IN THE COURT OF APPEALS OF IOWA

No. 8-712 / 97-2294

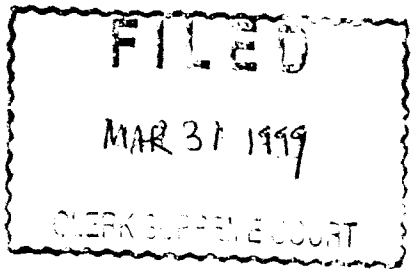
D. STEVEN DVORAK,

Plaintiff-Appellant/Cross-Appellee,

vs.

KATHRYN HUNTER,

Defendant-Appellee/Cross-Appellant.



Appeal from the Iowa District Court for Howard County, John Bauercamper, Judge.

D. Steven Dvorak appeals from an unfavorable ruling on his "Petition to Enforce Lease" in which the district court reformed his farm lease to add a clause authorizing termination of the lease upon sale of the premises. **REVERSED AND REMANDED WITH DIRECTIONS.**

David L. Strand of Larson, Nichols & Strand, Decorah, for appellant.

Christopher F. O'Donohoe of Elwood, O'Donohoe, O'Connor & Stochl, New Hampton, for appellee.

Heard by Huitink, P.J., and Mahan, and Zimmer, JJ.

ZIMMER, J.

Steven Dvorak appeals from a district court decree which reformed his farm lease to add a clause authorizing termination of the lease upon sale by his landlord of the leased premises. Following de novo review, we reverse and remand.

On December 2, 1995, Steven Dvorak and Kathryn Hunter signed a written cash rent farm lease. Hunter leased Dvorak a 330-acre tract of farmland in Howard County for three crop years. The term of the lease was from March 1, 1996 until March 1, 1999. The cost of the lease was $90 per acre for the first year and $95 per acre for the second and third years. The lease which the parties signed was prepared by Hunter's attorney.

Dvorak entered into possession of the land and began farming it during the 1996 crop season. He paid the rent which was due under the lease on April 1 and November 1, 1996. Dvorak continued to farm the leased premises in 1997 and paid the rent which came due April 1, 1997.

In June 1997, landlord Hunter served Dvorak with a notice of termination of farm tenancy and demand for possession. She also served him with a notice to quit listing six alleged breaches of the lease. Hunter entered into an agreement to sell the leased land to third parties before serving the two notices on Dvorak. The sale was contingent upon her lease with Dvorak being broken.

On June 30, 1997, Dvorak filed a petition to enforce his lease. Hunter filed an answer and counterclaim alleging breaches of the lease. Hunter also sought

reformation of the lease contending the parties had negotiated a termination-on-sale clause which was inadvertently omitted from the lease signed by the parties.

Following trial, the district court concluded the lease which the parties signed did not express their true intentions, and reformed the lease to provide Hunter with authorization to terminate the lease prior to expiration of its three-year term upon a bona fide sale of the leased premises. Dvorak thereafter filed post-trial motions which were denied by the court as untimely.

Dvorak now appeals. He argues the parties were not mutually mistaken as to the allegedly missing termination-on-sale provision. He also contends his post-trial motions were timely and that he should be awarded trial and appellate attorney fees. Defendant cross-appeals, arguing plaintiff's breaches entitle her to rescission of the lease. She also seeks an award of appellate attorney fees.

I. Scope of Review. Ordinarily we hear cases on appeal in the manner in which they were tried in the district court. *See Davis-Eisenhart Mktg. Co. v. Baysden*, 539 N.W.2d 140, 142 (Iowa 1995). This case was tried as an equity case. Our review is therefore de novo. *See Sun Valley Iowa Lake Ass'n v. Anderson*, 551 N.W.2d 621, 629 (Iowa 1996). We give respectful consideration to the district court's fact findings, especially when witness credibility is an issue, but we are not bound by those findings. *See* Iowa R. App. P. 14(f)(7).

II. Reformation of the Lease. A writing may be reformed where it is shown it does not express the true agreement of the parties because of fraud or duress, mutual mistake of fact, mistake of law, mistake of one party and fraud or inequitable

conduct on the part of the other. *See Kufer v. Carson*, 230 N.W.2d 500, 504 (Iowa 1975). In reforming the instrument, the court does not change the agreement between the parties, but changes the drafted instrument to conform to the real agreement. *See Baldwin v. Equitable Life Assurance Soc'y of United States*, 108 N.W.2d 66, 68–69 (1961). The party who seeks reformation must establish by clear, satisfactory, and convincing evidence the writing does not reflect the true agreement. *See Kufer v. Carson*, 230 N.W.2d at 503. Finally, "if a clause is inserted (or omitted) in a formal agreement by mistake on the part of the seller or the scrivener, then the same is a mutual mistake because it is contrary to the real agreement of the parties." *Akkerman v. Gersema*, 149, N.W.2d 856, 859 (Iowa 1967).

Hunter contends she established by clear and convincing evidence the signed lease did not express the real agreement of the parties and should be reformed. On review of the record, we are not satisfied Hunter presented sufficient evidence to warrant reformation of the parties' written lease.

In 1995, the parties began negotiations which led to an agreement that Dvorak would lease farmland owned by Hunter for three years. Their testimony regarding their negotiations and execution of the lease is conflicting. Hunter contends three versions of the lease were prepared, all by her attorney. She claims the first draft was never signed and was rewritten to reflect some re-negotiated lease terms. She testified the second draft of the lease was signed by Dvorak at her home. According to her testimony, after this lease was signed, she realized a termination-on-sale provision, allegedly in the first version, had been inadvertently omitted from the second. She

claims she then had a third lease prepared to include the termination provision, but was unsuccessful in obtaining Dvorak's signature. Meanwhile, Dvorak began farming the land according to the signed lease. Though Hunter claims the lease she and Dvorak signed did not reflect their true agreement, she nevertheless accepted rent pursuant to its terms.

Dvorak disputes much of Hunter's testimony. He contends a termination-on-sale clause was never negotiated, would have been unacceptable to him, and is inconsistent with other provisions of the lease. He testified the only matters negotiated were price per acre and the length of the lease. He disputes there were three different versions of the lease. He contends the lease was signed at a bank rather than Hunter's home.

In concluding insufficient clear, satisfactory, and convincing evidence was presented to justify reformation of the lease, we note Hunter failed to produce either the first or the third versions of the lease which she caused to be prepared. According to her testimony, both of those versions of the lease included the missing termination-on-sale provision. Hunter also failed to present notes from any stage of the negotiations which indicate the parties agreed to a termination-on-sale provision. Furthermore, no witness verified Hunter's testimony the termination-on-sale clause was inadvertently omitted from the lease signed by the parties when it was prepared at her attorney's office. No documentary evidence was introduced showing the precise wording of the termination-on-sale clause which Hunter claims was omitted

from the parties' lease. Hunter did not take legal action seeking to have the lease reformed until June 1997.

Moreover, allowing termination on sale would be contradictory to the clearly stated three-year duration clause in the lease. We are hesitant to insert terms into a written agreement based on extrinsic evidence when those terms would contradict other terms already in the contract. *Cf. Johnson Controls v. Cedar Rapids*, 713 F.2d 370, 375 (8th Cir. 1983); *First Interstate Equip. v. Fielder*, 449 N.W.2d 100, 102 (Iowa App. 1989).

We conclude the evidence defendant presented at trial was not sufficiently clear, satisfactory, and convincing to justify reformation of the parties' lease.

III. Timeliness of Post-Trial Motions and Breach of Contract. In light of our decision today, we need not address Dvorak's contention the trial court improperly denied his motions for reconsideration and new trial. Additionally, because the trial court did not address Hunter's breach of contract claim, we remand this case for resolution of Hunter's claim she is entitled to rescission due to Dvorak's alleged breaches of the lease.

IV. Attorney Fees and Court Costs. In their lease agreement, the parties provided that if either filed suit to enforce any terms of the lease, the prevailing party would be entitled to recover court costs and reasonable attorney fees. Here, Dvorak petitioned the district court to enforce the three-year term of the lease in light of Hunter's notice of termination and demand for possession and Hunter counterclaimed seeking reformation of the lease or rescission based on alleged breaches of lease

terms. Because we have denied Hunter's claim for reformation and remanded this case, we set aside the judgment entered by the trial court awarding attorney fees to Hunter from Dvorak. Upon resolution of this case on remand, the district court shall determine the amount of attorney fees recoverable pursuant to Iowa Code section 625.22 for the entire litigation, including this appeal. *See* Iowa Code § 625.22 (1997); *Federal Land Bank of Omaha v. Woods*, 480 N.W.2d 61, 70 (Iowa 1992) (remand required so district court may determine and fix trial and appellate attorney fees); *Banker's Trust Co. v. Woltz*, 326 N.W.2d 274, 278 (Iowa 1982) (appellate attorney fees are to be awarded under section 625.22 if the written contract provides for attorneys fees and does not specifically prohibit fees incurred on appeal). Costs of this appeal shall be taxed to Hunter.

In summary, we reverse the trial court's decision reforming the parties' lease and set aside the judgment entered by the trial court concerning attorney fees. We remand this case for further proceedings consistent with this opinion. We do not retain jurisdiction.

REVERSED AND REMANDED WITH DIRECTIONS.