fifth and fourteenth amendments of the United States Constitution.

I. **Summary Judgment.** A motion for summary judgment is properly granted if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 237(c).

The burden is on the moving party to establish both propositions. Knapp v. Simmons, 345 N.W.2d 118, 121 (Iowa 1984).

At the hearing, the defendant offered no facts that might dispute the allegations set forth in plaintiff's petition. As noted earlier, his only explanation of his predicament was his wife's illness. Therefore, based upon the record before us, we hold the trial court was correct in granting plaintiff's motion for summary judgment.

At the hearing, defendant also dismissed his counterclaim against plaintiff and therefore that issue is not before us.

After the entry of summary judgment, defendant alleged that his "substantial rights" had been violated and moved for a new trial. On appeal defendant alleges that his due process rights had been violated and therefore the trial court erred in denying his motion for a new trial.

In ruling on a motion for a new trial, the trial court has broad discretion to determine whether the verdict effectuates substantial justice between the parties. Iowa R. App. P. 14(f)(3); Miller v. AMF Harley-Davidson Motor Co., Inc., 328 N.W.2d 348, 351 (Iowa App. 1982). Defendant's allegations that he was denied his due process rights appear to us to be very similar to the allegations embodied, and eventually dismissed, in his counterclaim. Defendant provides us with no other specific portions of the record that might support his allegations for his motion for a new trial. We therefore affirm the trial court's denial of defendant's motion for a new trial.

Because we hold the trial court did not err in any of the issues raised on appeal, we affirm the trial court's grant of summary judgment to plaintiff and the denial of defendant's motion for a new trial.

AFFIRMED.