FILED
SEP 21 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

DAKOTA COUNTY STATE BANK,

Appellant,

v.

ROBERT STANWICK, OTTO K. FELSKE, and STANLEY NAVRUDE,

Appellees.

Filed September 21, 1978

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2-61403

Appeal from Woodbury District Court - James P. Kelley, Judge.

Plaintiff in replevin action appeals order dismissing claim as to one of three defendants. Appeal dismissed for want of final judgment.

Larry A. Storm, of Titus, Holman & Myers, Sioux City, for appellant.

E. S. Bikakis, of Rhinehart, Bikakis & Vohs, Sioux City, for appellee Navrude.

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

PER CURIAM 420

This is an appeal by the plaintiff in an action for replevin of a boat, boat trailer, and outboard motor. Plaintiff claims the right to possess such property as collateral under a security agreement. A prior replevin action involving the same property had been dismissed as to one of the defendants (Navrude) and he successfully asserted in the trial court that plaintiff's claims as to him are barred by doctrines of issue preclusion. Such determination was made by the trial court in an order determining Navrude's application for separate adjudication of law points. It is this order which plaintiff seeks to appeal as a final judgment.

Although the amount in controversy is less than $3000, the trial court certified the cause as one in which appeal should be allowed pursuant to rule 3, Rules of Appellate Procedure. While that circumstance obviates one jurisdictional obstacle to plaintiff's appeal, we are compelled to consider other jurisdictional issues. If an appeal is unauthorized, the failure of the appellee to assert the issue does not confer jurisdiction upon the appellate court and the appeal must be dismissed on the court's own initiative. Forte v. Schlick, 248 Iowa 1327, 1332, 85 N.W.2d 549, 552 (1957).

Appeals from rulings and orders on applications for separate adjudication of law points under R.C.P. 105 may or may not be appealable as final judgments depending upon whether such rulings dispose of the entire case. Compare, Hubbard v. Marsh, 239 Iowa 472, 474, 32 N.W.2d 67, 68 (1948) (no final judgment), with Anderson Construction Co. v. National Bank of Des Moines, 262 N.W.2d 563, 564 (Iowa 1978) (final judgment). In applying such considerations to the present case, we note that Navrude is only one of three defendants against whom plaintiff makes claim for (a) the immediate possession of its collateral or, in the alternative, a judgment for its value; and (b) damages for wrongful detention. Plaintiff's petition states a single cause of action against three defendants. See § 643.2, The Code.

There is thus a conspicuous absence of those separate and distinct causes of action as to multiple defendants which, under the holding of McGuire v. City of Cedar Rapids, 189 N.W.2d 592, 597 (Iowa 1971), are needed to establish final judgment status under rule 1(a), R. App. P. Absent such separability there is no final judgment until the case is disposed of as to all parties. McGuire v. City of Cedar Rapids, supra, at 595; Reuter v. City of Oskaloosa, 253 Iowa 768, 772, 113 N.W.2d 716, 719 (1962). We are therefore without jurisdiction to entertain plaintiff's appeal taken at a time when no final judgment existed.

APPEAL DISMISSED.