IN THE COURT OF APPEALS OF IOWA

No. 0-305 / 89-491

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CLERK SUPREME COURT

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CHARLES C. FORD,

Plaintiff-Appellant,

vs.

JOHN P. FOGARTY and **CITY OF BETTENDORF, IOWA,**

Defendants-Appellees.

Appeal from the Iowa District Court for Scott County, C. H. Pelton, Judge.

Plaintiff appeals a judgment for defendant in a suit for false imprisonment and abuse of process. **AFFIRMED.**

Ted Breckenfelder, Davenport, for appellant.

John D. Stonebraker of McDonald, Stonebraker, & Cepican, P.C., Davenport, for appellees.

Heard by Schlegel, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

This case involves false imprisonment and abuse of process claims by an Iowa resident who was transported by an Iowa police officer to the State of Illinois and hospitalized in Illinois for treatment. An Iowa resident, plaintiff-appellant Charles C. Ford, appeals a final judgment, following a jury verdict, for defendants-appellees John P. Fogarty and the City of Bettendorf. We affirm.

Plaintiff is a thirty-four-year-old male, a college graduate, who lived in Bettendorf, Iowa. He was employed by his father. He had been diagnosed as having a bipolar manic-depressive disorder. He also experienced occasional problems with alcohol abuse. He had no prior confinements in mental institutions. He was being treated by Dr. Domingo, a psychiatrist in Illinois. Domingo had seen him the day before this incident and prescribed medication.

I.

Plaintiff's first assigned error is that the trial court substantially prejudiced him by applying Illinois law. Plaintiff contends the trial court erred in taking judicial notice of Illinois law. What the trial court actually did was instruct on the differences between Iowa and Illinois law. Plaintiff objected to the instruction, contending the law of the State of Iowa was the applicable law. Plaintiff did not ask the trial court to instruct

that Iowa law was the applicable law. The trial court did not instruct on the law that should have been applied but instructed on both laws and the differences therein.

We agree with plaintiff that the applicable law is the law of the State of Iowa, and the provisions of the Illinois hospitalization statute should not be applied to determine the legality of plaintiff's detention and hospitalization. Plaintiff was an Iowa resident. Defendant Fogarty was an Iowa resident and an Iowa police officer employed by the City of Bettendorf, an Iowa community. Plaintiff was detained and confined in Iowa and moved nonconsentually to Illinois. Plaintiff brought this action in the Iowa courts.

In Fuerste v. Bemis, 156 N.W.2d 831, 833 (Iowa 1968), the Iowa court discussed the choice of law and their acceptance of the rule of "most significant relationships" in resolving the choice of substantive law. They said they could see no reason why the rule should not be used in determining the substantive law to be applied to each issue in litigation involving a torts conflict question. Id. They determined the merit in such a rule gives the place having the most interest in the problem paramount control over the legal issues allowing the forum to apply the policy of the forum most intimately concerned with the outcome of the litigation. Id.

In Fuerste, 156 N.W.2d at 833, the court applied the Iowa guest statute law to an automobile accident that occurred in Wisconsin. In doing so they took into account that both parties were Iowa residents traveling between two Iowa cities and the case was filed in Iowa. The court determined all significant contacts and issues were within the State of Iowa. Fuerste, 156 N.W.2d at 834. Iowa law would be applicable and Illinois has no significant relationship with the parties or the interests in this litigation.

However, we do not find the trial court erred in giving the instruction on the difference between commitment procedures in Iowa and in Illinois. One of plaintiff's claims was that he was taken to Illinois because he could be more easily committed under Illinois law. The instructions on the differences between Iowa and Illinois commitment procedures were instructive on that issue.

We agree that the issue of applicable law is a legal and not a factual question, and the judge should instruct as to the applicable law. But the trial court will only be reversed on such an issue if it has been alerted to the issue and error has been preserved. Plaintiff has failed to point out in his brief where in the record error on this issue was preserved. See Franken v. City of Sioux Center, 272 N.W.2d 422, 426 (Iowa 1978).

The question is whether the issue raised now was raised at the trial court level. Plaintiff contends it was. Defendant contends it was not. We look to objections to and request for instructions. The defendant objected to the instruction on Illinois law as being inapplicable. No request was made to the trial court to instruct that Iowa law was the applicable law. We reject plaintiff's claim on this issue.

II.

Plaintiff next contends defendant failed to establish lawful conduct based on reasonable grounds, justification, or compliance with the applicable Iowa law. Plaintiff contends the trial court erroneously denied his motion for directed verdict. Plaintiff contends he was entitled to a judgment as a matter of law because defendants failed to establish compliance with the statutory process. Again, plaintiff's brief fails to clearly point out where in the record error on this issue was preserved. See Franken, 272 N.W.2d at 426. On our review of the record, we do not find error was preserved on this issue.

III.

Plaintiff contends the trial court committed two errors in responding to juror's questions. The first was in its response to the following question. "Was the process of taking Mr. Ford to Franciscan Hospital in Illinois an illegal act?" The judge in response invited the jury to

reread the instructions and continue their deliberations. Plaintiff contends the failure of the court to provide the jury a meaningful response to their question, particularly on fundamental police principles, is clear error. Plaintiff failed to ask the trial court to give a specific instruction, and fails to cite any authority to support his position. We reject plaintiff's argument on this issue.

IV.

Plaintiff's last alleged error is the trial court should have provided the jury with a tape recorder when they requested one to listen to tapes introduced into evidence. In response to the request the trial judge stated:

> Your second request was for a tape recorder, apparently to replay the tapes of conversations that came into evidence.
>
> The Court's answer is: Ordinarily, it is better to not emphasize certain testimony by repetition. Therefore, the preferred procedure is to deliberate without reviewing again certain of the oral testimony. On the other hand, if you do insist, it can be done.

Plaintiff contends this statement de-emphasized the value of the recorded conversations and could be inferred as a comment on the evidence. Plaintiff argues this communication with the jury was prejudicial and reversible error. Two cassette tapes were marked as exhibits, entered into evidence, and sent to the jury with other exhibits. After several hours, the jury requested a tape recorder to listen to the tapes. The trial court denied the request.

Plaintiff contends the trial court abused its discretion in refusing the jury's request

Defendant contends State v. Baumann, 236 N.W.2d 361 (Iowa 1975) addresses the issue. Baumann is not completely instructive because it involved an issue of the jury's request for tapes that were not admitted as exhibits. The tapes here had already been admitted into evidence. The issue was whether the jury could have the tool (a tape recorder) to make use of the exhibits. Plaintiff alleges generally that the tapes contradicted the defendant's position and testimony but cites no evidence to support that position. We will not consider issues not properly and timely preserved. Farmers Trust & Savings Bank v. Manning, 359 N.W.2d 461, 465 (Iowa 1984). We find no basis for reversal.

AFFIRMED.