

206 SUPREME COURT

Defendant-Appellee.

Heard by Oxberger, C.J., Hayden, and Sackett, JJ.

The plaintiffs appeal from denial of their request for an injunction to prevent defendant from taking further action regarding six actions filed by defendant against them, which plaintiffs say have been adjudicated by the courts. We reverse the trial court's decision that an injunction is not warranted.

The plaintiffs include the uncle, brother, and other relatives of Royal D. Jennings. Apparently the dispute between defendant, Royal, and the plaintiffs began in 1958 after a settlement agreement was reached between Royal and his parents concerning several claims. Since that time seven separate law suits have been filed by Royal against the plaintiffs, resulting in twenty-one separate volumes of files and transcripts presented to this court.

In 1980 plaintiffs brought the present action for an injunction asserting the seven actions and subsequent motions and appeals were "repetitious, baseless, malicious and vexatious." In one count of their petition, plaintiffs sought to have defendant permanently enjoined from filing any further papers, or taking any further appeals in the seven actions, including one federal court petition, and from bringing any new actions. In the remaining counts of their petition, plaintiffs sought damages.

The injunction count was tried first. After trial, the district court denied the injunction, stating: (1) that it had no authority to enjoin a person from filing or prosecuting an action in the federal district court, and (2) that plaintiffs had not shown that the various actions brought by defendant were "repetitious... or essentially similar to each other." Plaintiffs appealed.

The supreme court raised on its own motion the issue of the finality of the order appealed from since the damages counts of the petition had not yet been disposed of. Justice Wolle ruled that the order was not final, but that permission for an interlocutory appeal would be granted.

We will attempt to summarize the litigation in our de novo review of the trial court's decision denying an injunction to plaintiffs.

After Royal reached settlement with his parents, a dispute arose concerning a trenching machine. Another settlement was entered into in 1965. In February 1966, defendant brought action 14052 in Louisa County for alleged breach of the settlement. He dismissed his action without prejudice July 18, 1967. Later a warranty deed was given of the family farm from Royal's parents, Olive and Boyd, to their other son, Vivan. Olive died in 1971.

On September 15, 1975, one day less than ten years after the settlement agreement, defendant brought Louisa County action number 15107 for interference with a contract arising out of the settlement breach, unjust enrichment, and for alleged undue influence on his parents by the plaintiffs. Royal, during this action, had five attorneys, who all withdrew, and he conducted much of the action pro se. The petition was recast four times and amended twice, the last amendment including sixteen pages of handwritten allegations concerning not only the plaintiffs, but his former attorneys and his father's cats and dogs. In division two, paragraph five of his third recast petition he indicated the first petition had been dismissed with the intent to bring the action again in another ten years.

Meanwhile, defendant had begun another action in Henry County, number 7658. This petition was filed February 17, 1976, and later recast into six divisions. The first division involved a demand to set aside a deed from defendant's mother to the plaintiff Vivan, and to set aside the deed from defendant's father to Vivan and Eileen Jennings. It also requested probate of Olive's will. The second division was brought against an attorney, the third was for alleged alienation of his parents' affections by the plaintiffs, an alleged assault on defendant's wife, for defamation, and interfering with his expectancy of inheritance from his parents. Division four was brought against his prior attorney,

and division five was for an accounting of payments due on the real estate contract and the trust agreement. Division six was a request for an injunction against all the plaintiffs to stop "interruption of the normal father-son and family relationship between Boyd Jennings" and the defendant and his family.

Only one person named in the petition, L. J. Jennings, was a resident of Henry County and none of the events or property involved was located in Henry County. The court transferred division one, relating to the deed of the farm, to Louisa County. The farm had been transferred by Vivan and Eileen to Elm Grove, Inc., and Elm Grove, Inc. intervened in the action and counterclaimed to quiet title of the property. This action, along with number 15107 concerning the settlement were set for trial October 4, 1978. The defendant did not appear and he was found to be in default. The case continued to trial on the counterclaim and on October 6, 1978, title was quieted with Elm Grove, Inc.

The defendant filed a motion to set aside the default, which was denied and then filed another motion, for a new trial of number 15208. The court found on February 2, 1979, it was without jurisdiction to entertain the motion since the prior motion had been denied. The defendant filed a motion to vacate the judgment pursuant to rule 252 and 253, which was denied October 1, 1980.

The court was without jurisdiction to hear divisions two, four, five, and six in Henry County and dismissed the claims for failure to state a claim upon which relief may be granted. On August 5, 1977, defendant filed a "petition to modify" pursuant to rule 252 and 253, and then alleged the same six divisions of his original petition. The "petition" was filed both in Louisa County and in Henry County. Summary judgment on the "petition" was entered on October 28, 1977, in Louisa County, and on October 27, 1977, in Henry County.

Only division three remained in Henry County and on January 5, 1978, eleven days before trial was scheduled, defendant sent a letter to the court requesting a voluntary dismissal of the action. No action remained in Henry County.

Defendant filed a motion in December 1977 "pursuant to rule 244" for a new

trial, although there had never been a trial on the case since it was dismissed for failure to state a claim upon which relief could be granted. He then wrote a letter to Judge Bainter requesting a hearing. The judge wrote to defendant, explaining that rule 244 could not apply to the case, and an order was subsequently entered denying the request. More motions followed on this ruling "pursuant to" rules 252 and 253 on this action. Prior to this ruling, other motions under rule 252 and 253 requested the entire case be reinstated. Another motion for a new trial was filed in April 1980 and attempts were made to appeal the claims.

In July 1978 three petitions were filed by defendant in Louisa County: number 15429A contested the will of Boyd Jennings, an accounting of Boyd's assets was requested, and the defendant objected to the summary judgment in the Henry County and Louisa County actions; number 15429B contested Olive's will; number 15429C again asked the deed from Olive to Vivan and from Boyd to Vivan be set aside, and for an accounting. The petition was replied by defendant's attorney. Trial in December 1978 resulted in a verdict against Royal, and in favor of the plaintiffs of the present action. A motion for a new trial was denied. A motion pursuant to rule 252 and 253 was heard, along with actions 15107 and 15208, and all were denied. Yet another motion to vacate the judgment was filed March 5, 1981.

Plaintiffs say that each year defendant has filed a motion pursuant to rule 252 and 253 to reinstate the actions, and has appealed to the Iowa Supreme Court and attempted to appeal to the United States Supreme Court. A partial listing by plaintiffs of defendant's appeals to the state supreme court shows twenty-one separate appeals were taken.

The trial court in its ruling on plaintiff's request for an injunction made several erroneous findings of fact, not surprisingly in view of the vast amount of paper it would have to sift through in order to make a determination. It indicated division one of the Henry County action, which was transferred to Louisa County,

had not be tried. In fact it had, and the title of the land was quieted in the corporation. The court further noted it was improper to treat the August 5th motion as a petition, when the action, according to the court, was "quite apparently an attempt to have the Judgment in Cause No. 7658 vacated." However, the action was labeled a "petition," restated the six divisions of the original action, and all parties, the clerk , and judge apparently were justified in treating it an another original action.

The court further stated that division three of number 7658, including assault claims, have not been adjudicated. Defendant voluntarily dismissed the claim and cannot pursue further action on number 7658. We note that after a voluntary dismissal, the action could ordinarily be brought again on the claims not adjudicated in the other actions. However, defendant's claim was brought five years after the alleged incidents and is barred by the applicable statute of limitations. Iowa Code § 614.1(2)(1983).

Plaintiffs do not contest the court's finding that it has no jurisdiction to enjoin further actions in federal court which were also started by the defendant. They say, however, the court erred in finding the actions were not repetitious suits on an adjudicated cause of action.

The last case to discuss at length the enjoining of vexatious and duplicative lawsuits was Benedict v. Hall Manufacturing Co., 211 Iowa 1312, 236 N.W. 92 (Iowa 1931). In that case, the appellee had brought claims, then voluntarily dismissed them prior to trial, and brought them again, until finally the case was determined in favor of the appellee. Id. at 1313-14, 236 N.W. at 92-93. The judgment was paid, yet appellee continued to bring lawsuits against the appellant. Id. As a result of the continuing lawsuits, the appellant was suffering damage. Id. The court noted that such injunctions, previously referred to as a "bill of peace," were warranted when:

[T]he plaintiff has after repeated and satisfactory trials established his right at law, and yet is in danger of further litigation and obstruction to his right from new attempts to controvert it. Under such circumstances Courts of Equity will interfere and grant a perpetual injunction to quiet the possession of the plaintiff and to suppress future litigation of the right.

Id. at 1317, 236 N.W. at 94. (citation omitted). The court noted another case similar to its own, and also similar to the case we decide today, where, "We must therefore consider that the plaintiff dismissed her cases voluntarily, and without any ground for so doing except to serve her own purposes." Id., 236 N.W. at 95. An injunction will be granted, the court added, when the plaintiff can show that although there is a remedy at law, it is inadequate, and justice requires an equitable remedy. Id. This can include the situation where plaintiffs are forced to pay extensive attorneys fees because of the vexatious litigation:

[O]ne who is pursued with repetition of suits has an adequate remedy at law, because he may plead the earlier adjudication in bar. . . . It suffices to say that there is no remedy for the needless expenditure [of money] the prosecution of the suit will force upon the defendant."

Id. at 1318-19, 236 N.W. at 95 (citations omitted).

We believe the facts outlined involve the type of situation that merits a "bill of peace." The two actions regarding the will of defendant's mother were brought more than five years after her death, and the action for alienation of parents' affections is not recognized in Iowa. Nevertheless, defendant continues to press these and other adjudicated claims.. The defendant continues to file appeals in all the actions, and attempts to reinstate the actions under rules 252, and 253, although rulings have already been made on the requests. Louisa County numbers 15107 and 15208 have been adjudicated through trial, division three of 7658 has been dismissed by defendant, and the remaining divisions have been dismissed, and subject to summary judgment. Numbers 15492A, 15429B, and 15429C have also been adjudicated by trial. Defendant has filed all the postjudgment motions he can possibly make on the decisions. Clearly, he will continue to make such motions.

We find the plaintiffs are entitled to the injunctive relief requested, to enjoin defendant from further action in Henry County lawsuit number 7658, and Louisa County actions 15107, 15208, 15429A, 15429B, and 15429C, and any other action on matters adjudicated or which could have been adjudicated in these actions.

We remand so that *an injunction may be entered* and for further action on damages consistent with this opinion.

REVERSED AND REMANDED.

SACKETT, J., (dissenting)

The majority has with great care outlined the history of litigation filed by the defendant and determined that the history supports awarding of injunctive relief to the plaintiff. While I find the defendant's use of the court system to be disgusting, I cannot agree with the majority's finding that an injunction should issue.

Access to our legal system must be readily available to persons who seek redress for civil grievance, be they represented by legal counsel or not. The system has its own safeguards to discourage improper use of the system, (e.g., filing fees and summary proceeding). We must use extreme caution in denying any citizen access to the system.

The majority determines that Benedict supports their decision. Benedict is distinguishable. It involves suits on the same action, and the court found that the litigation was brought in bad faith. Benedict, 211 Iowa at 1316-17, 236 N.W. at 94. Furthermore, the record contained abundant evidence of the manner in which defendant was harassed in its business transactions because of the litigation. Id. at 1316, 236 N.W. at 94.

The Iowa court in Benedict, 211 Iowa at 1320, 236 N.W. at 95, made it extremely clear that the equitable power of the courts to use injunctive relief to stop litigation should be exercised only with great caution and for very substantial reasons. . . . The court in Wall v. County Bd. of Educ., 249 Iowa 209, 219, 86 N.W.2d 231, 237 (1957) emphasized the need to exercise great caution and very substantial reasons.

One source, in referring to the court's power to enjoin vexatious litigation, explains:

It is based on the fact that the litigation is for the purpose of harassing, annoying, and vexing an opponent, and that the jurisdiction of the court is invoked by the numerous proceedings, not for the attainment of justice, but rather to further or satisfy individual malice towards another.

42 Am. Jur. 2d Injunctions §206 (1984). To be vexatious, litigation must be prosecuted not only without probable cause but also with malice. Bridgeport Hydraulic Co. v. Pearson, 91 A.2d 778, 781 (Conn. 1952). The plaintiffs have failed to show bad faith or malice.