MAY 31 1978
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

HENRY H. LIMKEMANN, ADMINISTRATOR OF THE ESTATE OF ROBERT A. LIMKEMANN, DECEASED,

Appellant,

vs.

BLACK HAWK COUNTY,

Appellee.

Filed May 31, 1978

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2-60297

Appeal from Black Hawk District Court - Dennis D. Damsgaard, Judge.

Plaintiff-executor appeals an Adjudication of Law Points holding his release of an alleged tort-feasor constituted full satisfaction of all claims of the estate arising out of an automobile accident. - Reversed.

Gary J. Boveia, Waverly, for Appellant.

Jay Roberts, of Swisher & Cohrt, Waterloo, for Appellee.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Plaintiff-executor Henry H. Limkemann appeals the trial court's dismissal of his petition upon defendant Black Hawk County's rule 105, Rules of Civil Procedure, motion. In ruling on the Application of Adjudication of Law Points, the trial court held as a matter of law that Limkemann's release agreement with one alleged tort-feasor constituted full satisfaction of all claims of the estate arising out of the accident. We reverse.

Limkemann argues that since Community School District of Postville v. Gordon N. Peterson, Inc., 176 N.W.2d 169 (Iowa 1970), the release of one tort-feasor in Iowa does not automatically release all other alleged tort-feasors. The trial court held that under Community School District Limkemann was entitled to one full satisfaction and ". . . the record indicates he has had it." The trial court found ". . . the release and settlement document is clear and free from any ambiguity," therefore the intent had to be drawn from the document itself.

We think the court erred in limiting its interpretation of Limkemann's intent to the language of the release document. The trial court should have considered Community School District's reliance upon Hamilton v. Wosepka, 261 Iowa 299, 154 N.W.2d 164 (1967) which had rejected the ambiguity-on-its-face doctrine. Hamilton examines in depth the judicial interpretive function in the search for intent in the Iowa contract cases, as well as among the other jurisdictions and treatise writers:

> . . . this intent 'must be sought where always intent must be sought, namely, in the conduct and language of the parties and the surrounding circumstances. The document alone will not suffice. What was intended to cover cannot be known till we know what there was to cover. The question being whether certain subjects of negotiation were intended to be covered, we must compare the writing and the negotiations before we can determine whether they were in fact covered.' Id. at 310, 154 N.W.2d at 170, citing Atlantic Northern Airlines v. Schwimmer, 12 N.J. 293, 96 A.2d 652, 657 quoting from 9 Wigmore on Evidence, Third Ed., sections 2413, 2430, 2431.

Community School District refused to dispose of a release case upon a rule 105 motion. The decision framed the rule in Iowa:

> If the debt is unliquidated the intention of the parties to the release controls. This intent must be determined by the terms of the contract aided by such extrinsic evidence as may be properly offered to aid in the task of interpretation. 176 N.W.2d at 175.

Community School District identifies the relevant inquiry in determining the effect of a release agreement as two-fold: 1) whether plaintiff has been thereby fully

compensated and 2) whether the parties intended "... the result of their negotiations to be complete freedom from further liability for all the tort feasors. . . ." 176 N.W.2d at 174 quoting from Harper and James, the Law of Torts, section 10.1, p. 712. Community School District concludes, quoting from Prosser, Law of Torts, Third Ed., § 46, p. 273, that these two questions of full satisfaction and the nature of the tender and acceptance "... are questions of fact, and normally to be determined by the jury, where the amount of the claim is unliquidated. . . ." 176 N.W.2d at 174.

The principal fact question in the instant case is whether Limkemann's settlement with the alleged tort-feasor Beverly Johnson was a full and complete satisfaction of all of plaintiff's claims arising from an automobile accident in which Limkemann's son died. The parties framed this fact issue in the pleadings. The trial court could not resolve the issue on a Motion to Adjudicate Law Points:

> Such motions, authorized by rule 105, Rules of Civil Procedure, serve only to determine questions of law which arise on uncontroverted pleadings and may not be used to resolve fact disputes. . . . (citations) The court used the motion here as a vehicle to resolve a factual issue which existed under the pleadings. This was error. Carter v.Jernigan, 227 N.W.2d 131, 133 (Iowa 1975).

We reverse and remand for further proceedings consistent with this opinion.